(1915) 11 AHC CK 0016

In the Allahabad High Court

Jiban Kunwar APPELLANT

Vs

Gobind Das RESPONDENT

Date of Decision : 29-11-1915

Acts Referred:
Stamp Act, 1899 — Section 57

Citation : (1916) ILR (All) 56

Hon'ble Judges : Piggott, J;Muhammad Rafiq, J;George Knox, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

George Knox, Muhammad Rafiq and Piggott, JJ.—The following case has been stated by the Chief Controlling Revenue Authority of these Provinces to this Court u/s 57 of the Indian Stamp Act of 1899. The case stated runs as follows:--On the 23rd of August, 1914, one Mathura Das died childless leaving property of the estimated value of Rs. 2,25,000. The sister of the deceased applied for letters of administration. Gobitid Das, a collateral of Mathura Das, disputed her claim. "Eventually the two claimants effected a compromise, and to give effect to this compromise both the parties executed separate instruments of e\\en date on the 14th of September, 1914. Eachinstrument was treated as a deed of release and was stamped with a stamp of Rs. 5. The instrument executed by Gobind Das was presented for registration and was impounded by the Sub-Registrar, who considere it to be an instrument of partition chargeable with a duty of Rs. 375. The instrument was sent to the Collector, who considered it to be a release and referred the case to the Board of Revenue u/s 56(2) of the Act. The Chief Controlling Revenue Authority gave it as their opinion that the two deeds read together constitute an instrument of partition liable to a duty of Rs. 375 under Article 45, Schedule I, of the Stamp Act. But as they consider the question as one of some difficulty the case has been referred to this Court. No one appears on behalf of the Chief Controlling Revenue Authority. The lady is represented in this Court by Dr. Tej Bahadur Sapru, and Mr. Sital Prasad Ghosh appears for Gobind Das. We have heard the former advocate. The deeds have been read over to us. We have carefully considered their contents and we are satisfied that as the deeds stand they are instruments of release within the meaning of Article 55, Schedule I, of the Stamp Act. The case as put by the lady in her deed is that under the Mayukh law she is the owner of the property left by the deceased Mathura Das. The case as put by Gobind Das in the document executed by him is that under the Mitakshara law he is the sole owner of the property in question. Neither of them states himself or herself as co-owner with the other nor can they do so rightly. We, therefore, have not a case of persons purporting to be co-owners of the property and agreeing to divide the same. Each party before us claims to be the sole and full owner and, in order to avoid litigation, agrees to release in favour of the other a certain portion of the property which he or she claims to be his or her particular property in full. The Board of Revenue has cited Reference under Stamp Act, Section 46(1) as applicable to this case. But that was a case in which the parties purported to be the co-owners of the property. The view which we take is supported by Eknath S. Gownde v. Jagannath S. Gownde ILR (1885) 9 Bom. 417 and Reference under Stamp Act, Section 46(3). We direct that this be returned to the Chief Controlling Revenue Authority as our decision in this case. The deeds will be returned with the decision.