

(2010) 02 KL CK 0072

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32015 of 2009 (V)

Anitha Rajan

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Kerala Stamp Act, 1959 — Section 18, 18(1), 2(c), 31, 32
Stamp Act, 1899 — Section 18, 2, 31, 31(1), 32

Citation : AIR 2010 Ker 153 : (2010) 2 ILR (Ker) 191 : (2010) 1 KLJ 553 :
(2010) 1 KLT 932

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : Rajesh Chakyat, for the Appellant; M.A. Asif (G.P.), for the
Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The petitioner purchased a parcel of land, 50 cents in extent, situated in Re-Survey No. 166/1 of Nattika village, Chavakkad taluk, Thrissur district from the legal heirs of late Gangadharan as per the original of Ext.P3 sale deed dated 16.3.2009, registered as document No. 640 of 2009 of Sub Registrar's office, Triprayar. The property conveyed to the petitioner as per Ext.P3 sale deed belonged to late Gangadharan. Ext.P3 sale deed was executed by his wife Smt. Rathnabhat and his children Sri. Ajayan, Smt. Jisha, Smt. Usha, Smt. Ajitha and Smt. Anitha. Sri. Ajayan, one of the vendors was employed in Dubai and Smt. Usha, another vendor was not residing in her home town. Sri. Ajayan had executed the original of Ext.P1 power of attorney on 1.3.2009 on non-judicial stamp paper of the value of Rs. 150/- appointing his mother Smt. Rathnabhai as his power of attorney to execute a sale deed in respect of the lands conveyed to the petitioner. The original of Ext.P1 power of attorney was executed at Dubai in the presence of the Vice Counsel in the Indian Consulate at Dubai and is attested by him. Ext.P2, the power of attorney executed by Smt. Usha, is a power of attorney registered in the Sub Registrar's Office, Triprayar.

After Ext.P3 sale deed was executed, the petitioner moved the third respondent for effecting mutation in the revenue records. The third respondent thereupon sent Ext.P4 letter dated 8.9.2009 to the petitioner informing her that the original of Ext. P1 power of attorney executed at Dubai has to be produced before the Revenue Divisional Officer, Thrissur for adjudication and that if the power of attorney is produced before him after adjudication by the Revenue Divisional Officer, mutation in the revenue records will be effected. The petitioner thereupon submitted Ext.P5 petition dated 6.10.2009 before the Revenue Divisional Officer, Thrissur requesting him to condone the delay in producing Ext.P1 for adjudication and to certify that it is duly stamped. On that application, the Revenue Divisional Officer, Thrissur passed Ext.P6 order dated 19.10.2009 (wrongly mentioned as 19.10.2001) rejecting Ext.P5 application on the ground that it was not produced before her within the time limit of three months stipulated in section 18 (1) of the Kerala Stamp Act, 1959. In this writ petition, the petitioner challenges Exts.P4 and P6 orders and seeks a direction to the first respondent to certify that Ext.P1 power of attorney is duly stamped. She also seeks a direction to the third respondent to pass orders on her application for effecting mutation in the revenue records in respect of the land conveyed to her by Ext.P3 sale deed.

2. The petitioner contends that it is not mandatory to produce every power of attorney executed out of India before the Revenue Divisional Officer and that only instruments executed out of India which are chargeable with duty but are not duly stamped, that require to be stamped within three months and that only such documents are required to be produced before the Collector for adjudication u/s 31 of the Kerala Stamp Act, 1959. The petitioner contends that the original of Ext.P1 power of attorney was produced before the Sub Registrar, Tripurayar, the competent authority at the time when the original of Ext.P3 sale deed was registered and that as the sale deed was duly registered by the Sub Registrar and no objection was taken to stamp duty payable on Ext.P1 power of attorney, the Village Officer should have effected mutation in the revenue records without insisting on the petitioner producing the original of Ext.P1 power of attorney before the Revenue Divisional Officer for adjudication u/s 31 of the Kerala Stamp Act, 1959.

3. I have considered the submissions made at the Bar by Sri. Rajesh Chakyat, the learned counsel appearing for the petitioner and Sri. M.A. Asif, the learned Government Pleader appearing for the respondents. Sub-section (1) of section 18 of the Kerala Stamp Act, 1959 states that every instrument chargeable with duty executed only out of India may be stamped within three months after it has been first received in the State of Kerala, Sub-section (2) of section 18 states that when any such instrument cannot with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector who shall stamp the same in such manner as the Government may by rules prescribe, with the stamp of such value as the person so taking such instrument may require and pay for. Sub-

section (1) of section 31 of the Kerala Stamp Act, 1959 stipulates that when any instrument, whether executed or not and whether previously stamped or not is brought to the Collector and the person bringing it applies to have the opinion of the Collector as to the duty if any with which it is chargeable and pays a fee of such amount not exceeding ten rupees and not less than one rupee as the Collector may in each case direct the Collector shall determine the duty, if any, with which, in his judgment, the instrument is chargeable, It is relying on these provisions that the Village Officer directed the petitioner to produce the original of Ext.P1 power of attorney before the Revenue Divisional Officer for adjudication as to the stamp duty payable on it. When the petitioner produced the original of Ext.P1 power of attorney before the Revenue Divisional Officer along with Ext.P5 petition, the Revenue Divisional Officer rejected that application on the ground that it was not submitted for adjudication within the time limit of three months stipulated in sub-section (1) of section 18 of the Kerala Stamp Act 1959.

4. Ext.P1 power of attorney is executed on Indian non-judicial stamp paper of the value of Rs. 150/-. By Ext.P1 Sri. Ajayan, one of the vendors appointed his mother, yet another vendor, as his attorney to execute and admit documents for sale, release, partition etc. of their joint properties situated in Re-survey Nos. 166/1 of Nattika Village and 163/10 of Triprayar Village which belonged to his father, late Gangadharan. No consideration is recited in Ext.P1 power of attorney. By Ext.P1 only one person was appointed to act as the power of attorney. Therefore, the stamp duty payable on the said power of attorney is only Rs. 150/- In terms of Article 44(f) of the Schedule to the Kerala Stamp Act, 1959, Ext.P1 power of attorney executed on Indian non-judicial stamp paper of Rs. 150/- at Dubai in the presence of the Vice Consul in the Indian Consulate at Dubai, was produced before the Sub Registrar, Triprayar who acted on it when he registered the original of Ext.P3 sale deed in favour of the petitioner. In my opinion, as the power of attorney was duly stamped, section 18(1) of the Kerala Stamp Act, 1959 has no application at all. It is only in cases where an instrument chargeable with duty is executed out of India but is not duly stamped that the law stipulates that when such instrument cannot be duly stamped by a private person, it may be taken within a period of three months to the Collector who shall stamp the same in such manner as the Government may by rules prescribe, with a stamp of such value as the person so taking such instrument may require and pay for. As the original of Ext.P1 is a power of attorney executed on Indian non-judicial stamp paper of value of Rs. 150/- which was the stamp duty payable during the relevant time on that power of attorney in terms of Article 44(f) of the Kerala Stamp Act, 1959, it was not necessary for the petitioner to take it before the Collector for getting it stamped as required u/s 18 of the Kerala Stamp Act, 1959. Necessary therefore, it has to be held that the petitioner was not bound to produce it before the Collector as defined in Section 2(c) of the Kerala Stamp Act, 1959 for the purpose of determining the duty payable on the power of attorney.

5. In Manoharan Vs. Velu and another, , a learned single judge of the Madras

High Court considered the question whether a power of attorney executed on Indian nonjudicial stamp paper of the value of Rs. 5/- which was the proper stamp duty payable on that instrument at that point of time should be produced before the Collector for the purpose of certifying that the full duty with which it is chargeable has been paid or not. It was held that it is only in a case where the opinion of the Collector is sought regarding the proper stamp duty payable on an instrument that the Collector gets the power to proceed in accordance with section 31 of the Indian Stamp Act, 1899 and that as proper stamp duty has already been paid, it was not necessary to produce the power of attorney before the Collector for adjudication. The learned single judge in *Manoharan v. Velu* (supra) held as follows;

5. This power document satisfies the definition "power of attorney" as defined in Sub-sec.(21) of Sec. 2 of the Act it is not in dispute that this power document is engrossed on Indian Non-Judicial stamp paper of the value of Rs. 5, which is the proper stamp duty, payable on that instrument. On these facts, the question that arises for consideration is whether the said power document should be necessarily produced before the Collector to certify by endorsement on such instrument that the full duty with which it is chargeable has been paid or not. To decide this question, the court has to necessarily look into Secs. 31 and 32 of the Act. Sec. 32 of the Act starts with the following words: "When an instrument brought to the Collector under Sec. 31, is etc., etc. Therefore, if the provisions of Sec. 32 of the Act have to be applied, then the instrument should have been necessarily produced under the provisions of Sec. 31 of the Act before the Collector concerned, Sec. 31 of the Act enable a person bringing to the Collector any instrument whether executed or not and whether previously stamped or not, to have his opinion as to the duty (if any) with which it is chargeable and thereupon the Collector on payment of a fee, shall determine the duty (if any) with which, in his judgment the instrument is chargeable, Sub-sec.(2) of Sec. 31 of the Act deals with the power of the Collector to collect materials, in order to determine the stamp duty, if any, chargeable on the instrument produced before him. Therefore, it is clear that only in a case where the opinion of the Collector is sought for regarding the payment of the proper stamp duty, the Collector gets the power to proceed in accordance with Sec. 31 of the Act, Once the Collector gets the jurisdiction under Sec. 31 of the Act in the manner I have stated above, then only Sec. 32 of the Act gets attracted.

6. Since in this case, the instrument has been charged with the proper stamp duty payable under the Act and since it has not been produced by the power of Attorney Agent of the deceased second plaintiff before the Collector, the Collector does not get any jurisdiction at all to go into that question. The argument the learned counsel for the respondents that the requirement of producing such an instrument before the Collector is mandatory, (Where the instrument had been executed outside India) cannot be sustained. The Proviso to the main section of the Act cannot alter the scope of the very section itself. To attract clause (b) of the Proviso to Sub-sec. (3) of Sec. 32 of the Act necessarily the document

whether it is executed in India or outside India should have been produced before the Collector under Sec. 31 (1) of the Act So long as the document was not produced before the Collector, under Sec. 31(1) of the Act seeking his opinion on proper stamp duty chargeable, there is no question of relying upon or referring to the Proviso to Sub-sec. (3) of Sec. 32 of the Act"

6. In *R.B.K. Rajeswari Nachiar Vs. N.N.S.A. Mohamed Kasim*, . a learned single judge of the Madras High Court held following the decision in *Manoharan v. Velu* (supra) that a power of attorney executed in Malaysia but engrossed on Indian non-judicial stamp paper need not be produced before the Collector for certification. In that case, the defendant in a suit produced a power of attorney executed in Malaysia and filed an application to accept the power holder as his agent. That application was allowed by the trial court. The plaintiff thereupon challenged the said order by filing a revision petition before the Madras High Court, She contended that as the power of attorney was executed in Malaysia, it should have been got certified by the Collector within three months from the date of execution as contemplated u/s 18 of the Indian Stamp Act, 1899 (which is para materia with section 18(1) of the Kerala Stamp Act, 1959) and that as it has not been certified u/s 31 of the Indian Stamp Act, 1899 (which is para materia with section 31 of the Kerala Stamp Act, 1959), the power of attorney cannot be acted upon. The learned single Judge of the Madras High Court held that the power of attorney executed in Malaysia which was engrossed on Indian non-judicial stamp paper need not be produced before the Collector for certification since the full stamp duty has already been paid, it was also held that as the power of attorney was executed on Indian non-judicial stamp paper, the failure to produce it before the Collector within three months will not disentitle the party from acting on the basis of such power of attorney.

7. Section 31 of the Kerala Stamp Act, 1959. (which is para materia with section 31 of the Indian Stamp Act, 1899) empowers the District Collector to adjudicate on the proper stamp duty payable on an instrument which is brought before him for the purpose of adjudication of the stamp duty. u/s 32 of the Kerala Stamp Act, 1959, the District Collector is empowered to determine the duty payable on that instrument. However, the second limb of the proviso to subsection (13) of section 32 of the Kerala Stamp Act stipulates that nothing contained in that section shall authorise the Collector to endorse any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in the State. Ext.P1 power of attorney is executed on Indian non-judicial stamp paper of the value of Rs. 150/- which was the proper stamp duty payable during the relevant time on that power of attorney under Article 44(f) of the Schedule to the Kerala Stamp Act, 1959, As the power of attorney was duly stamped, It was not necessary for the power holder or the petitioner to produce the original of Ext. P1 before the Collector as required under sections 18 and 31 of the Kerala Stamp Act, 1959 for the purpose of adjudication. It is only in cases where an instrument is brought before the Collector u/s 31 that the Collector is empowered to adjudicate whether it is

properly stamped or not. The view that I have taken is supported by the decision of the Madras High Court in Manotiaran's case (supra) and R.B.K. Rajeswari Nachiar's case (supra) wherein the very same issue arose for consideration. In the instant case, the respondents have no case that the proper stamp duty payable on the power of attorney has not been paid. Since Ext. P1 power of attorney, though executed at Dubai is engrossed on Indian non-judicial stamp paper of the value of Rs. 150/-which represents the proper stamp duty payable in respect of the said instrument it was not necessary to produce the said instrument before the Revenue Divisional Officer, who has been appointed by the Government of Kerala to exercise all the powers of the Collector under sections 18, 31 and 32 of the Kerala Stamp Act, 1959. The restrictions imposed in section 18(1) and proviso (b) to sub-section (3) of section 32 of the Kerala Stamp Act do not therefore apply. Further, the said power of attorney was acted upon by the Sub Registrar, Triprayar who is aware of the stipulations in sections 18, 31 and 32 of the Kerala Stamp Act, 1959, when he registered the original of Ext.P3 sale deed. I therefore hold that the Village Officer, Nattika Village erred in not acting on the petitioner's application for transfer of registry and in directing the petitioner to produce the original of Ext.P1 power of attorney before the Revenue Divisional Officer, Thrissur for adjudication under sections 31 and 32 of the Kerala Stamp Act, 1959.

I accordingly allow this writ petition, quash Exts.P4 and P6 and direct respondents 2 and 3 to pass orders on the petitioner's application to effect mutation in the revenue records in relation to the property described in Ext.P3 sale deed. Necessary steps in that regard shall be taken and completed within two months from the date on which the petitioner produces a certified copy of this judgment before the second respondent.