
(1967) 02 MAD CK 0014
In the Madras High Court
Case No : Case Ref. No. 3 of 1962

Chief Controlling Revenue Authority, Referring Officer	APPELLANT
Vs	
Rustorn Nusserwanji Patel	RESPONDENT

Date of Decision : 28-02-1967

Acts Referred:

Stamp Act, 1899 — Article 19, 23, 55, 57

Citation : AIR 1968 Mad 159 : (1968) ILR (Mad) 651 : (1967) 80 LW 598

Hon'ble Judges : M. Anantanarayanan, C.J.; Ramkrishnan, J.; Natesan, J

Bench : Full Bench

Judgement

M. Anantanarayanan, C.J.

(1) The case referred to us u/s 57 of the Indian Stamp Act involves this question whether a particular document is an instrument chargeable as a

conveyance under Art 23 of Schedule I (previous Art. 19 of Schedule 1-A) or as release under Art. 55 of Schedule I of the Indian Stamp Act.

We have had the benefit of elaborate arguments on this matter, and apart from the facts to which we shall presently refer, and which are explicit

and clear, the question also involves the interpretation of what amounts to a release in law as distinguished from a conveyance or transfer of

property for value; there are one or two leading authorities available on this aspect to which also we shall make a brief reference.

(2) In order to have a clear picture of the preceding facts we might immediately take up the settlement deed dated 5-4-1955 which is among the

papers and which involves on N.K. Patel & his two sons K.N. Patel (first son) and R.N. Patel (second son). Under this settlement deed, it is

recited that there are certain Immovable properties, of which the settlor (N.K. Patel) and his first son (K.N. Patel) are co-owners and joint

tenants, with a right of survivorship reserved to the surviving party. The settlor out of natural love and affection for the second son donee), makes

this settlement of his undivided half share in the properties the other co-owner (the first son) joining in the instrument as thereby, the right of

survivorship comes to an end. The document proceeds to state that the donee will thereafter hold the property along with the first son as tenants-

in-common in equal shares.

(3) The next document that we have to scrutinise is the document dated 12-7-1957, which is the instrument under analysis. This instrument refers

to a mortgage dated 14-7-1955 and the releasee (first son) assigns this mortgage to the releasor (second son), which forms the element of

consideration for the release itself. We need not further dwell on this aspect. The learned counsel for the State (Sri Ramaswami) does not contend

that a release deed is valid only when it is gratuitous. Admittedly, a release deed can be validly executed also for some benefit accruing to the

releasor simultaneously. After having recited this the donee (second son) (releasor) purports to release his undivided half share and interest in the

entire property in favour of the first son (releasee). The document proceeded to state that the amount secured under the mortgage (Rs. 51,250)

forms the consideration, in the sense that this half share itself is valued at about that figure. Admittedly, the entire estate was acquired for a much

less amount several years earlier, and both the co-owners claim to have spent moneys on the estate, resulting in a considerable enhancement of its

value.

(4) The question that falls to be decided by us is whether this instrument must necessarily be construed as amounting to a conveyance, and

assessed for stamp as such, or could be accepted as a release under Article 55 of Schedule I. It is not in dispute that the nomenclature is not

decisive nor the language which the parties may choose to employ, in framing the document. What is decisive is the actual character of the

transaction and the precise nature of the rights created by means of the instrument.

(5) Of the several authorities that have been referred to before us, the decision of the Full Bench in Board of Revenue v. Murugesu Mudaliar, 1955

2 MLJ 166 = AIR 1955 Mad 614 would appear to be most relevant, and indeed,

virtually decisive of the issue. There also the Full Bench was concerned with a transaction between co-owners, with regard to property under which these co-owners held undivided shares, and there had been to division by metes and bounds. The relevant cannon was stated by Rajamannar C. J. in the following form:--

In such a case there need to be conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owners. It is sufficient if he releases his interest. The result of such a release would be enlargement of the share of the other co-owners. There can be no release by one person in favour of another who is not already entitled to the property as co-owner"".

(6) In the last paragraph of this decision, there is some reference to the parallel case of a Hindu coparcenary where one member purports to

relinquish his rights in the family property in favour of the remaining coparceners. The learned Judges finally proceeded to observe:--

We can see no difference in principle, between such a document as between members of a coparcenary and the document in question, which is a document between co-owners"".

Finally, the learned Judges held that the document was a release, not liable to be charged either as a deed of dissolution of partnership or as a conveyance.

(7) Another very relevant decision is that of the Supreme Court in Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, , (not

report in full text so far) Their Lordships were concerned with the nature of a document of release and they approbated the observations that ""a

release deed can only feed title but cannot transfer title"" and also that

renunciation must be in favour of a person who had already title to the estate, the effect of which is only to enlarge the right

Their Lordships further proceeded to observe with great significance for the facts serve with great significance for the facts of the present case, that

it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having

a limited estate, e.g. by a remainderman to a tenant for life and the release then

operates as an enlargement of the limited estate.

(8) In the present case, *prima facie*, it may be contended with great force and plausibility that the document rightly purports to be a release and

should be received as such. For it cannot be disputed, we think, that the estate in question is owned by two parties or co-owners, that the releasee

has already an undivided half share in the estate and that what the releasor purports to do by the document is to effect himself, in respect of both

this title and his right to possession in favour of the releasee. Nevertheless, Sri Ramaswami for the State has contended, upon two main lines of

reasoning, that the document has to be interpreted as a conveyance or should be held essentially to be such. The first line of reasoning is based

upon the distinction well known to law borrowed from the English law of real Property between a joint tenant and a tenant-in-common. This

distinction has also been applied to the concept of a Hindu Coparcenary as existing before a division in status and the state of rights between

erstwhile co-parceners after division is status as would be apparent from cited passages in Mulla's Hindu law. The other line of reasoning is that

upon the actual phraseology of Article 55 of Schedule I such a document as this cannot amount to a release.

(9) We have carefully examined these arguments and we do not find them to be substantial. No doubt, there is a well understood distinction

between tenancy in common and a joint tenancy, and our attention has been drawn to the relevant passage or entry in Jowitt's Dictionary on

English law, page 1728. It is pointed out there:--

Tenancy in common differs from joint tenancy, in that joint tenants have one interest in the whole and no interest in any particular part. Tenants in

common have several and distinct interest in their respective parts-tenants in common held by unity of possession, because neither of them knows

his own severally"".

Our attention has also been drawn to one passage upon this aspect setting forth an extract from Halsbury in *State of Madras v. Subramania Iyer*,

1965 1 MLJ 566, to which one of us was a party.

(10) We do not think that this distinction is really significant on the present facts, and it need not be pressed very far in the present case. To the

extent of the present facts, these two parties are co-owners, with a title which

cannot be demarcated or fixed, with reference to any particular part of the property. In other words, there is a joint possession that can only be severed by partition, and further commonalty of title, in the sense that the title of the releasor is derived from the father, who jointly held the property with the other son, the releasee. In that context, therefore, we do not think that the mere fact that these persons can be described in a certain sense as tenants in common would convert a document which purports to be a document of release into a conveyance.

(11) On the contrary, we may emphasise that the essential ingredients of release are here present. There is already a legal right in the property vested in the release, and the release operates to enlarge that right into an absolute title for the entire property, as far as the parties are concerned.

(12) The next argument of the learned counsel that this kind of release does not fall within the ambit of Article 55 of Schedule I appears to be

devoid of substance. Article 55 refers to release, that is to say "any instrument..... whereby a person renounces a claim upon any other

person, or against any specified property". We do not think that this means that a releasor cannot validly state, in the instrument, that he is effacing

his rights in the property, in favour of another named individual. There is an entity known to law as a document of release, and we have no reason

to think that, by this Article that entity was not indicated but only one particular kind of sub-species release, wherein the person in whose favour

the release is declared or intimated, is not designated by identity or name.

(13) We would, therefore, unhesitatingly answer the question in the form that the document was rightly interpreted as a release under Art. 55 of

Schedule I of the Indian Stamp Act and is liable to duty as such.

(14) Answer accordingly.