
(2019) 11 DEL CK 0130

In the Delhi High Court

Case No : Civil Writ Petition No. 3370 Of 2018

Hari Kapoor

APPELLANT

Vs

South Delhi Municipal Corporation

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Indian Stamp Act, 1899 — Article 55
Delhi Municipal Corporation Act, 1957 — Section 147, 147(2)(b)
Transfer Of Property Act, 1882 — Section 45, 123
Court of Wards Act, 1977 — Section 34

Citation : (2019) 265 DLT 150

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Manish Sharma, Jigyasa Sharma, Dinesh Monga, Arjun Malik, Nikhil Goel, Piyo Harold, Dushyant Sarna

Final Decision : Allowed

Judgement

Jayant Nath, J

1. This Writ Petition is filed by the petitioner seeking an appropriate Writ for quashing the order dated 8.12.2015 passed by the Additional Commissioner of the respondent for collection of duty and directing that there is no chargeability of stamp duty on the instrument of Deed of release.

2. The case of the petitioner is that on 2.11.1989 the petitioner alongwith the brother Shri Ramesh Chander Kapoor purchased the property bearing No. N-26, situated at Panchsheel Park, New Delhi vide registered sale deed. On 25.7.2016, the brother of the petitioner Shri Ramesh Chander Kapoor executed a Deed of Release and Relinquishment in respect of his half undivided share of the said property in favour of the petitioner. The petitioner approached the respondent with a letter of request for transfer/mutation of the property in his favour on 25.10.2016. As there was no proper response from the respondent, the petitioner on 14.08.2017 filed an application under RTI Act. Alongwith the reply

sent by the respondent dated 11.09.2017 a circular/order issued dated 8.12.2015 was attached. As per the said circular a direction has been issued to the Sub Registrar to collect transfer duty on each and every document of Transfer of immovable property including Release Deeds/Relinquishment Deeds. This circular was issued based on the opinion of the legal department of the respondent stating that in view of section 147 of the Delhi Municipal Corporation Act, 1957, transfer duty has to be charged on release deeds/relinquishment deeds.

3. The narrow dispute in the present petition is as to whether a release deed is liable to levy of duty as provided under section 147 of the DMC Act, 1957.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner relies upon judgment of the Full Bench of the Madras High Court in The Chief Controlling Revenue Authority , Board of Revenue, Madras vs. Dr. K. Manjunatha Rai, AIR 1977 Madras 10. Learned counsel for the petitioner has also relied upon the judgments in the case of Pasagadugula Narayana Rao vs. Pasagadugula Rama Murty and Ors., 2015 SCC OnLine Hyd 346 and judgment of the Division Bench of this court in Mahip Singh Thakur vs. Hema Thakur & Ors., 2005 (82) DRJ 311 (DB) to contend that the essential ingredients of release are that there should already be a legal right in the property vested in the releasee and the release should operate to enlarge that right into an absolute title for the entire property as far as the parties are concerned. It manifests that in such a transfer there is no transfer involved and section 147 of the DMC Act, 1957 will not apply. Reliance is also placed on judgments of this court in the case of Srichand Badlani vs. Govt. of NCT of Delhi & Ors., AIR 2014 (NOC 539) 192 and Jatinder Nath vs. DDA, AIR 2001 Delhi 89 to plead that in similar circumstances documents have been construed as release deed.

5. Learned counsel for the respondent states that there can be no dispute that section 147 of the Act does not apply to a release deed. He, however, states that where two co-owners purchase the property jointly and thereafter one co-owner issues a release deed in favour of the other co-owner a document of this nature would be termed as a Gift Deed and not a release deed. He relies on section 45 of the Transfer of Property Act to support his plea. He further states that a release deed can only be executed where the co-owners have inherited the property. He also relies upon judgment of a co-ordinate Bench of this Court in Satya Pal Gupta vs. Sudhir Kumar Gupta 2013 SCC OnLine Del 2304.

He further states that the provisions of the Stamp Act have no application to the levy of a duty under section 147 of the DMC Act, 1957. Reliance is also placed on judgment of the Full Bench of this court in Dayal Singh vs. Collector of Stamps, AIR 1972 Delhi 131.

6. Section 147 of the DMC Act, 1957 reads as follows:-

"147. Duty on transfer of property and method of assessment thereto.-(1) Save as otherwise provided in this Act, a Corporation shall levy a duty on transfers of

immovable property situated within the limits of the area of the corporation in accordance with the provisions hereafter in this section contained.

(2) The said duty shall be levied-

(a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (2 of 1899) as in force for the time being in the Union territory of Delhi, on every instrument of the description specified below, and

(b) at such rate as may be determined by a Corporation not exceeding five per cent, on the amount specified below against such instruments:

Description of instrument

Amount on which duty should be levied

(i) Sale of immovable property.

The amount or value of the consideration for the sale, as set forth in the instrument.

(ii) Exchange of immovable property.

The value of the property of the greater value, as set forth in the instrument.

(iii) Gift of immovable property.

The value of the property, as set forth in the instrument.

(iv) Mortgage with possession of immovable property.

The amount secured by the mortgage as set forth in the instrument.

(v) Lease in perpetuity of immovable property

The amount equal to onesixth of the whole amount or value of the rent which would be paid or delivered in respect of the first fifty years of the lease as set forth in the instrument.

(vi) Contract for transfer of immovable property

Ninety per cent. Of the value of the consideration for the transfer as set out in the contract.

7. Hence, the Corporation can levy duty on transfer of immovable property. Section 147(2)(b) of the DMC Act, 1957, states the method of imposing duty for different instruments. The different instruments stated where duty can be levied are sale of immovable property, exchange of immovable property, gift of immovable property, mortgage with possession of immovable property, lease in perpetuity of immovable property and contract for transfer of immovable property. It is noteworthy that there is no reference regarding "instrument of release deed".

8. Article 55 of the Schedule of the Indian Stamp Act defines the duty for a

release deed as follows:-

55. RELEASE, that is to say, any instruments [(not being such a release as is provided for by section 23A)] whereby a person renounces a claim upon another person or against any specified property-

(a) if the amount or value of the claim does not exceed Rs. 1,000;

(b) in any other case.

The same duty as a Bond (No. 15) for such amount or value as set forth in the Release. Five rupees

9. To understand the nature of instrument that falls within the term release deed reference may be had to the three judgments relied upon by the learned counsel for the petitioner. In *The Chief Controlling Revenue Authority, Board of Revenue, Madras vs. Dr. K. Manjunatha Rai (supra)*, the Full Bench of the Madras High Court was dealing with an instrument which purported to release the property in favour of the wife which stood in the name of the releaser. The Sub-Registrar termed the documents as insufficiently stamped on the ground that it was not a release deed but a conveyance. The court held as follows:-

"14. A "release" as defined in Article 65 of the Schedule I to the Stamp Act is "any instrumentwhereby a person renounces a claim upon another person or against any specified property." A plain reading of the document in question in this case does not admit of any doubt as to the nature of the transaction. We are satisfied that it is a release, pure and simple. This conclusion must flow from the recitals contained in the deed. It is true that the original purchase of the property of the extent of 27 grounds under the deed dated 14-03-1947 was not in the joint names of the parties; not stated to be for the joint benefit of both the husband and the wife. But we cannot brush aside the clear recital in the release deed that even at the time of the original purchase (it was agreed between the husband and the wife that ten out of the 27 grounds were for the latter's benefit. That this could have been the intention is shown by the fact that a better part of the purchase consideration of the property was a borrowal on the joint credit of both the respondent and his wife, first from the Vijaya Bank and later from the Indian Bank. Besides, the wife had repaid Rs. 30,000, from resources found by her alone. In these circumstances there could be no doubt that even from the start the respondent and his wife were co-owners of the property and it was only as such co-owner that the wife subsequently proceeded to raise superstructures on a portion of the property at her own costs; thereafter enjoying the income from the property and paying the taxes herself. The District Registrar as well as the Board of Revenue regarded the document as a conveyance from the respondent to his wife, and spelt out the consideration therefore to be Rs. 30,000. The inference as to consideration was apparently drawn from, the recital that the respondent's wife had partially discharged the Vijaya Bank loan to the extent of Rs. 30,000. The instrument of release also carried a statement written underneath the schedule to the effect that the respondent had obtained

consideration for the release in the sum of Rs. 30,000 from his wife in 1947. In our view, however, this statement in the release deed does not have the effect of rendering the transaction as a conveyance. For a release, in law, may be effected either for consideration or for no consideration. In either case, if the transaction operates as a relinquishment or a renunciation of a claim by one person against another or against a specified property, it will be a release. The stamp duty on a release, under the Stamp Act, does not depend upon the question of consideration or absence of consideration for the release. On the contrary it is made to depend on the value of the claim which is renounced by the releasor."

10. Reference may also be had to the judgment of the High Court of Hyderabad in the case *Pasagadugula Narayana Rao vs. Pasagadugula Rama Murty and Ors.* (supra) where the court held as follows:-

"22. In *Kuppuswami Chettiar v. A.S.P.A. Arumugam Chettiar*, the Supreme Court, while drawing distinction between release deed and gift, held as follows:

"A release deed can only feed title but cannot transfer title. Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in person a title where it did not exist. Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate."

From the principle laid down in the above judgment, releasing right means a person, who had interest in property along with others, giving up his right in the property which enlarges the right of others who had same right in the property. If release in favour of a third person having no right in property, it cannot be said to be release and, at best, it may amount to gift as defined under the Transfer of Property Act, 1882 (for short, "the Act of 1882").

23. A Special Bench of this Court in *Kothuri Venkata Subba Rao v. District Registrar of Assurances, Guntur*, held as follows:

"The word "release" is not defined, but in view of Article 46 of Schedule 1-A (A.P.), a deed of release is an instrument by which one of the co-owners releases or renounces his interest in the specified property and the result of such release would be the enlargement of the share of the other co-owner. Thus, there is a clear and marked distinction between a deed of conveyance and a deed of release. A deed of release need not be gratuitous only. Even if it is supported by consideration, still it can be treated as a deed of release if the intent of the parties and the purpose of the transaction satisfy the requirements of a deed of release in a case of the property owned by the co-owners. The release to be effective and operative must be in favour of all the persons interested in the property. The well settled principle of relinquishment is the enlargement of the share or shares of the co-owners and that principle will be defeated if the relinquishment is made in favour of one or a few named co-owners from out of

the several co-owners."

In view of the principle laid down in the decision referred supra, a deed of release means an instrument by which one of the co-owners releases or renounces his interest in the specified property which would enlarge the share of the other co-owners. In the present case, the plaintiff executed Ex.B4 renouncing or giving up his right in the property of Hindu undivided coparcenary agreeing to receive Rs. 15,000/- as consideration."

11. Reference may also be had to the judgment of the Division Bench of this court in Mahip Singh Thakur vs. Hema Thakur (supra) where the court held as under:-

"8. We have given our careful consideration to the arguments advanced by learned counsel for the parties. The law is well settled with regard to the documents of release of property or release of a share from the property owned by two co-owners and one of them effacing himself in favour of the other. The essential ingredients of release are that there should be already a legal right in the property vested in the releasee and the release should operate to enlarge that right into an absolute title for the entire property as far as the parties are concerned. There cannot be any release by one person in favour of another, who is not entitled to the property as co-owner. In Chief Controlling Revenue Authority v. Rustorn Nusserwanji Patel (supra), Full Bench of the Madras High Court took the similar view:

"(11) On the contrary, we may emphasise that the essential ingredients of release are here present. There is already a legal right in the property vested in the releasee, and the release operates to enlarge that right into an absolute title for the entire property, as far as the parties are concerned.

(12) The next argument of the learned counsel that this kind of release does not fall within the ambit of Article 55 of Schedule I appears to be devoid of substance. Article 55 refers to release, that is to say "any instrument.....whereby a person renounces a claim upon any other person, or against any specified property".

We do not think that this means that a releasor cannot validly state, in the instrument, that he is effacing his rights in the property, in favour of another named individual. There is an entity known to law as a document of release, and we have no reason to think that, by this Article that entity was not indicated but only one particular kind of sub-species release, wherein the person in whose favour the release is declared or intimated, is not designated by identity or name.

(13) We would, therefore, unhesitatingly answer the question in the form that the document was rightly interpreted as a release under Art. 55 of Schedule I of the Indian Stamp Act and is liable to duty as such."

12. It would follow that a deed of release is an instrument by which one co-owner releases his interest in a specified property as a result of which there

would be enlargement of the share of the other co-owners. The releasee should also have a legal right in the property and the release deed would operate to enlarge that right. The share cannot be released in favour of one who has no rights in the property as co-owner.

13. Reference may also be had to few other judgments relied upon by learned counsel for the petitioner. *Jatinder Nath vs. DDA* (supra) was a case where after the demise of the father, the property devolved upon his two sons. On account of the oral settlement the brother executed a relinquishment deed in favour of the petitioner. The respondent refused to transfer/mutate the property stating that unless a gift deed is registered the name of the petitioner cannot be mutated as the full owner. In those facts a Coordinate Bench of this court held as follows:-

"6. At the outset, I must say as to how these guidelines can come in the way of the respondent in deleting the name of Narender Nath. According to the guidelines relied upon by respondent the word occurring in sub-clause (i) of clause 2 is a regular conveyance/gift deed. A Release Deed or Relinquishment Deed can not be said to be a Conveyance Deed. The insistence on the part of the respondent is totally untenable in law. I would not dwell much on this controversy because what has been filed by the respondent in this Court and has been heavily relied upon by counsel for the respondent is some guidelines which pertain to the substitution/addition/deletion of names in industrial/commercial plots. Unmindful of the fact that guidelines under which the respondent wants to take shelter pertains to industrial and commercial plots yet the respondent has been insisting to produce a Gift Deed pursuant to these guidelines which do not apply in case of residential plots.

Nothing has been filed to show that there is any guideline by the respondent in relation to any residential plot which specifically, as a matter of principle and policy, requires for deletion of a name a gift deed. In the circumstances, I quash the impugned letter whereby the respondent is insisting upon execution of Gift Deed by Narender Nath in favour of his brother i.e. the petitioner."

14. Similarly, reference may also be had to the judgment of a co-ordinate Bench of this court in *Srichand Badlani vs. Govt. of NCT of Delhi & Ors.*, (supra). The facts are somewhat identical, namely, the co-owners inherited the property. One of the co-owners relinquished his share by the relinquishment deed. However, the same was impounded and was treated as a gift deed by the Director of Stamps. Director of Stamp took the view that the document was not a Relinquishment Deed but a Gift Deed. The court held as follows:-

"5. It is a settled legal proposition that one of the co-owners can relinquish his share in a co-owned property in favour of one or more of the co-owners. The document executed by him in this regard would continue to be a Relinquishment Deed irrespective of whether the relinquishment is in favour of one or all the remaining co-owners of the property. There is no basis in law for the proposition that if the Relinquishment Deed is executed in favour of one of the co-owners, it

would be treated as a Gift Deed. The law of stamp duty as applicable in Delhi treats Relinquishment Deed and Gift Deed as separate documents, chargeable with different stamp duties. It is not necessary that in order to qualify as a Relinquishment Deed the document must purport to relinquish the share of the relinquisher in favour of all the remaining co-owners of the property. Even if the relinquishment is in favour of one of the co-owners it would qualify as a Relinquishment Deed."

15. Hence, both the above judgments of co-ordinate Benches of this court have clearly held that a Gift Deed is not necessary where a release deed has been executed in favour of one of the co-owners of the property.

16. I may now deal with the contentions of learned counsel for the respondent. It has been pleaded relying upon section 45 of the Transfer of Property Act that a release deed only operates where the co-owners have inherited the property. It would not operate where the property has been bought jointly by the co-owners themselves. Section 45 of The Transfer of Property Act, 1882 reads as follows:-

"45. Joint transfer for consideration.-Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."

17. A perusal of the above statutory provisions does not show that it supports the plea of the learned counsel for the respondent, namely, that a deed which operates to release the property of the co-owners who have inherited the property can be termed as release deed and not a deed which is executed between the co-owners who bought the property jointly for valuable consideration.

18. In this context, reference may be had to the observations of the learned Author Sh. K.K.Krishnamurthy in the Indian Stamp Act, 9th Ed. where Release Deed has been described as follows:-

"5. Release or conveyance. - In the case of co-owners each co-owner is in theory entitled to enjoy the entire property in part or in whole. It is not therefore necessary for one of the co-owner to convey his interest to the other co-owner. It is sufficient if he released his interest. The result of such a release should be the enlargement of the share of the other co-owner. There can be no release by one

person in favour of another who is not already entitled to the property as co-owner. A release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate and the release then operates as an enlargement of the limited right. A release can only feed title and cannot transfer title and as such, a release should necessarily be in favour of some one who had already some title to the estate and the effect of the release is only to enlarge that right..."

19. Reliance was placed by learned counsel for the respondent in support of his plea on the judgment of a co-ordinate Bench of this court in the case of Satya Pal Gupta vs. Sudhir Kumar Gupta (supra). In that case the court held as follows:-

"20. Release/relinquishment on non-judicial stamp paper of Rs. 10/- is permitted and registered when title to the property had been inherited from a common ancestor. In such situation, since acquisition of title by inheritance is not owing to any voluntary act of the person on which the title devolves, the law permitted such person, if did not desire to hold such title, to convey the same by way of a release/relinquishment on a non-judicial stamp paper of Rs. 10/- in favour of some other heir of the common ancestor. However if the conveyance is intended to be from owner to another, ad valorem stamp duty is required to be paid. In the present case as aforesaid SPG and SKG acquired different floors of the property under different Sale Deeds with SPG being the owner of the ground floor and SKG being the owner of the upper floors and release/relinquishment on a stamp paper of Rs. 10/- in any case was not permissible. The title held exclusively by SKG of the upper floors of the property could have been conveyed to SPG even if under nomenclature of Release/Relinquishment Deed, only by paying ad valorem stamp duty thereon. To the same effect are the judgements of the Division Bench of Karnataka High Court in Ranganayakamma v. K.S. Prakash AIR 2005 Kant 426 and of the Andhra Pradesh High Court in Goli Ramaswami v. Narla JagannadhaRao AIR 1962 AP 94. The reliance by the counsel for SKG in this regard on Kuppuswamy Chettiar and Ramdas Chimna(supra) is also apposite."

20. There is nothing in this judgment to support the contention of the respondent. The facts of the case show that the court was not dealing with a case of co-owners. Further, the judgment does not state that a Release deed can only be executed in the eventuality that title to a property is inherited from a common ancestor. This plea is without merits.

21. The Division Bench of this court in Mahip Singh Thakur vs Hema Thakur (supra) have clearly held that the essential ingredients of release are that there should already be a legal right in the property vested in the releasee and the release should operate notwithstanding that right into an absolute title. In view of the said legal position stated by the Division bench, in my opinion, the document in question which is subject matter of the present petition has to be treated as a release deed.

22. I may note that while interpreting a taxing statute, the court has to look only at the words of the statute and interpret them. The court cannot imply anything which is not expressed. Reference in this context may be had to the judgment of the Supreme Court in the case of A.V. Fernandez vs. The State of Kerala, AIR 1957 SC 657 where the court held as follows:-

"29. It is no doubt, true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities."

23. Reference may also be had to the judgment of the Constitution Bench in the case of Commissioner of Sales Tax, U.P. vs. Modi Sugar Mills Ltd., AIR 1961 SC 1047 where the Supreme Court held as follows:-

"10. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

24. As already noted above under Section 147 of the DMC Act the documents on which transfer duty can be levied are documents relating to sale of immovable property, exchange of immovable property, gift of immovable property, mortgage of immovable property, lease in perpetuity of immovable property and contract for transfer of immovable property. On a strict interpretation of the said statutory provisions, it is clear that a release deed is not mentioned in the said provisions. Hence, the stand of the respondent treating a release deed as a gift deed and holding that transfer duty has to be charged on the release deed/relinquishment deed is misplaced. A gift deed is distinct and cannot be confused with a release deed.

25. I may note that the distinction between a release deed and gift deed was noted by the Supreme Court in the case of Kuppuswami Chettiar vs. S.P.A. Arumugam Chettiar & Anr., AIR 1967 SC 1395 where the court held as follows:-

"4. The question is whether Ex. B-1 on its true construction conveyed properties to the respondents. In T. Mammo v. K. Ramunni [AIR 1966 SC 337] , this Court held:

"a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses an intention to effect a transfer".

In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under Section 123 of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-1 stated that the releasor was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.

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6. Counsel next submitted that a release can only enlarge an existing title of the releasee, and there can be no release in favour of a releasee who has no interest in the property. He relied on the following observation in *Hutchi Gowder v. Bheema Gowder* [(1959) 2 MLJ 324, 337] "A release deed can only feed title but cannot transfer title" and another observation in *S.P. Chinnathambiar v. V.R.P. Chinnathambiar* [(1953) 2 MLJ 387, 391] "Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in a person a title where it did not exist...". Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate. But in this case, we are not concerned with a release in favour of the holder of a limited estate. Here, the deed was in favour of a person having no interest in the property, and it could not take effect as an 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. The cases relied upon by counsel are not authorities for the proposition that the operative words of a release deed must be ignored. In *S.P. Chinnathambiar's case* [(1953) 2 MLJ 387], the document could not operate as a transfer, because a transfer was hit by Section 34 of the Court of Wards Act, and viewed as a renunciation of a claim, it could not vest title in the releasee. In *Hutchi Gowder v. Bheema Gowder* [(1959) 2 MLJ 3247] the question was whether a covenant of further assurance should be enforced by directing the defendant to execute a release deed or a deed of conveyance, and the Court held

that the defendant should execute a deed of conveyance. These decisions 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."

There is clearly no merit in the plea of the learned counsel for the respondent.

26. Accordingly, a writ of mandamus is issued to the respondent to carry out the mutation in favour of the petitioner for the property in question without payment of any transfer duty under Section 147 of the DMC Act, 1957.

27. The Writ Petition is allowed, as above.