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(2005) 06 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 11993, 12674, 13485 and 13642 of 2005

George Jacob and Others — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 14-06-2005

Acts Referred:

Kerala Stamp Act, 1959 — Section 17, 2
Registration Act, 1908 — Section 17, 23, 45B
Transfer of Property Act, 1882 — Section 54

Citation : AIR 2005 Ker 298 : (2005) 3 ILR (Ker) 275

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : G.G. Manoj, P.B. Sahasranaman, K. Jagadeesh, T.S. Harikumar, V.M. Kurian, A.V. Thomas, Mathew Kurian, K.J. Thomas, M. Sasindran, Tojan J. Vathikulam, Tulasi Panicker, K, Girija, P. George Varghese, M.K. Dileepan, Deepak T. Nedungadan and K.D. Vincent, for the Appellant; T.R. Ravi, Government Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioners in these writ petitions are aggrieved by the refusal of the Sub-Registrars to accept the documents stated to have been executed on or before 31-3-2005, when they were presented for registration, after the said date. One of the writ petitions, W.P. (C) No. 12674/05, is filed by the All Kerala Document Writers and Scribes Association. The brief facts necessary for the disposal of the writ petitions are the following :

2. The Kerala Finance Act, 2005 (Act 10 of 2005) amended the schedule to the Kerala Stamp Act, providing for higher rate of stamp duty for conveyance deeds. The same was enforced with effect from 1-4-2005. The petitioners submit, they prepared and executed the documents before 1-4-2005 and presented them for registration on 1-4-2005 or thereafter. But, the Sub-Registrars declined to accept those documents for not paying the stamp duty at the revised rate, prevailing on the date of presentation of the documents. So, the petitioners, relying on Section 17 of the Kerala Stamp Act, 1959 and Section 23 of the Registration Act, 1908,

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have approached this Court, praying for a direction to the concerned Sub-Registrars to register those documents, which are produced for registration within four months of their execution, without insisting for payment of stamp duty at the revised rate.

3. The respondents resist the prayers in the writ petition, saying that a document can be said to be executed, only when it is registered. The conveyance, concerning an immovable property, the value of which is Rs. 100/- or above, has to be compulsorily registered in view of Section 54 of the Transfer of Property Act, 1882, it is pointed out. Therefore, they submit that the execution of a document will be complete, only on its registration. So, the petitioners are bound to pay stamp duty at the rate prevailing when the documents are presented for registration. Thus, they justify the refusal of the Sub-Registrars to accept the documents for registration without paying the stamp duty payable as on the date of presentation of the documents for registration. For resolution of the above dispute, reference to the relevant statutory provisions will be necessary.

Section 54 of the Transfer of Property Act, 1882 reads as follows :-

"Sale defined-- ''Sale is a transfer of ownership in exchange for a price paid or promised or part paid and part-promised.

Sale how made -- Such transfer, in the case of tangible Immovable property of the value of one hundred rupees and upwards or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible Immovable property of a value of less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible Immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."

The above provision provides that only by a registered document, the transfer by sale of tangible immovable property can be made. Section 17 of the Kerala Stamp Act, 1959 reads as follows :

"Instruments executed in the State of Kerala :-- All instruments chargeable with duty and executed by any person in the State of Kerala shall be stamped before or at the time of execution."

The word ''execution'' is defined in Section 2(f) of the Stamp Act as follows :--

" ''executed'' and ''execution'' used with reference to instruments, means ''signed'' and ''signature''."

Section 23 of the Registration Act, 1908 reads as follows :--

"Time for presenting documents : Subject to the provisions contained in Sections. 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four

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months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made or where it is appealable within four months from the day on which it becomes final."

It is common case that stamp duty has to be paid at the rate prevailing at the time of execution of the document. The dispute between the parties is concerning interpretation of the word ''execution.'' Relying on the definition of ''execution,'' the learned Counsel for the petitioners would submit that when a document is signed, the execution is over. They also place reliance on the decision of this Court in M. Manohar Kammath Vs. M. Ram Mohan Kammath and Another, . A Division Bench of this Court, in the said decision, has treated ''signing'' as ''execution'' for the purpose of the Stamp Act. The relevant portion of the judgment reads as follows :--

"The definition of executed and execution in a way restricts and confines it to mean signed and signature. It is possible to say that it may include the signature of all persons, who are required by the character of the document to sign in the document. This we say because there may be cases where both parties have to sign in the document and if one of the parties alone has signed, it will be difficult for us to hold that the document is executed. This is important because the chargeability of stamp duty depends upon execution of the document. It is also perhaps possible to hold in this context that if a document had to be signed by attesting witnesses in order to make it a valid execution of the document, the signatures of the attesting witnesses are also to be necessary to treat the document as an instrument, executed falling within the definition of that category of instruments, chargeable with stamp duty. But, once a document is complete in execution in the sense that all persons required to be signed in the document, have signed, then at once, the chargeability under the Stamp Act is attracted. A liability to stamp duty is brought down upon the instrument with reference to the relevant articles as soon as it is executed. We give emphasis to this aspect, of the matter for the reason that the liability to stamp duty is the cause for holding that the instrument is not properly stamped and the liability commences and continues as soon as the instrument is executed. Perhaps, the instrument may not be valid in law for other reasons. Nevertheless, it attracts the liability for stamp duty, when the execution of it is completed."

The learned Counsel also contended that the Sub-Registrar is bound to accept the document, register it and return it, even if there is some dispute regarding the stamp duty to be paid. The only course open to the Sub-Registrar is to proceed u/s 45-B of the Registration Act, it is contended. In support of this submission, reliance is placed on the decision of a Division Bench of this Court in Periyar Real Estates Vs. State of Kerala, . They also rely on the Division Bench decision of the Andhra Pradesh High Court in Media Anasuyamma and another Vs. Choppela Lakshmamma, , wherein it was held that the relevant date for payment of duty, is the date of execution of the document.

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4. In answer to the above submissions, the learned Government pleader submitted that the mere signing of the document cannot be treated as the execution of the document. For the completion of the execution, something more is required. In the case of documents, which are to be compulsorily registered, registration is also necessary. In support of this submission, reliance is placed on the definition of ''executed'' contained in the Law Lexicon of Ramanatha Iyer, third Edition, 2005. Reliance is also placed on the decision of the Divisional Court in Terrapin International Ltd. v. Inland Revenue Commissioner (1976) 2 All ER 461. Therefore, the learned Government pleader contends that the petitioners are bound to pay the enhanced stamp duty for registration of the documents. The learned Government pleader also pointed out that in some cases, the documents were signed subsequently, but they have been predated to appear that they were executed before 1-4-2005.

5. The dispute between the parties lies within a very narrow compass. I feel that going by the relevant statutory provisions, the contentions of the petitioners have to be accepted. In view of the definition, of ''execution'' contained in Section 2(f) of the Stamp Act, a document shall be deemed to be executed for the purpose of the Kerala Stamp Act, at the time of signing it. The stamp duty payable on it, is the one that is prevailing at the time of signing the document in view of Section 17 of the Stamp Act. By virtue of Section 23 of the Registration Act, if the document is presented within four months of the execution, it is liable to be registered. The statutory provisions are clear and unambiguous. They admit no other interpretation. The decisions in M. Manohar Kammath Vs. M. Ram Mohan Kammath and Another, and Media Anasuyamma and another Vs. Choppela Lakshmamma, cases mentioned above, support this view. The definition of ''execution'' cited by the learned Government pleader from the Law Lexicon and also the decision In Terrapin International''s case 1976 (2) All ER 461 mentioned above, could have been relied on, if there was no definition of ''execution'' in the Stamp Act. When interpreting the provisions of the Stamp Act, the Court is to be guided by the definition of ''execution'' contained in the Act. It cannot go after any meaning given to it in the Law Lexicon or in the English decision.

6. In view of the above position, the following directions are issued :

The documents which were signed before 1-4-2005, shall be accepted and registered by the Sub-Registrars, if the stamp duty prevailing before 1-4-2005 is paid. If the Sub-Registrars entertain any doubt regarding the date of execution of the documents, the affected parties shall be put oh notice and only after hearing them, a decision shall be taken. If any one is aggrieved by the decision, concerning the date of execution, he will be free to work out his remedy. All documents found to have been executed before 1-4-2005, shall be registered by the concerned Sub-Registrars within one month from the date of production of a copy of this judgment or before the expiry of four months from 31-3-2005, whichever is earlier. It is made clear that the powers of the statutory authorities

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to proceed against the documents found to have been not properly stamped, are not affected by the directions issued above. The documents which were registered pursuant to the interim orders of this Court, shall be treated as having been registered regularly, provided the concerned Sub-Registrars find that those documents, were, in fact, executed before 1-4-2005.

The writ petitions are allowed as above. No costs.

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