(1990) 08 KL CK 0055

In the High Court Of Kerala

Case No : C.R.P. No. 3395 of 1983 G

Deputy Collector APPELLANT

Vs

Shahul Hameed and Another RESPONDENT

Date of Decision : 20-08-1990

Acts Referred:

Citation : (1991) 1 KLJ 530

Hon'ble Judges : K. Sukumaran, J;G. Rajasekharan, J

Bench : Division Bench

Advocate : K. Thankappan, Government Pleader, for the Appellant; M.K. Abdulla, for the Respondent

Judgement

Sukumaran, J.—The question referred for the consideration of the Division Bench is whether Document No. 3282 of 1976 of the Trichur Sub Registry Office is a settlement or gift.

2. The Deputy Collector went to the extent of treating it as a conveyance. The District Court, in appeal took the view that it is a gift deed. Consequently, the order of the Additional District Magistrate was set aside. It was held that no further stamp duty was payable by the Appellant for the document.

3. The Deputy Collector has pursued the matter by way of revision.

4. The learned Single Judge, doubted whether the document would come even within the definition of ''gift''. The reference was made essentially for that reason.

5. The document evidences a transfer of property by the first Respondent, who was then a Government employee, in favour of the second Respondent, who was then a law student. The absolute ownership of the executant over the property, the difficulty in managing it as a result of frequent change of residence consequent on the transfers, and the fact that his son is affectionate and dependant on him, are all recited therein. The educational expenses of the son could be met by the income from the property transferred, was another aspect

stressed.

6. There cannot be any doubt that the transfer is effected by a person to one of the members of his family. The transferee is a person dependant on the transferer. A settlement, in essential terms, is a non-testamentary disposition of property of the nature described in the definition. It will be a settlement if the transfer is for the purpose of distributing property of the settlor among his family, or those for whom he desires to provide, or for the purpose of providing for some person dependant on him. Here the transferee satisfies the qualification of the membership of the family and is referred to as a person dependant upon the transferer. The document thus satisfies all the ingredients of the definition of a settlement deed.

7. Undoubtedly, the document will operate as a gift. However, a gift in favour of the specified persons as coming within the definition of settlement will be taken out of Entry 31 of the schedule relating to ''gift''. In other words, many settlement deeds may be gift deed; but all gifts need not necessarily be settlements. Some documents may satisfy the requirements of both "gift" and settlement. In the present case, the requirements of a gift and the satisfaction of the conditions relating to the clauses in which the gift will become a settlement, are fully complied with by the document. Stamp duty is therefore payable only under entry 51, and that attracts the rate of a Bottomry Bond (No. 14 in the schedule), a rate considerably lower than that of conveyance.

8. In the case of a gift deed, as also in the settlement deed, as the provisions stood at the relevant time, duty was payable on the amount mentioned in the document. It was not open to the Revenue, to go behind it.

9. We are of the view that the document, in truth and fact, is only a settlement deed. The stamp duty payable is really less than what has been already paid. The decision of the Court below, that no further amount is payable, is therefore sustainable though on a different reasoning. The revision petition is dismissed. We do not make any order as to costs.

