**Thomas George Vs. Chief Controlling Revenue Authority**

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**SooperKanoon Citation** : sooperkanoon.com/965446

**Court** : Chennai

**Decided On :** Jan-03-2013

**Judge** : The Hon'Ble Mr. Justice T.S.Sivagnanam

**Appellant** : Thomas George

**Respondent** : Chief Controlling Revenue Authority

**Judgement** :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

03. 01.2013 CORAM: THE HONBLE MR. JUSTICE T.S.SIVAGNANAM W.P.No.23499 of 2003 Thomas George ... Petitioner -vs- 1.The Inspector General Chief Controlling Revenue Authority 100, Santhome High Road Chennai. 2.District Registrar (Administration) Office of District Registrar (Central) Chennai. ... Respondents Prayer : The Writ Petition filed under Article 226 of the Constitution of India for issue of Writ of certiorari to call for the records of the first respondent in Pa.Mu.No.26741/B1/2002 dated 18.2.2003 and quash the same as illegal. For Petitioner : Mr.A.L.Somayajee, Sr.Counsel for Mr.R.Shankaranarayanan For Respondents : Mr.K.Karthikeyan, G.A. O R D E R Heard Mr.A.L.Somayajee, learned Senior Counsel appearing for Mr.R.Shankaranarayanan, learned counsel for the petitioner and Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents and perused the materials available on record. 2.The challenge in this Writ Petition is to an order passed by the first respondent, Inspector General/Chief Controlling Revenue Authority, Chennai, dated 18.2.2003. By the said order, the first respondent confirmed the demand of deficit stamp duty

made on the petitioner, his brother and sister, and called upon them to pay a sum of Rs.6,36,369/- in respect of Deed of Partition dated 22.3.2000, registered as document No.983/2002, on the file of the Sub Registrar, Purasaiwalkam. 3.The facts of case lies in a narrow campus. The land in question is comprised in Plot No.75, Door No.4, Third Cross Street, Sylvan Lodge Colony, Kilpauk, Chennai. The Writ Petitioner Mr.Thomas George, purchased about 3/4th undivided share of the total extent of land by a sale deed dated 16.5.1980, registered as document No.946/80. His brother Dr.Thomas George, purchased the remaining 1/4th share by a sale deed dated 18.06.1986, registered as Document No.1447 of 1986. It appears that subsequently, the Writ Petitioner sold about 900 sq.ft. of land to a third party. Therefore, the total extent owned by the petitioner and his brother Dr.Thomas George was 3 grounds and 674 sq.ft. A Deed of Partition dated 22.3.2000, was entered into between the petitioner, his brother Dr.Thomas George and his sister Sarah Mathai. The said document was presented before the Sub Registrar, Purasaiwalkam, who entertained the document for registration, accepted the stamp duty paid by the petitioner and the parties to the document and registered the same as document No.983/2000 and the document was also released. Subsequently, the District Registrar, Central Chennai, issued a notice date 18.3.2000 purported to be under section 33 A of the Indian Stamp Act (herein after referred to as the 'Act'), stating that in respect of the Deed of Partition, registered as Document No.983/2000, the petitioner has to remit the deficit Stamp duty of Rs.6,36,369/- within a period of fifteen days. In response to the said communication, the Writ Petitioner submitted a representation dated 29.3.2000. Thereafter the District Registrar issued a notice in Form not I under section 47-A(3) of the Act, giving details with regard to the value of the property in question, etc. and how the deficit stamp duty has been arrived at. Subsequently, another detailed representation was given by the petitioner on 20.4.2000,by stating that all the three parties to the Deed of Partition had pooled their resources for the purpose of purchase of the land without conveyance and put up three floors, each floor for each one of the party and all the three parties being brothers and sister, the document was rightly treated as a Deed of Partition and therefore the demand was not sustainable. That apart it was pointed out that the procedure contemplated under the Act was not followed prior to issuance of the demand.

4.Though such representation was given, the District Registrar by proceedings dated 4.4.2002, communicated to the petitioner the certificate issued under section 33-A (3) of the Act certifying that the petitioner is bound to pay the deficit stamp duty of Rs.6,36,369/-. The petitioner was informed that as against the said certificate an appeal lies to the first respondent. Accordingly the petitioner filed an appeal before the first respondent on 15.5.2002 and the first respondent after affording an opportunity to the petitioner and taking into consideration the materials available on record, came to the conclusion that the deed of partition with regard to the superstructure is accepted, but in respect of the land more particularly the additional extent of land which was stated to be conveyed to Dr.Thomas George, the brother of the Writ Petitioner and the extent of land which came into the entitlement of the petitioners sister Sarah Mathai, has to be treated as conveyance and therefore, the petitioner has to remit the deficit stamp duty. Challenging the said order, the present Writ Petition has been filed. 5.The learned Senior Counsel appearing for the petitioner primarily challenged the impugned order raising two contentions. Firstly, by pointing out that prior to issuance of the demand, the procedure contemplated under section 33 A(1) of the Act has not been followed. Secondly, it was pointed out that the rate of stamp duty payable on a deed of partition is in terms of Article 45 of the Indian Stamp Act and if an instrumentation of partition is among the family members, the stamp duty has been fixed as Re.1/- for every Rs.100/-or part thereof of the market value of the property which is under partition, subject to the maximum of Rs.10,000/- per share. It is further submitted that in terms of explanation to Article 45 of the Act, for the purpose of said Article, the word 'family' shall have the same meaning as defined under clause 2 of Article 58 of the Act. By referring to Article 58 of the Act and the clarification issued by the Government in their letter No.85, Commercial Taxes and Registration Department dated 10.8.2006, it is submitted that the family includes brothers and sisters and instruments of partion, settlement and release executed among brothers and sisters is an instrument in favour of a member of a family as defined in Article 58 of the Act. Therefore, it is submitted that the document having been executed between the brothers and sister, the same should be treated as a deed of partition among family members as defined under Article 58 of the Act and therefore it is chargeable to duty as stipulated in Article 58 of the Act. 6.On the other hand, the learned Government Advocate appearing for the respondents submitted that at the time when the impugned order was passed by the first respondent, the clarification issued by the Government during 2006 was not available and therefore the deed of partition in so far it relates to the land was treated as deed of conveyance. The learned Government Advocate further submitted that the matter may be remanded to the first respondent for fresh consideration so that the first respondent shall take into consideration the clarification issued by the Government in 2006, as regards the definition of family in Article 58 and pass appropriate orders. 7.After hearing the learned counsel for the parties and perusing the materials on record, it is seen that prior to the issuance of the demand under section 33 A of the Act, the procedure required to be followed has not been complied with. The statute mandates that even after registration of any instrument under the Registration Act, if it is found that the proper stamp duty payable under the Act has not been paid or has been insufficiently paid, such duty or the deficit as the case may be, on a certificate from the Registrar of the District be recovered from the person liable to pay the duty as arrears of land revenue. In terms of the first proviso to sub section 1 of section 33-A of Act, no such certificate shall be granted by the Registrator of the District, unless due inquiry is made and such person liable to pay the stamp duty should be given opportunity of being heard. 8.Admittedly, no record has been placed before this Court to show that prior to issuance of demand notice dated 18.3.2002, the procedure contemplated under the first proviso to sub-section 1 of section 33 A of the Act has been complied with. In fact the petitioner appears to have treated the proceedings dated 18.3.2002, as notice and submitted an objection on 29.3.2002. Yet the District Registrar did not afford an opportunity, nor conducted any enquiry, but proceeded to issued Form I notice under section 47 A of the Act. Therefore, the entire proceedings from the stage of commencement is vitiated for not following the mandatory statutory procedure. Further, even before the appellate authority this error was pointed out. However, the appellate authority partially accepted the case of the petitioner i.e. in respect of superstructure alone, but, rejected the claim in respect of the undivided share of the land, stating that the sister will not be included within the definition of family. The confusion as regards the interpretation of the provisions of Article 58 of the Act and the definition of the term 'family' had been put at rest after the Government clarified the same by a Government letter No.85 Commercial Taxes and Registration Department dated 10.8.2006. Admittedly such clarification was issued much after the impugned order has been passed. 9.In view of the above reasons and taking note of the fact that provisions of section 33-A of the Act has not been followed, this Court is of the firm view that the matter requires to be reconsidered by the second respondent viz. The District Registrar. Accordingly, the impugned order is set aside to a limited extent and the matter is remanded to the second respondent for fresh consideration as regards the question whether the division of proportionate undivided share in the land among the petitioner, his brother and sister could be treated as a partition by taking note of the clarification issued by the Govrnment inletter dated 10.8.2006. In so far as the superstructure, the first respondent had accepted the petitioner's contention that it is a deed of partition and therefore the said finding is not disturbed. The second respondent shall issue a notice to the petitioner under section 33 A of the Act, afford an opportunity to the petitioner to submit a reply, conduct an enquiry as contemplated under the Act and thereafter proceed in accordance with law. 10.At this juncture, the learned counsel for the petitioner submitted that the petitioner has given a Bank Guarantee for the deficit stamp duty and such a Bank Guarantee is valid till October 2013. If that be so, the petitioner shall keep the Bank Guarantee alive till the proceedings are concluded by the second respondent or by such other authority. The Writ Petition is allowed on the above terms. No costs. 03.01.2012 rpa Index :Yes Internet:Yes T.S.SIVAGNANAM J rpa To 1.The Inspector General Chief Controlling Revenue Authority 100, Santhome High Road Chennai. 2.District Registrar (Administration) Office of District Registrar (Central) Chennai. W.P.No.23499 o

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