(2014) 11 KL CK 0040

In the High Court Of Kerala

Case No : W.P. (C). No. 18583 of 2014 (W)

K.K. Janu APPELLANT

Vs

The Sub Registrar RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Kerala Stamp Act, 1959 — Section 2(k), 33(1), 39

Citation : (2015) 1 KHC 315 : (2015) 1 KLT 109

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : B. Krishnan, R. Parthasarathy and Rajesh V. Nair, Advocate for the Appellant; T.R. Rajesh, Government Pleader, Advocate for the Respondent

Judgement

P.B. Suresh Kumar, J.—Petitioner along with seven others executed Ext. P1 partition deed in respect of the property held by her father, Govindan. According to the petitioner, on the death of Govindan and his wife Panchali, the mother of the petitioner, the property covered by the document devolved on the parties to the document by virtue of the provisions of a registered will executed by deceased Govindan. The parties to the document are the petitioner, her children, the daughter of the deceased sister of the petitioner and her children. The document recites the aforesaid devolution of property on the executants. Since the document was executed among the family members, stamp duty was paid for the document under Article 42(i) of the Schedule to the Kerala Stamp Act (''the Act'', for short). The Sub Registrar entertained a doubt as to the correctness of the stamp duty paid on the document and consequently, impounded the document, invoking his powers under Section 33(1) of the Act. Thereupon, the document was forwarded to the second respondent, the District Registrar. The District Registrar, in exercise of his powers under Section 39 of the Act, issued Ext. P2 order directing the petitioner to pay stamp duty on the document under Article 42(ii) of the Schedule to the Act. In addition, as per Ext. P2 order, the District Registrar has imposed a fine of Rs. 15,000/- on the petitioner. Ext. P2 order is under challenge in this writ petition.

2. It is stated in Ext. P2 order that the executants of the document do not come within the definition of ''family'' contained in Article 42 of the Schedule to the Act. The stand of the second respondent, as discernible from Ext. P2, is that the grandchildren and the great grandchildren of deceased Govindan, do not come within the definition of ''family''. Section 2(k) of the Act defines "instrument of partition" as follows:

"instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severality, and includes also a final order for effecting a partition passed by any Revenue Authority or any Civil Court and an award by an arbitrator directing a partition."

Article 42 of the Schedule to the Act deals with instrument of partition. Article 42 of the Schedule provides that where the partition is among all or some of the family members, stamp duty is payable under Article 42(i) of the Schedule and where the partition is among others, stamp duty is payable under Article 42(ii) the Schedule. The explanation to Article 42 of the Schedule defines ''family'' as follows:

"Family means father, mother, grandfather, grandmother, husband, wife, son, daughter, grandchildren, brother, sister and legal heirs of the deceased children, if any, as the case may be."

The definition of ''family'' indicates that various relationships described in the definition are with reference to one person. Since the definition is in the context of an instrument of partition, that person can only be the owner of the property partitioned as per the document. All possible blood relationships in the context of executing an instrument of partition are seen included in the definition of family. It is thus evident that the instruments of partition contemplated under Article 42(i) of the Schedule are instruments of partition between the successors in interest of one person whose property is partitioned among the parties. Obviously, the instruments of partition contemplated under Article 42(ii) of the Schedule are instruments other than instruments coming under Article 42(i) of the Schedule. The definition of ''family'' contained in Article 42 of the Schedule can, therefore, be only an inclusive definition. As such, merely for the reason that the great grandchildren are not included in the definition, it cannot be contended that the document would not come under the scope of Article 42(i) of the Schedule.

3. In the instant case, the second respondent has no case that the parties to Ext. P1 partition are not co-owners of the property sought to be partitioned. The objection is only that the great grandchildren of the owner of the property are parties to the document and they do not come within the definition of ''family''. As indicated above, the definition being only an inclusive definition, merely for the reason that the great grand children of the original owner of the property are also parties to the document, it cannot be contended that the document would not come within the scope of Article 42(i) of the Schedule. In so far as the

parties to the document are co-owners and they are the successors in interest of the owner of the property partitioned as per the document, the document would certainly come within the scope of Article 42(i) of the Schedule. Since the petitioner has paid stamp duty on the document, as provided for under Article 42(i) of the Schedule, Ext. P2 order is illegal and liable to be quashed.

4. In the result, Ext. P2 is quashed and respondents are directed to return the original document to the petitioner within two weeks from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.