(2011) 02 KL CK 0079

In the High Court Of Kerala

Case No : Writ Petition (C) No. 36144 of 2010 (P)

C.I. Johnson, C.I. Vincent and Jamuna APPELLANT

Vs

Sub Registrar, District Registrar (General) and Land Revenue Commissioner RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:
Kerala Stamp Act, 1959 — Article 22, 48, 2(K), 37(2), 54

Citation : (2011) 02 KL CK 0079

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : P. Santhosh, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—First Petitioner is the brother of the second Petitioner and the second Petitioner is the husband of the third Petitioner.

2. Ext.P1 is a sale deed whereby the first and third Petitioners have purchased 2 cents of land in Sy. No. 1765/1 and 8 cents of land in Sy. No. 1765/2, Poonkunnam Village. Ext.P2 is another sale deed whereby the first and second Petitioners, brothers purchased 9.840 cents of land in Sy. No. 27/1 of Koorkkancherry Village.

3. Ext.P3 is styled as a partition deed to which Petitioners 1 to 3 are parties. By this document, 10 cents of land covered by Ext.P1 document referred to above and owned by Petitioners 1 and 3 has been allotted to the share of the first Petitioner and 9.840 cents of land covered by Ext.P2 title deed and owned by Petitioners 1 and 3 is allotted to the share of the second and third Petitioners, the husband and wife. When the document was presented for registration, 1st Respondent raised an objection that stamp duty payable should be under Article 22 of the Kerala Stamp Act. The document was impounded and was sent to the 2nd Respondent for adjudication u/s 37(2) of the Kerala Stamp Act.

4. By Ext.P4 order, 2nd Respondent held that the document has to be treated as a release deed and stamp duty under Article 48 of the Stamp Act is payable. Against Ext.P4 order, Petitioners filed an appeal to the 3rd Respondent invoking his appellate powers u/s 54 of the Kerala Stamp Act. By Ext.P5 order, 3rd Respondent held that the document consists of two release deeds and stamp duty is payable under Article 48. It is challenging Exts.P4 and P5 orders and praying that Ext.P3 shall be registered as a partition deed, the writ petition has been filed.

5. The contention raised by the learned Counsel for the Petitioners is that, on presentation of the original of Ext.P3, the 1st Respondent should have gone by the recitals contained in Ext.P3 itself and treating the parties to the document as co owners, should have registered the document as a partition deed. This contention of the learned Counsel for the Petitioners is sought to substantiated by referring to the judgments in (Gurram Pedda) Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others, , West Punjab Government v. Gain Chand AIR 1949 Lah 126, N. Venkalah v. J.V. Venkamma (AIR 1958 A.P. 457).

6. However, learned Government Pleader relied on Section 2(k) of the Kerala Stamp Act and contended that a deed of partition can be executed only if the parties thereto are actual co owners. It is contended that in this case, there is no co ownership and the properties were separate and distinct, and therefore, there could not have been a partition among the parties to the document.

7. Section 2(k) of the Kerala Stamp Act defines the instrument of partition as follows:

(k) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severality, and includes also a final order for effecting a partition passed by any Revenue Authority or any Civil Court and an award by an arbitrator directing a partition;

8. From the aforesaid statutory provision, it is clear that, to be an instrument of partition, a document should be executed by co-owners and by that document, the co ownership property must be divided or agreed to be divided in severality. In this case, the property which is claimed to be partitioned by Ext.P3 are those covered by Exts.P1 and P2 sale deeds. Ext.P1 is the sale deed obtained by the Petitioners 1 and 2 whereby they have purchased 10 cents of property described in the schedule to the document. Similarly, Ext.P2 is yet another document of sale whereby Petitioners 1 and 2 have purchased property mentioned therein. Though it was possible for Petitioners 1 and 3 to have partitioned the property covered by Ext.P1 among themselves and Petitioners 1 and 2 to have partitioned the property covered by Ext.P2 among themselves, these two properties could not have been partitioned among the Petitioners 1 to 3. In that process, properties belonging to Petitioners 1 and 3 could not have been given to the first Petitioner or the property belonging to Petitioners 1 and 2 could not have been given to Petitioners 2 and 3. In that view of the matter, it cannot be said that

Ext.P3 answers the definition of "instrument of partition" as defined in the Kerala Stamp Act.

9. In so far as the judgments relied on by the learned Counsel for the Petitioners are concerned, those judgments were rendered in the context of the provisions contained in the Stamp Act, 1899. A close reading of the judgments show that all the parties to the partition deeds which are referred to in the judgments had interest in the properties partitioned, unlike in this case, where there is no mutuality of interest over the property concerned. Therefore, I am not persuaded to think that the principles laid down in those cases can be of any assistance while interpreting Ext.P3 document and that too in the context of Section 2(k) of the Stamp Act.

10. Learned Counsel for the Petitioners further contended that it was the second Petitioner, who raised funds on behalf of the 3rd Petitioner for the property covered by Ext.P1, and therefore, the second Petitioner should have been treated as a co owner. In my view, when a document is presented for registration before the Registrar, he will have to go by the recitals in the document only, and if so appreciated, the 2nd Petitioner cannot be held to have any interest in the property covered by Ext.P1. Therefore, that contention of the learned Counsel for the Petitioners also does not merit acceptance.

In that view, I do not find any merit in the writ petition. Writ petition is dismissed.

