**(1961) 09 MAD CK 0043**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 180 and 232 of 1959

Doriaswami Gounder APPELLANT

Vs

Revenue Divisional Officer, Coimbatore RESPONDENT

**Date of Decision :** 19-09-1961

**Acts Referred:**

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 17, 35, 40, 40(1), 61

**Citation :** AIR 1962 Mad 425

**Hon'ble Judges :** Jagadisan, J

**Bench :** Single Bench

# Judgement

(1) These are-two writ petitions under Article. 226 of the Constitution praying for the issue of a writ of certiorari to quash the order of the Revenue Divisional Officer, Coimbatore, dated 24-10-1958 levying deficient stamp duty of Rs. 298-15 in respect of a document dated 7-7-1951 and levying a penalty of R. 1500 against the petitioner.

(2) The document dated 7-7-1951 which formed the subject-matter of levy of stamp duty and penalty by the Revenue Divisional Officer was executed by P. M Sundararn and N. Parvathi in favour of one Ratnasabapathi Gounder, the father of the petitioners herein. Two items of machinery of the value of Rs. 8500/- and Rs. 6500/- formed the subject-matter of the document, styled, agreement. Sundaram and, Parvathi agreed to sell the machinery to Rathnasabapathi Gounder for a total consideration of Rs 10,000/- The agreement recited that an advance of Rs. 500/- was received by the executants and the balance was due. This document came to he exhibited In the suit, O. S. No. 541 of 1956 on the file of the District Munsif''s Court, Coimbatore, and the learned District Munsif impounded the document and forwarded it to the Revenue Divisional Officer, Coimbatore, for necessary action under the provisions of the Indian Stamp Act. The Revenue Divisional officer was of the opinion that u/s 40(1)(b) of the Act a deficient stamp duty. of Rs. 298-50 was payable and that a penalty. of Rs. 1500/- was also leviable. He was further of opinion that the sons of

Ratnasabapathi, Ratnasabapathi having died on 29-11-1956, were liable to pay the-deficient duty and the penalty. He made each of the sons liable for half of the total amount of deficient stamp duty and penalty levied. The sons of Ratnasabapathi have filed these two writ petitions challenging the validity and correctness of this order of the Revenue Divisional Officer.

(3) The short point that is raised on behalf of the petitioners is that Ratnasabapathi was not the executant of the impounded document and, therefore, his sons are not liable to pay the deficient stamp duty and are also not liable to be levied with penalty for non-conformity of the provisions of the Indian Stamp Act. The document certainly executed by two persons, Sundaram and Parvathi in favour of Ratnasabapathi. Ratnasabapathi has not signed the document. A Division Bench of this Court in Subramaniam Chettiar Vs. Revenue Divisional Officer and Another, has held that on a proper construction of sections 17 and 62 read with sections 35, 40 and 61 of the Stamp Act, the Collector should proceed only against the executant for collecting stamp duty and penalty. The word "executant" as been held not to include all persons signing in the document but only person who by a valid execution have entered into an obligation under the document. In the present case it cannot he said that Ratnasabapathi was an exetcutant at all. As he has not signed the document and undertaken any obligation under, it, he cannot he made liable tinder the provisions of the Indian Stamp Act for stamp duty and penalty. It follows that the sons of Ratnasabapathi cannot be made liable for the deficient stamp duty and penalty. In the result the writ petitions are allowed and the, rule nisi is made absolute. There will, however, be no order as to costs.

(4) Rule absolute.

 