(2012) 07 KL CK 0193

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11942 of 2012

Bahuleyan APPELLANT

Vs

District Registrar RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:
Kerala Stamp Act, 1959 — Serial No. 42

Citation : AIR 2013 Ker 79 : (2012) 4 KLT 356

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Rajit, for the Appellant; K.C. Vincent), for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair

1. The stamp duty payable on a partition deed executed between the petitioners, is the issue to be resolved in this Writ Petition. The genealogy show that one Lakshmi had two sons, Balan @ Parameswaran and Kumaran. First petitioner is the son of Balan. Petitioners 2, 3 and 4 are respectively the wife of late Kumaran and two sons Kumaran through the second petitioner.

2. The property in question belonged to Lakshmi and it is having an extent of 2 acres and 842/3 cents. She had executed Ext. P1 registered will by which the property was bequeathed to the first petitioner and late Kumaran. After her death, the property devolved on the first petitioner and late Kumaran and the present partition deed, Ext. P2, is the one executed between the petitioners. Ext. P3 is the copy of the Finance Act, 2011 whereby amendments have been introduced in Serial No. 42 of the Schedule. I shall re-produce Serial No. 42(i) and the Explanation therein, before the amendment and after the amendment:

(i) Where the partition is among all or some of the family members:

The contention raised by the petitioners is that they being the members of the same family, the amended provision is attracted.

3. A statement has been filed on behalf of the second respondent. It is pointed out that the petitioners cannot be considered to be coming under the same family, as the property actually belonged to the first petitioner and Kumaran and when their properties are partitioned, they can only be considered as belonging to different families.

4. Learned counsel for the petitioners relied upon the judgments of this Court in Baburaj v. District Registrar (2011 (3) KLT 837) and Lakshmi Vs. The District Registrar, Kozhikode and Another, . In Baburaj''s case (supra), the facts show that a deed of partition was executed in respect of an immovable property which originally belonged to late Shri Ponnan. He had one son and the document of partition was executed between the children of Pattivelan who was the son of Ponnan, wife of Pattivelan, two children of one Haridas, who is a deceased son of Pattivelan and the sons of Yasoda and Devaki, who are the deceased daughters of Ponnan. After referring to the definition of ''family'', this Court has held as follows in paragraphs 7 & 8:

7. With the above factual details, it has to be seen whether the aforesaid persons come within the expression "family" as provided in the Explanation to Sl. No. 42 to the Schedule to the Kerala Stamp Act. The provision reads as under:-

Family means husband, wife, children and the legal heirs of the deceased children, if any, as the case may be.

8. A perusal of the above details itself show that the executants were the wife, grand children and great grand children of Ponnan, who are legal heirs of the children of Ponnan, whose property is partitioned. If that be so, they fall within the clause "wife and legal heirs of the deceased children" as provided in the Explanation. Necessarily, the document should have been classified under 42(i) as against 42(ii) as ordered in Ext. P1.

It was held that the document will come within the classification provided Serial No. 42(i) to the Schedule.

5. Learned counsel for the petitioners therefore emphasised the fact that all the executants will be covered by the expanded definition of ''family'' in the Explanation and the partition deed being one executed between the same family members, the provision that will apply for stamp duty is Serial No. 42(i) itself. Learned Government Pleader stressed the point that the first petitioner and late Kumaran had their own families and therefore they should be considered as belonging to different families.

6. For the purpose of Serial No. 42(i), what is required is that "partition is among all or some of the family members." Here, the property belonged to Lakshmi, the grand mother of the first petitioner and petitioners 3 and 4. In terms of the will executed by Lakshmi, the property devolved on the first petitioner and the husband of the second petitioner who is the father of petitioners 3 and 4. Herein,

going by the meaning of ''family'' in the Explanation, it will include grandchildren and legal heirs of deceased children. The first petitioner is the grandchild as far as Lakshmi is concerned and petitioners 2, 3 and 4 are legal heirs of the deceased son of Lakshmi. Petitioners 3 and 4 also will be her grandchildren. Thus, the document is being executed by one grandson of Lakshmi and legal heirs of another son. All these persons are thus covered by the meaning of ''family'' in the Explanation. In fact, the Explanation which was considered by this Court in Baburaj''s case (supra) was the unamended one and going by the amended provision, some more members of the family have been included.

7. The decision in Laksmi''s case (2011 (4) KLT 959) considered a document styled as settlement deed for the purpose of Serial No. 51(a)(ii). There, the document was executed in favour of a grandson of a deceased son which was not one covered by the Schedule itself In para 8 it is stated as follows:

It is to be noted that the instance of "Partition'' contemplated under Schedule 42 stands entirely on a different footing in so far as the property can be partitioned only among the co-owners. Unlike this, coming to the case of Gift/Settlement, the property can be gifted by a person to anybody of his choice, subject to satisfaction of the requirements under the relevant provisions of law.

8. Herein, the partition is between the co-owners, viz. the first petitioner who is a grandson and petitioners 2, 3 and 4 who are the legal heirs of another son of Lakshmi. Therefore, all of them will come within the definition of ''family'' for the purpose of the Explanation. The Explanation shows that ''family'' is sought to be denoted on the basis of the relationship of the parties concerned. The issue is not whether they are residing under one roof or separately. In fact, if the position as canvassed by the respondents is accepted, then even in respect of the members covered by the Explanation, merely because they are residing under separate roof, the benefit will not be obtained. A purposive interpretation of the provision is therefore required. In that view of the matter, the stand taken by the respondents cannot be accepted. Therefore, Ext. P4 is quashed. There will be a direction to the second respondent to compute the stamp duty payable for the document in terms of Serial No. 42(i) to the Schedule, as per the provisions of Ext. P3 amendment of the Finance Act, 2011. Going by the same, the maximum stamp duty payable will be only Rs. 1,000/-. The document will therefore be duly registered.

The Writ Petition is allowed as above. No costs.

