

(2013) 03 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No. 12233 of 2008 and M.P. No. 2 of 2008

K. Thilak Kumar and K. Sathish Kumar

APPELLANT

Vs

Chief Controlling Revenue Authority and Inspector General of
Registration Chennai 600028 and The Sub-Registrar
Royapuram, Chennai 600001

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Stamp Act, 1899 — Section 2, 40(1)(b), 56(1)

Citation : (2013) 4 MLJ 359

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T. Dhanasekaran, for the Appellant; A. Edwin Prabakar Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioners have approached this Court with a prayer for issuance of a Writ in the nature of Certiorari, to quash

the order dated 02.04.2008 passed by the 1st respondent declining the registration of family settlement on the ground that it was in fact a

settlement deed, subject to ad-valorem stamp duty. It is submitted that the grand father of the petitioners late K. Kuppusamy Chetty was the

owner of the house property bearing Door No. 10, Arumuga Muthali Street, Chennai 21. He had two sons and two daughters.

2. The petitioners are sons of K. Mruthyunjayudu. One son of Thiru. Kuppusamy Chetty through his first wife Lokamma had predeceased him.

No issues were born through the second wife Tmt. Jayamma of Thiru. Kuppusami Chettiar.

3. The grandfather of the petitioners executed a will and Codicil in the year 1958

bequeathing the house property in favour of the male issues to be born to his sons while giving life interest in favour of his second wife, namely, Tmt. K. Jayamma, without any power of alienation. The Will was probated vide O.P. No. 129 of 1960.

4. It is submitted that the step-mother was maintained by the father of the petitioners, after the death of their grandfather.

5. It is also the case of the petitioners that other son of Thiru. Kuppusami Chettiar ie., Thiru. Krishnamoorthy did not have any male issue and

therefore, under the Will after the death of Tmt. K. Jayamma, the property was to be devolved on the petitioners.

6. It is submitted that the members of the family entered into a family settlement and the property ie., the house fell to the share of the

petitioners. The petitioners presented the family settlement for registration before the Sub-Registrar, Royapuram. The Sub-Registrar, Royapuram

issued notice to the petitioners on 29.12.2006 that the family settlement deed stood impounded due to deficit stamp duty of Rs. 3,10,000/-

(Rupees three lakhs and ten thousand only) and penalty of Rs. 1,000/- (Rupees one thousand only) was also proposed to be imposed.

7. The petitioners submitted explanation to the show cause notice justifying the stamp duty of Rs. 10,000/- (Rupees ten thousand only) on the deed

of family settlement. The explanation submitted by the petitioners was not accepted and vide order dated 07.03.2007 the petitioners were directed

to pay a stamp duty of Rs. 3,10,000/- (Rupees three lakhs and ten thousand only) with a penalty of Rs. 1,000/- (Rupees one thousand only) on

the ground that the settlees were step-sons of the settlor, who were not entitled to exemption under Article 58(1) of the Indian Stamp Act.

8. The appeal filed by the petitioners was also dismissed by the first respondent.

9. The reasons for rejection of the appeal filed by the petitioners by the first respondent read as under:-

The revision petition 2nd cited was filed u/s 56(1) of the Indian Stamp Act, 1899 against the orders cited in reference 1 above issued u/s 40(1)(b)

ibid in respect of deed labeled as "Deed of Settlement" was kept pending registration as No. 126/2006 demanding deficit stamp duty of Rs.

3,10,1000/- and penalty of Rs. 1,000/-.

2. Brief History of the case are as follows:-

Date of execution 07.12.2006

Title of the deed Settlement

Settlor K.Jeyamma, W/o. Late Thiru.K.Kuppuswamy

Settlees K.Thilak Kumar and K.Sathish Kumar, both sons of
Thiru.K.Mruthyunjayudu

Stamp borne by the deed Rs.10,000/-

3. The Settlor is the second wife of K. Kuppuswamy Chetty. Kuppusamy Chetty had two sons and two daughters. Kuppusamy Chetty executed

Will and the same was also probated. In the said Will, the above said K. Jayamma, the first wife of Testator was given only life interest and after

life time, the property is to be enjoyed by the grandsons of to be born to two sons of K. Kuppusamy Chetty, the Testator. One of the sons of

Kuppusamy had no issues. The settlees are the sons of one of the sons of Kuppusamy Chetty, namely, K. Mruthyunjayudu.

4. The Sub Registrar (in the cadre of District Registrar), Royapuram in his order 1st cited held that since the settlees cannot be construed as

grandsons of Settlor, the document in question was classified as Settlement in favour of non-family member. Aggrieved on this, the petitioner has

filed this revision petition.

5. Mr. Raghu, the Counsel for the petitioner appeared before me and argued that:-

a) Vested interest is created in favour of the Settlees in the Will and the document in question is executed only to accelerate the passing of right to

settlees; and

b) Settlor is the step grand mother of the Settlees and the explanation of family found in Article 58 of the Schedule-1 to the Indian Stamp Act, does

not either expressly or impliedly excludes the step grand mother. Relationship is very close when compared to adoption.

6. The argument of the Counsel for the petitioner and the original file of the Sub Registrar have been examined by me in detail and carefully. Even

though the vested interest is with the settlees, the same cannot be enjoyed absolutely unless the Settlor relinquishes her interest, unless there is

express inclusion of a word, no presumption can be made. The step sons, step parents and step grand sons have not been included in the

explanation of family under Article 58 of Schedule-I to the Indian Stamp Act. In the absence of express inclusion, the step mother cannot be

treated as family member for the purpose of explanation family in the said Article.

7. In the circumstances explained above, the order 1st cited is upheld by dismissing the revision petition 2nd cited.

10. The learned counsel for the petitioners vehemently contended that the impugned order cannot be sustained in law, as it is admitted that the

settlor was not an outsider, but was the wife of the original owner of the property, namely, Thiru. K. Kuppusamy Chetty, who was the grandfather

of the petitioners. Furthermore, under the Will, the petitioners had right to inherit the property and by way of family settlement, the succession was

only expedited. The petitioners in any case had interest in the property, which was transferred to them by way of family settlement by their step

grandmother.

11. It was also the contention of the learned counsel for the petitioners that the mother as defined under Article 58 of the Indian Stamp Act does

not exclude step-mother from the definition, consequently, impugned order holding that the transfer between the outsiders cannot be accepted and

deserves to be set aside.

12. In support of the contention that the step-mother will come within the definition of the family, the reliance was placed on the judgment of the

Hon"ble Andhra Pradesh High Court in Zaheda Begum and Another Vs. Lal Ahmed Khan and Others, wherein, the Hon"ble Andhra Pradesh

High Court was pleased to lay down as under:-

17. A family settlement need not be confined to the one, among the legal heirs, or successors. If the aim is only to provide for arrangement in

accordance to succession, the whole exercise would be redundant. The reason is that the Law of Succession would take its course. It is only when

an arrangement, in slight or major deviation from natural succession, as a price for bringing about comity and harmony is chosen, that a settlement

comes into existence.

18. Recently Hon"ble Supreme Court held in Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, as under:-

It has been repeatedly emphasized in several decisions that family settlements are governed by a special equity and are to be enforced if honestly

made. This would be so ""even if the terms may have been agreed to on the basis of an error of the parties or originate in a mistake or ignorance of

fact as to what the rights of the parties actually are, or of the points on which their rights actually depend"". This is because the object of an

arrangement is to protect the family from long drawn out litigation, and to bring about harmony and goodwill in the family (see *Kale and Others Vs.*

Deputy Director of Consolidation and Others,). The Courts lean heavily in favour of family arrangements and, "matters which would be fatal to the

validity of similar transactions between strangers are not objections to the binding effect of family arrangements"". This view has been reiterated

recently in *Amteshwar Anand Vs. Virender Mohan Singh and Others*, .

19. The connotation of the word "family" changes depending upon the context. For instance, its purport under the income tax Act may not be the

same as the one under the Urban Land (Ceiling and Regulation) Act or other similar Enactments. Much would depend upon the context in which

the term is used. Where the concept of joint family exists, the family may comprise of the persons of 3 to 4 generations. In a narrow sense, the

family may comprise of the spouses and their children. In the context of settlement, the family takes in its fold, the several persons, some of whom

are a bit distantly related to those who constitute the core of the family.

20. In *Mahadeo Pathade (dead) through LRs. and Others Vs. Vatsalabai Pathade*, , the Bombay High Court held,

A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth

instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term

"family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may

have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and

the family instead fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to

more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead

of disrupting the same on technical or trivial grounds. Where the Courts find that

the family arrangement suffers from a legal lacuna or a formal

defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to

unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.

21. Such is the importance, accorded to the family settlements, by the Courts. Sub Section (24) of Section 2 of the Indian Stamp Act defines that

term as under:

Settlement"" means any non-testamentary disposition, in writing, of movable and immovable property made -

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing

for some person dependent on him, or

(c) for any religious or charitable purpose

22. From this provision it is clear that the settlement, particularly, within a family need not be restricted to be members of the family upto a

particular degree. Therefore, the irresistible conclusion is that a family settlement can be among not only heirs of a particular class, but also can take

in its fold, persons outside the purview of succession.

13. The Writ Petition is opposed by the learned Government Advocate by referring Article 58 of the Indian Stamp Act defining the family. The

contention of the learned Government Advocate was that for the purpose of Article 58, the word family means father, mother, husband, wife, son,

daughter, grand child including adoptive father, mother, son and daughter and therefore, step-mother cannot come under the definition of family to

claim the benefit of family settlement and therefore, the impugned order based on the interpretation of Article 58, does not call for any interference.

14. On consideration, this Court finds that this Writ Petition deserves to be succeeded. Admittedly, under the Will the property had been

bequeathed in favour of the petitioners. The step-grandmother of the petitioners was holding life interest in the property. She is the member of the

family. The Hon''ble High Court of Andhra Pradesh has laid down that the family cannot be given restricted meaning as contended by the learned

Government Advocate and therefore, it cannot be said that the transaction is not between the family and there is the impugned order. The

impugned order cannot be sustained in law as it gives restrictive meaning to the family, which is not permissible in law, as grandmother will include

step-grandmother and petitioners are to be treated as her grand children. Consequently, this Writ Petition is allowed. The impugned order is

ordered to be quashed. The Writ in the nature of Mandamus is issued directing the respondents to register the document in accordance with law,

by taking it to be family settlement. Consequently, connected Miscellaneous Petition is closed. No costs.