(1969) 01 MAD CK 0023

In the Madras High Court

Case No : Refd. Case No. 1 of 1963

Chief Controlling Revenue Authority Revenue Board, Madras — APPELLANT

Vs

Swami Gounder — RESPONDENT

Date of Decision : 28-01-1969

Acts Referred:
Stamp Duties Act, 1899 — Article 17, 23, 55

Citation : AIR 1970 Mad 1

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

Bench : Full Bench

Advocate : Addl. Government Pleader, for the Appellant; Vittal V. Souli for V.P. Raman, R. Krishnaswami and N.R. Chandran, for the Respondent

Judgement

Natesan, J.—The short question for consideration in this case is, whether an instrument by which a vendor of immo-veable property who

had taken an agreement for reconveyance from the vendee, gives up that right, is a ''conveyance'' falling under Article 23 of Schedule I of the

Indian Stamp Act, or a ''release'' falling under Article 55; an alternative suggestion is that it is a deed of cancellation falling under Article 17. The

respondent and his brothers purchased a certain property from one Kaliammal and others under a registered sale deed on 7-4-1958 for a

consideration of Rs. 5000. On the very same day, and as part of the same transaction, the vendees executed an agreement for reconveyance of the

property for the same consideration of Rs. 5000, of which Rs. 10 was paid as consideration for the agreement of reconveyance. On 1-6-1959 the

vendors executed the instrument in question, styled as a deed of release of the agreement for reconveyance. It is contended for the Revenue that

this instrument, must be stamped as a conveyance. It is admitted that the stamp duty payable as for a release has been paid, but the claim is that the instrument is a ''conveyance'' and not a release deed.

2. The learned Additional Government Pleader contends that this right to secure a reconveyance is ''property'' and that when that is dealt with, there is a transfer of the righht and therefore, the instrument in question would be a ''conveyance.'' The question for consideration is not whether the agreement for reconveyance is property of one kind of other, but the question is whether the transaction is a ''conveyance.'' That this right to secure a reconveyance, is capable of transfer is not in the least'' in doubt. Our attention is drawn to the decision of one of us in Andalammal Vs. Alamelu Ammal, , where it has been noticed that a right to reconveyance of land is property and not a mere right to sue, that such a right could be assigned and the assignee could enforce the same.

Under the definition of ''conveyance'' in the Stamp Act, conveyance may be in respect of any property, whether moveable or immovable; but the essential requisite is a transfer inter vivos of the property. Now, when the vendors, who had obtained the right of reconveyance under an instrument executed by the vendees, give up their right to get a reconveyance, can it be said that there is a transfer inter vivos of that right? The effect of such a transaction is to extinguish the outstanding right or claim which the vendors had against the vendees with reference to the property.

After the transaction the right given up is no longer subsisting or outstanding as such in any one. There can be no doubt that if the agreement for reconveyance had been transferred to any other person any third person other than the vendees who were obliged to retransfer the property under the agreement, then the instrument would be a ''conveyance''. But here, admittedly, the instrument is in favour of the original vendees. Article 55 of Schedule I of the Stamp Act, which provides for duty in respect of a release, indicates what a release is. The Article runs--

Release, that is to say, any instrument .... whereby a person renounces a claim upon another person, or against any specified property.

Under the instrument now under consideration, the vendor who could call upon the vendees to reconvey the property in question back to them, renounced that right. Squarely, the transaction falls within the definition of ''release'' which one reads in Article 55.

3. The learned Additional Government Pleader drew our attention to our decision in Chief Controlling Revenue Authority, Referring Officer Vs.

Rustorn Nusserwanji Patel, and contended that unless the parties to the instrument are co-owners, there can be no release. We find absolutely no

warrant whatsoever for such an inference from the decision in question. Therein we have categorically held that the essential ingredients of a release

are that there should already be a legal right in the property vested in the release and the release should operate to enlarge that right into an

absolute title for the entire property, as far as the parties are concerned. In that case, we were concerned with undivided co-owners. We have

referred therein to the decision of the Supreme Court in Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, , wherein their

Lordships point out that a release deed can only feed title, but cannot transfer title. They indicate that a release is, in essence, a renunciation in

favour of a person who has already title to the estate.

In Stroud''s Judicial Dictionary ''release'' is defined as ''the giving or discharging of the right of action which any hath or claimeth against another, or

his land.'' There cannot be the least doubt that the instrument in question is a ''release'' as described here. In our view, this is not a deed 01

cancellation of a former instrument, provided for in Article 17 of Schedule I of the Stamp Act, a residuary Article. The transaction in question can

only be a release.

4. The Reference is answered accordingly. No order as to costs.

