**(1998) 03 RAJ CK 0054**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 1051 of 1997

Gyan Chand APPELLANT

Vs

State and Others RESPONDENT

**Date of Decision :** 17-03-1998

**Acts Referred:**

Rajasthan Stamp Law (Adaptation) Act, 1952 — Article 23, 2(10)
Stamp Act, 1899 — Article 23, 2(10)
Transfer of Property Act, 1882 — Section 45, 54

**Citation :** AIR 1998 Raj 223 : (1999) 1 CivCC 349 : (1998) 2 RLW 1101 : (1998) 3 WLC 181 : (1998) 1 WLN 276

**Hon'ble Judges :** P.P. Naolekar, J

**Bench :** Single Bench

**Advocate :** R.R. Nagori, for the Appellant; R.K. Vishoni, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.P. Naolekar, J.—Facts, in brief, necessary, for disposal of this writ petition are :

Gyan Chand the petitioner and one Laxman Singh jointly purchased plots situated at Bhilwara by sale-deeds dated 12-3-1984 and 14-3-1984. Laxman Singh who was the joint owner of the said two plots released his shares in respect of both the plots by a deed dated 17-7-1985 tided as ''Release Deed''. The documents were presented for registration before the Sub-Registrar, Bhilwara. The matter was taken up u/s 47C(3) of the Rajasthan Stamps Law (Adaptation) Act, 1952 by the Deputy Inspector General of Stamps Ext Officio, Collector Stamps, Ajmer and the document was held to be a deed of conveyance and not ''Release Deed''. The petitioner was directed to pay the additional stamp duty of Rs. 39022.75 including penalty etc.

2. Aggrieved by the said order, the petitioner preferred a revision petition u/s 56 of the Indian Stamp Act before the Board of Revenue. The revision petition and, thereafter, review application, filed by the petitioner were dismissed.

3. Submission of the learned counsel for the petitioner is that the property having been purchased by the petitioner and Laxman Singh, jointly both had joint interest in the entire property and, therefore, Laxman Singh could have released his share in the property and, the documents should not have been treated to be a deed of conveyance. The main question requires determination in this case is whether, jointly purchased property can be said to create a interest of the joint owners in each other''s share.

4. In K. Hutchi Gowder Vs. H. Bheema Gowder, it has been held that the release deed can only feed title but cannot transfer title. In Senthathikalai Pandiya Chinnathambiar and Others Vs. Varaguna Rama Pandia Chinnathambiar and Another, it is held that the renunciation must be in favour of the person who has title to the estate, the effect of which is only to enlarge right. Renunciation does not vest in a person a title where it did not exist. In The Board of Revenue, Hyderabad Vs. Validity Ram Krishnaiah, the Board of Revenue, Hyderabad v. Valivety Rama Krishnaiah, it has been held that the release deed can only feed title but cannot transfer title and the renouncement must be in favour of a person who already has title to an estate.

5. In Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, while considering the nature of deed styled as release, it is said by the Supreme Court that: "here the deed was in favour of a person having no interest in the property, and it could not take effect as aft enlargement of an existing estate. It was intended to be and was a transfer of ownership. A deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer. It is said that the S. P. Chinnathambiar''s and Hutchi Gowder''s case do not lay down that a deed styled a deed of release cannot, in law, transfer title to one who before the transfer had no interest in the property.

6. It has been held by the Supreme Court in Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, that a registered instrument styled as release deed releasing right, title and interest of releaser without consideration may operate as transfer by way of gift when document clearly shows intention to effect transfer and is signed by or on behalf of releaser and attested by at least two witnesses. This case is on point that although the document is styled as release deed, it can be treated in given facts and circumstances to be a transfer deed conveying title.

7. Aforementioned decision lays down that deed of release can enlarge title where there is one but cannot create title where there is none. The release deed can be construed to be a deed of transfer conveying interest in the property.

8. u/s 45 of the Transfer of Property Act, 1882 where immovable property is transferred for consideration to two or more persons jointly makes them co-owners of the property transferred, their interest are in proportion to the share of the consideration they have advanced. In the absence of evidence of share of the consideration the co-owners shall be presumed to have equal interest in the

 

property. Co-owners have unity of possession and commencement of title in the property but does not have unity of title or unity of interest in the property. Joint owner of the property cannot be said to have title and interest in the property of another co-owner. Every joint owner has his individual title and interest in the property purchased jointly by them. Thus relinquishment of title and interest in the joint property by one joint owner in favour of another joint owner would only be transfer of interest of one joint owner in favour of another joint owner, each joint owner having distinguishable, independent, individual title in the jointly purchased property.

9. The right, title and interest of Laxman Singh in the property jointly purchased cannot be said to have co-existence with the right title and interest of the petitioner in the property. The deed, although styled as a release deed, in effect, had conveyed the title and interest of Laxman Singh in the property in favour of Gyan Chand the petitioner and, thus, the release deed having been, in fact, deed of conveyance was rightly charged with the stamp-duty as deed of conveyance.

10. For the aforesaid reasons, the writ petition fails and is hereby dismissed. There shall, however, be no orders as to cost.