(2012) 11 KL CK 0184

In the High Court Of Kerala

Case No : W.A. No. 1697 of 2012

District Registrar APPELLANT

Vs

Bahuleyan RESPONDENT

Date of Decision : 29-11-2012

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

Citation : (2013) 2 ILR (Ker) 674 : (2013) 1 KLT 831

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Abraham Markos Government Pleader, for the Appellant;

Final Decision : Allowed

Judgement

Manjula Chellur, C J.

1. State has come up in this appeal aggrieved by the judgment of learned Single Judge. Respondents-writ petitioners claim to be joint owners of a property measuring 2 acres 84 2/3 cents of land in re-survey No. 373 of Thalikkulam Village. It is not in dispute, the property originally belonged to Smt. Lakshmi, who executed a Will, a registered document as per Exhibit P1. As per her last will and testament, the property should devolve upon her grandson Bahuleyan and one late Kumaran, another son. According to the writ petitioners before the learned Single Judge, by virtue of serial number 42 of the Finance Act, 2011, whereby certain amendments came to be made as serial number 42(i) and the Explanation thereto would cover all the writ petitioners by expanding the definition of ''family''. According to the writ petitioners, what is required is, partition should be among all or some of the family members. Therefore, Explanation of the word ''family'' will include grandchildren and legal heirs of present petitioners. First petitioner Bahuleyan is the grand son of late Laxshmi and petitioners 2, 3 and 4 were the legal heirs of deceased son Kumaran, therefore, petitioners 3 and 4 will also be her grandchildren. This was seriously contested by the State contending that the definition or explanation of the word

''family'' would include only father, mother, husband, wife, son and daughter, if any, as the case may be. Therefore, property at Exhibit P2 partition deed originally belonged to the first petitioner and Kumaran, who is the uncle of the first petitioner by virtue of a Will. Hence, it cannot be considered as a single family. Exhibit P2 partition deed was between first petitioner and the legal heirs of deceased Kumaran, who is the son of late Laxshmi.

2. As a matter of fact, the writ petitioners approached learned Single Judge aggrieved by issuance of Exhibit P4 by the Sub Registrar, Sub Registrar''s Office, Vadanappally, Thrissur District contending that there is no justification in issuing Exhibit P4, as there is no application of mind by the second respondent in understanding explanation of the word ''family''. According to the petitioners, all the petitioners belonged to the family of late Laxshmi, therefore, they decided to partition the property among them as per Exhibit P2 dated 19.5.2012 and submitted the same for registration, which came to be rejected by the second respondent without application of mind. According to the petitioners, the stand of second respondent that stamp duty payable on Exhibit P2 should be computed in terms of serial number 42(ii) of the Schedule of Kerala Stamp Act, 1959 is totally incorrect and the stamp duty has to be paid only as per serial number 42(i), hence, they sought for quashing of Exhibit P4 and further sought for a direction to second respondent and others to register partition deed by computing stamp duty payable in terms of serial number 42(i) as per Exhibit P3. They also claim that they are liable to pay only maximum stamp duty of Rs. 1,000/-.

3. Learned Single Judge, after referring to two judgments of this Court reported in Baburaj v. District Registrar (2011 (3) KLT 835) and Lakshmi Vs. The District Registrar, Kozhikode and Another, , ultimately opined, the partition is between two co-owners, grandson of late Laxshmi and legal heirs of her another son, therefore, they all come under the definition of ''family'' for the purpose of Explanation. Learned Single Judge further opined that the Explanation shows that family is sought to be denoted on the basis of relationship of parties concerned and not the factum of their residence under one roof. Accordingly, the Writ Petition was allowed. Aggrieved by the same, the State is before us raising several grounds attacking the judgment of learned Single Judge.

4. According to the appellants, the opinion of learned Single Judge is not only illegal, but irregular and deserves to be set aside. According to them, the judgments relied upon by learned Single Judge relate to altogether different facts and none of the facts in the present appeal would attract such opinion. With the death of late Laxshmi, the property devolves upon the first petitioner, being the son of her deceased son Balan. Therefore, there is no question of further partition between the first petitioner and legal heirs of late Kumaran by availing the benefit of Explanation. With this argument, learned Government Pleader Sri. P.I. Davis seeks for setting aside the judgment of learned Single Judge. As against this, learned counsel for the respondents-writ petitioners vehemently contends that the very purpose of introducing Exhibit P3 was to give benefit of

paying lesser stamp duty, therefore, restricting the meaning of ''family'' the Sub Registrar was not justified in demanding payment of stamp duty as contemplated under serial number 42(ii).

5. The Finance Act, 2011, by amendment, has introduced a beneficial provision by replacing column number (3) (i.e., proper stamp duty) altogether with a new column number (3) at serial number 42(i). Serial number 42(i) indicates the quantum of stamp duty payable, where the partition is among all or some of the family members. Before the amendment what was column number (3) of serial number 42(i), after the amendment what it is, similarly, what included and also explanation of the word ''family'' included earlier and what it is after the amendment, reads as under:

42(i). Where the partition is among all or some of the family members: (3)

Before the amendment: The same duty as a Bottomry Bond (No. 14) for the amount of the value of the separated share or shares of the property.

After the amendment; One rupee for every rupees 100 or part thereof of the fair value of the land and the value of all the properties of their separated share or shares or the value of all the share or shares of all properties, whichever is higher, subject to a maximum of Rupees 1000.

Explanation

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

After the amendment: Family means father, mother, husband, wife, son, daughter, grand children, brother, sister and legal heirs of the deceased children, if any, as the case may be.

6. Serial No. 42(i) and Explanation therein stated above denotes that if the partition is among all or some of the family members, i.e. the members explained in the Explanation then the stamp duty has to be as per the amendment i.e., one rupee for every Rs. 100/- or part thereof. The maximum is Rs. 1,000A. In order to get this benefit, the partition has to be between different members of the family and the relationship between those persons must be as explained in the Explanation. The very object and purpose of bringing this amendment indicates there is a benefit of paying lesser stamp duty if the partition is ''among all or some of the family members''. There may be several persons who constitutes a family. Unless Explanation takes into its fold those persons as a family, the special benefit carved out in Serial No. 42(i) so far as stamp duty, cannot be extended.

7. According to the learned Single Judge as the partition is between the co-owners i.e., first respondent who is the grandson of late Laxshmi and others who are none other than the legal representatives of another son of late Kumaran, all of them fall within the definition of family for the purpose of Explanation because

partition need not be among the family members who live under one roof. According to him, irrespective of the fact that they are residing under one roof or separately, if the relationship denoted in the Explanation attracts or brings those members within the definition of family, it is sufficient to give the benefit. Reading of the Explanation clearly indicates that if the partition is among all the members of the family or some of the family members, then 42(i) item would apply. So far as the facts of the present case, Smt. Lakshmi the erstwhile owner is the grandmother of first respondent herein i.e., Sri. Bahuleyan, Mother-in-law of second respondent Vijayalakshmi and grandmother of 3rd and 4th respondents Suresh Babu and Rajeesh. The partition is not between Smt. Lakshmi and respondents herein; the partition is between the grandson of Smt. Lakshmi i.e., son of Balan and legal representatives of other son Kumaran. It is not in dispute that the property in question belongs to Lakshmi, who is no more. During her life time she executed a Will in favour of 1st respondent Bahuleyan and also her son late Kumaran. Subsequent to her death, property devolved on the persons in whose favour property was bequeathed in terms of registered Will. So by virtue of this Will property has to be enjoyed and held by those persons who were declared as beneficiaries in the Will. Here no one is challenging the said Will. The partition now undertaken is not between Lakshmi and respondent/ writ petitioners. It is among the parties who acquired the title to the property by virtue of a registered Will, therefore, the relationship between Lakshmi and the respondent/writ petitioners has no criterion in deciding the issue. It is not who should get property after her demise but it is on account of her declaration in the registered Will, the parties have acquired right, title and interest in the property. If these persons in whose favour property came to be bequeathed intends to enter into partition, definitely it cannot take into its fold the writ petitioners in question. It is a partition which is virtually between the first cousins and w/o. Mr. Kumaran who is the aunt of Bahuleyan. In that view of the matter, the stand of the Government that the benefit extended under Serial No. 42(i) will not apply to the facts of the present case has to be accepted.

Accordingly, the Writ Appeal is allowed setting aside the judgment of the learned Single Judge.

