
(2011) 08 KL CK 0066
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8336 of 2011

Lakshmi

APPELLANT

Vs

The District Registrar, Kozhikode and Another

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Kerala Stamp Act, 1959 — Section 2(k), 33, 51(a), 6(1)

Citation : (2011) 4 KLJ 511 : (2011) 4 KLT 959

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Nirmal S. and Veena Hari, for the Appellant; Mathew George Vadakkal (GP), for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Whether the stamp duty payable in respect of a "Gift Deed" executed by a person in favour of the grand-son of her deceased son, is at the lesser rate of "2%" for every Rs. 100/- as stipulated under Schedule 51(a)(i) of the Kerala Stamp Act (as amended), treating the beneficiary as a member of the "Family" of the executant or whether at the higher rate of "5%" for every Rs. 100/- as stipulated under Schedule 51(a)(ii) of the said Act, is the issue involved. The petitioner was the owner of 2.024 Ares of land comprised in re-survey No. 170/1A, 6A (old Sy. No. 93/1), having obtained the title by virtue of the assignment deed bearing No. 1018/1978 as mentioned in paragraph 1 of the Writ Petition. The petitioner wanted to convey the property by way of two separate conveyances, in respect of the two different portions, the first one in favour of her son and other one in favour of the grand-son of her deceased son. The property sought to be conveyed in favour of the son was registered by the concerned Sub Registry as borne by Exhibit P1 Gift Deed bearing No. 1664/2010, whereas registration of the Gift Deed/Settlement Deed sought to be, executed by the petitioner in favour of the grand-son of her deceased son, paying the stamp duty at similar lesser rate under Schedule 51(a)

(i) of the Kerala Stamp Act, (treating the beneficiary as a member of the family) was, however, not acceded to by the Sub Registry. The document was impounded by the second respondent u/s 33 of the Act and the same was forwarded to the first respondent for further steps. The first respondent issued a notice to the petitioner demanding a sum of Rs. 26,550/- (including the deficit stamp duty and penalty as prescribed) as borne by Exhibit P3. The petitioner submitted Exhibit P4 explanation But, since no favourable orders were passed, W.P.(C).No. 38651 of 2010 was filed, which culminated in Exhibit P5 judgment, whereby the first respondent was directed to finalise the proceedings after considering the objections preferred by the petitioner. Pursuant to Exhibit P5 judgment, the petitioner supplemented the objections already filed, by submitting Exhibit P6. After considering the case projected by the petitioner, the first respondent finalised the matter by passing Exhibit P7 order dated 21.2.2011, whereby the earlier proposal was confirmed and the amount stated as due was demanded, which, in turn is under challenge in this Writ Petition.

2. Heard learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents at length.

3. The liability to satisfy the stamp duty in respect of a "Settlement Deed" as originally stipulated under Schedule 51a of the Kerala Stamp Act is as follows:

Subsequently, the Kerala Finance Bill, 2010 was introduced, whereby a change was mooted in respect of the said provision, effecting the modification as given below:

(ix) in serial number 51, for clause (a) and the entries against it in columns (2) and (3), the following clause and entries shall respectively be substituted, namely:--

As per the said provision, where the settlement is in favour of a "family member", the conveyance will attract stamp duty only at the rate of "2%" for every Rs. 100/- or part thereof, of the fair value of the land or the value set forth, whichever is higher, as provided under sub-clause (i) of Schedule 51 (a) of the Kerala Stamp Act By virtue of sub-clause (ii), in any other case, the stamp duty payable will be, as it originally existed in respect of a Bottomry Bond, i.e. @ 5%. The learned counsel submits that, though the term "family" is not defined in the above Bill, the factual position contemplated therein necessitates it to be worked out with reference to Schedule 42 of the Kerala Stamp Act, 1959. The said Schedule, with the "Explanation", reads as follows:

42. Partition-Instrument of [as defined by Section 2(k)]:

Explanation.-- Family means husband, wife, children and the legal heirs of the deceased children if any, as the case may be.

It is contended that, since the term "Family" has been explained under Schedule 42 as the Husband, Wife, Children and the legal heirs of the deceased children if any, the conveyance now sought to be effected by the petitioner in favour of the

"grand-son" other deceased son, is liable to be treated as a conveyance in favour of a "member of the family" and the stamp duty payable can only be under Schedule 51(a)(i) and never under 51(a)(ii) of the Kerala Stamp Act as insisted by the respondents. The contentions raised to the contrary including those raised in the counter affidavit filed by the respondents are sought to be rebutted, placing reliance on the decision rendered by this Court in Padmanabhan V. Menon Vs. Inspector General of Registration and Others .

4. The learned Government Pleader appearing for the respondents submits with reference to the counter affidavit as well as the relevant provisions of law, that the contentions raised by the petitioner are totally wrong and misconceived. The learned Government Pleader adds that the term "family" as contained in the "Bill", is having only a restricted meaning, which cannot be widened beyond the scope and intent. Reference is also made to the enactment followed, which is stated as brought into effect from 1.4.2010, wherein the term "family" has been clearly defined, pointing out that the benefit of lesser rate of stamp duty as provided under Schedule 51(a)(i) is available only in respect of a Settlement in favour of "father, mother, husband, wife, son, daughter, brother or sister of a person". The said provision after the amendment, read as follows:

51. Settlement--

Reference is also made to the Kerala Provisional Collection of Revenues Act, 1985, stating that a declaration has been given in the Statute, whereby the Act has to be reckoned as having coming into existence with effect from 1.4.2010, though the assent of the Governor was obtained only on 28.7.2010.

5. The learned counsel for the petitioner asserts that the Act has come into force only on 28.7.2010 and in the instant case, the deed in favour of the "grand-son" having been executed on 23.6.2010, (when the Finance Bill of 2010 was in existence), the petitioner is entitled to have the benefit of wider meaning of the term "family" as given under Schedule 42 of the Kerala Stamp Act, particularly, when the grand-son is none other than the son of her deceased son and there is nothing in the Bill to exclude the benefit to such a member of the family.

6. The crucial question to be considered is whether the term "family" as given under Schedule 51(a)(i) in the Finance Bill, 2010 is having any wider meaning, so as to include any person like the grand-son of a deceased son, as in the instant case. True, Schedule 42 of the Kerala Stamp Act clearly refers to such grandson as well, as given in the "Explanation". But, whether any analogy can be drawn to the said provision, when the question comes to payment of stamp duty under the Kerala Stamp Act, as modified by the Finance Bill, 2010, is the point.

7. It is to be noted that, the instance of "Partition" contemplated under Schedule 42 stands entirely on a different footing, in so far as the property can be partitioned only among the co-owners. Unlike this, coming to the case of Gift/Settlement, the property can be gifted by a person to anybody of his choice,

subject to satisfaction of the requirements under the relevant provisions of law. Exception sought to be given or rather the concession intended to be given providing a lesser stamp duty under Schedule 51(a)(i) of the Kerala Stamp Act is to extend the benefit only to the named/specified beneficiaries as desired by the law makers. What was in the mind of the law makers when a "two-tier" procedure was prescribed with reference to the liability to pay stamp duty in respect of a Settlement Deed under Schedule 51(a), is the next point to be considered.

8. As mentioned earlier, the rate of stamp duty for Gift/Settlement Deed was uniform, as that of the Bottomry Bond, before the introduction of the Finance Bill, 2010. By virtue of the Finance Bill, while sub-clause (i) of Section 51(a) deals with the members of the "family" providing for a lesser stamp duty, the remaining cases are to be dealt with the liability to pay higher stamp duty as it existed earlier under sub-clause (ii). There cannot be any dispute with regard to the legal position that, while interpreting a provision of law, paramount concern has to be given to the "purpose of legislation" and the "intention of the law maker". To ascertain, what was in the mind of the law makers, it is worthwhile to note the subsequent turn of events as well, whereby the "Bill" was replaced by the Finance Act, 2010, which obtained the assent of the Governor on 28.7.2010. By virtue of the enactment referred to above, the relevant clause, i.e., sub-clause (i) of Schedule 51(a) has become very specific, in so far as the benefit of lesser rate of stamp duty is provided only in respect of the instruments where settlement is in favour of father, mother, husband, wife, son, daughter, brother or sister of a person and nobody else. All other cases are to be dealt with, as provided under sub-clause (ii), with the higher rate of duty as in the case of Bottomry Bond. As it stands so, it is obvious, that the intention of the law makers was to extend concessional rate of duty only to such persons, who are specifically referred to in clause (i) of Schedule 51(a) and not to any other person. Since "grand-son" of a deceased son of the executant is not included in Schedule 51(a)(i) of the Kerala Stamp Act, the benefit of the said provision, to have the conveyance registered with a lesser stamp duty, is not available to the case in hand.

9. The Finance Bill, 2010, admittedly, stands replaced by the Finance Act, 2010. Though the assent of the Governor was obtained only on 28.7.2010, since the Bill is replaced by the Act, the provisions of the Act are liable to be treated as having come into existence with effect from 1.4.2010, the date of commencement of the Bill, as provided. As such, the document executed by the petitioner on 22.6.2010 is liable to be treated as one covered by the specific provisions under the "Act" and the contention of the petitioner to the contrary, stating that something more or something different is contemplated under the Finance Bill, 2010, is not liable to be accepted on any count.

10. Coming to the decision cited by the learned counsel for the petitioner in Padmanabhan V Menon's case (supra), it stands entirely on a different footing.

The factual position in the said case reveals that the "partition" sought to be effected among the co-owners was intended to be registered by paying a stamp duty of Rs. 1,000/- by virtue of the Finance Bill 355/2006, which was introduced with effect from 1.4.2006. The said Bill also contained a declaration under the Kerala Provisional Collection of Revenues Act, 1985, whereby it was stipulated that it was expedient in public interest, that all the provisions of the Bill shall have the effect from 1.4.2006 under the Kerala Provisional Collection of Revenues Act, 1985. The Partition deed was executed among the parties on 22.6.2010 on a stamp paper worth Rs. 1,000/- and the same was presented for registration within the time permissible under law. While so, a notice was served on the executant on 28.1.22006 by the District Registrar General, Kozhikode, requiring them to show cause, why the deficit stamp duty with penalty should not be realised in respect of the conveyance. The stand of the respondents/department was that the Bill 355/2006 got elapsed and hence the amended provision to Schedule 42(i) of the Kerala Stamp Act providing a lesser stamp duty of Rs. 1,000/- for Partition did not actually come into existence and that the provision stood as before, which made the executor to incur a higher liability. Though the Finance Act, 2006 was brought into force, the assent of the Governor was obtained only on 24.10.2006 and the same was published on the very same day. In view of the admitted position that the Bill lapsed before the commencement of the Act, the provisions in the Act could not be stretched back to the prior date, was the contention of the department. After considering the rival submissions with reference to the relevant provisions of law, particularly, the effect of declaration, the Court arrived at a finding that the petitioner therein was liable to satisfy the stamp duty only to the extent of Rs. 1,000/- as stipulated in the Bill. Section 6(1) of the Finance Act validates the levy of stamp duty on the Partition deed executed between the petitioner and his brothers on 22.6.2006 and as such, the payment of Rs. 1,000/- as the stamp duty for the said partition deed was, therefore, liable to be treated as sufficient. Accordingly, the payment of additional stamp duty and penalty was held as illegal and unsustainable.

11. Coming to the case in hand, the position is entirely different. The question to be considered herein, is not the applicability of the provisions in the Finance Bill, 2010, but what the term "Family" as contemplated in the Bill means. As explained herein before, the term "family" as contained in the Bill was actual by the law makers, as discernible from the enactment followed clearly defining the extent to which the benefit of lesser duty is intended to be extended. Absolutely no material is brought before this Court to arrive at a contrary finding that, while introducing the Bill, the benefit was actually intended to be given to persons on a wider spectrum and that by virtue of the "Act" brought into force subsequently, the same was limited or restricted, deleting the beneficiaries otherwise intended to be given the benefit earlier, by pursuing any conscious act. In the above facts and circumstances, this Court finds it difficult to accept the proposition put forth by the petitioner. The challenge raised by the petitioner in respect of the impugned proceedings is not correct or sustainable. The "Settlement Deed"

executed by the petitioner in favour of her grand-son is liable to be treated only as a conveyance coming within the purview of sub-clause (ii) of Schedule 51(a) of the Kerala Stamp Act and as such, the petitioner is liable to satisfy the duty prescribed at the higher rate of Rs. 5/- for every Rs. 100/- as demanded by the respondents.

The Writ Petition fails and it is dismissed accordingly. The second respondent is directed to register the Gift Deed forthwith, on satisfying the amount stipulated in Exhibit P3 by the petitioner, if the same is otherwise proper and in order.