
(2013) 10 MAD CK 0024

In the Madras High Court

Case No : C.M.A. 3195 of 2012 and MP No. 1 of 2012

M. Suseelamma and Others

APPELLANT

Vs

The Chief Controlling Revenue Authority and The Sub-
Registrar (District Registrar Cadre)

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : AIR 2014 Mad 43 : (2014) 2 CTC 402 : (2014) 1 LW 211

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : R. Thiagarajan, for the Appellant; M. Venugopal, Spl. Govt. Pleader (CS), for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Being aggrieved by the order made by the Chief Controlling Revenue Authority, Chennai, 1st respondent herein, in the

appeal petition in Pa.Ma. No. 2150/P1/2004, dated 26.12.2006, and the subsequent demand by the Sub Registrar (District Registrar Cadre),

Chennai, 2nd respondent herein, made in I. No. 8 of 2003, dated 07.09.2007, the present Civil Miscellaneous Appeal has been filed. Wife, sons

and daughters of Late Krishnaiah Chetty, have filed this appeal. A Deed, dated 09.10.2003, has been executed by the 1st respondent along her

sons and daughters, respondents 2 to 6, in favour of the 7th respondent and his three minor sons, and the said document has been presented in the

Office of the Sub-Registrar, District Registrar Cadre, Sowcarpet, Chennai, The document has been kept pending u/s 33 of the Indian Stamp Act,

1899, as it was not duly stamped. The Sub-Registrar, (District Registrar Cadre), Chennai, 2nd respondent herein, after giving notice to the

appellants, treated the document in question, as ""conveyance"", chargeable under Article 23 of Schedule I of the Indian Stamp Act, 1899, on the

ground that the releases 2 to 4 do not have any pre-existing right over the property. Being aggrieved by the same, the appellants have preferred a

revision petition before the 1st respondent u/s 56 of the Indian Stamp Act, 1899. After considering the case of the appellants, the said authority,

vide orders in D. Dis. No. 2150/P1/2004, dated 26.12.2006, treated the document in question, as the one, comprising of dual nature, viz.,

"Release" chargeable under Article 55A with regard to 21.43% of Undivided share of the property and the rest of 64.29% undivided share as

"Gift" chargeable under Article 33 of Schedule-1 to the Indian Stamp Act, 1899, on the ground that 2nd, 3rd and 4th releases do not have any

pre-existing right over the property. Being aggrieved by the same, the present appeal has been filed.

2. Assailing the correctness of the orders, Mr. R. Thiagarajan, learned counsel for the appellants submitted that the 1st respondent ought to have

noticed that the property, covered under the Release Deed, dated 09.10.2003, originally belonged to Late M. Krishnaiah Chetty, was married to

M. Suseelamma, 1st appellant and on his demise, the property has devolved upon the 1st appellant, his children and grand children of M.

Krishnaiah Chetty. The appellants have further submitted that the 1st appellant has succeeded to the property by inheritance and succession and as

such, inclusion of the grand children, in the Release Deed, dated 09.10.2003, would not change the character of the property or their right and

entitlement. However, the demand of additional stamp duty, construing the document, as conveyance of the property, insofar as the grand children

of late M. Krishnaiah Chetty, is concerned, is illegal.

3. Placing reliance on a decision made in Smt. Balwant Kaur and Others Vs. State of U.P., , the appellants have submitted that the 1st respondent

ought to have seen that when a co-owner executes a Deed of Release in favour of other co-owners, it cannot be construed as ""conveyance"",

According to him, the essential difference between a ""Conveyance"" and a ""Release Deed"", lies in the fact that in the latter, there is no transfer of an

interest or right to enter, who had pre-existing rights. A release of a right or a claim can only be in favour of a person, or a claim can only be in

favour of a person who had that pre-existing right or a claim and by reason of the release, the latter's right is enlarged.

4. Placing reliance on a decisions made in Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, , the appellants

have further contended that in order to determine, whether a document, is a release or conveyance, the nomenclature or the language used is not

decisive and what is decisive is the actual character of the transaction and the precise nature of the rights created by himself or herself of such

instruments. The appellants have also contended that the 1st respondent ought to have seen that the children of the Releasers and the Releases

have been included in the respective branches to have a binding force, as against such of those persons and their legal heirs, at a later date.

According to them, the document cannot be construed as a gift or a conveyance.

5. The Inspector General of Registration, Chennai, 1st respondent has filed a detailed counter affidavit and reiterating the same, Mr. M.

Venugopal, learned Special Government Pleader (CS), submitted that the property comprised in Deed, dated 09.10.2003, was purchased and

owned by the 1st appellant and father of the remaining appellants, viz., Mr. M. Krishnaiah Chetty. He has purchased the said property from one

Sheela Devi, vide Sale Deed, registered as No. 558 of 1987, on the file of Sub-Registrar Office, Sowcarpet. Subsequently, the said M.

Krishnaiah Chetty died intestate, on 16.04.2000, leaving behind the appellants 1 to 7, as his Class I legal heirs. Recitals of the abovesaid

document, read as follows:

AND WHEREAS by reason of inheritance and succession, the widow of late M. Krishnaiah Chetty, Smt. M. Suseelamma and her sons and

daughters have succeeded to the estate of late M. Krishnaiah Chetty and each of them has undivided 1/7th share in the schedule mentioned

property.

Consequent on the demise of the said M. Krishnaiah Chetty, the appellants are only Class-I Legal Heirs to inherit the property, under Hindu

Succession Act, 1956.

6. Learned Special Government Pleader (CS), further submitted that the Schedule in Hindu Succession Act, 1956, provides the following as

Class-I legal heirs

Son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a

predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son. daughter of a predeceased son of a

predeceased son, widow of a predeceased son of a predeceased son of a predeceased son

7. Learned Special Government Pleader further submitted that nowhere in the document, dated 09.10.2003, the parties therein, have been

described as belonging to Hindu Undivided Family, and that the said M. Krishnaiah Chetty as the Kartha of the Hindu Undivided Family and in

these circumstances, out of the 4 releases, 1st releasee, viz., M. Kumar, 7th Appellant, alone is having pre-existing right over the said property and

that releases 2 to 4 do not have any pre-existing right over the said property. He further submitted that Section 8 of the Hindu Succession Act,

1956 confers right of inheritance only on the son and the son of a predeceased son, but not on the grandson when his father is alive. He also

submitted that the question, as to whether, a son who inherits the property of the father u/s 8 of the Act, gets the property, as a separate property

or as the property of his own joint family of son and grandson and great-grandson.

8. Placing reliance on the decisions made in Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry

Ltd., Bhavnagar and Another, and Yudhishter Vs. Ashok Kumar, , learned Special Government Pleader further submitted that the releases 2 to 4

are not at all having any pre-existing right over the property. Reference has also been made to a decision of this Court in Chief Controlling Revenue

Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, , and he submitted that there can be no release by one person, in favour of another,

who is not already entitled to the property, as a co-owner and in the instant case, the releases 2 to 4 are not the co-owners of the property in

question.

9. Learned Special Government Pleader submitted that the 1st Respondent has treated the instrument, in question, u/s 5 as "Release" and "Gift"

chargeable, under Articles 55-A and 23 of schedule-1 of the Indian Stamp Act respectively, and the reasons adduced for the same are extracted

hereunder:-

10. Learned Special Government Pleader further submitted that grand children cannot inherit any share in the property, when the father is alive and

if the parties do not belong to Joint Hindu Family and therefore, the 1st Respondent has rightly treated the instrument in question, both as "Release"

and "Gift" and not as sale in his order. For the abovesaid reasons, he has prayed for dismissal of the writ petition.

11. Before advertng to the contentions, this Court deems it fit to extract Articles 23 and 55 of the Indian Stamp Act, 1899, as follows:

12. Facts deduced from the material on record, are that Late M. Krishnaiah Chetty has purchased the subject property from one Sheela Devi,

vide Sale Deed registered as No. 558 of 1987 on the file of Sub-Registrar Office, Sowcarpet. Subsequently, after the demise of M. Krishnaiah

Chetty, who died intestate on 16.04.2000, leaving behind the appellants 1 to 7, wife, sons and daughters, as his Class I Legal Heirs, a Document,

dated 09.10.2003, has been presented and numbered as 50 of 2003, on the file of the Sub-Registrar (District Registrar Cadre), captioned as deed

of release and executed by (1) Mrs. Suseelamma, 1st appellant, wife of late M. Krishnaiah Chetty; along with her sons and daughters, viz., (2) M.

Sridhar for himself and his children, M. Nithya, aged 12 years and M. Laxmi Narayana, aged 10 years; (3) M. Eswaraiah, for himself and his

children, M. Haritha, aged about 10 years and M. Akshay, aged about 5 years, (4) M. Jayashankar, for himself and his children, M. Hemalatha,

aged about 7 years, M. Sai Vignesh, aged about 5 years, (5) Y. Chandrakala, wife of Y. Babu, for herself and her children, Y. Thulasi, aged

about 14 years and Y. Venkata Balamurali, aged about 13 years, (6) A. Hemavathi, wife of A. Chandrasekar, for herself and her children, A.

Abishek, aged about 6 years and A. Sirisha, aged about 3 years respectively, to and in favour of M. Kumar, son of Late M. Krishnaiah Chetty,

and his children, M. Gopikrishna, aged about 17 yeas and M. Asha Rani, aged about 15 years.

13. Section 8 of the Hindu Succession Act, deals with General Rules of Succession, in the case of Males and the same reads as follows:

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

14. Schedule in the said Act provides Class-I legal heirs, as extracted hereunder:

Son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son of a predeceased son.

15. As rightly pointed out that the recitals in the document captioned as ""Release Deed"" do not reflect a Hindu undivided family, showing M.

Krishnaiah Chetty, as the Kartha of the Hindu undivided family. As per the recitals, the property has been acquired by M. Krishnaiah Chetty and

that he died on 16.04.2000, at Chennai, leaving behind (1) Mrs. Suseelamma and his children, (2) M. Kumar, (3) M. Sridhar, (3) M. Easwaraiah,

(4) M. Jaya Shankar, (5) Y. Chandrakala and (6) A. Hemavathy. Therefore, as per Section 8 of the Hindu Succession Act, the appellants have

got 1/7th undivided share in the Schedule mentioned property, appended to the Deed.

16. In Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, , the executants of the deed were three persons, who along

with two other persons, in whose favour the deed was executed, were partners of a registered firm, known as ""Gudiyatham Lungi Company"". The

executants ceased to become partners of the firm, after 12-4-1949. The Preamble to the document described that the releasers, i.e., executants,

were co-owners of the immoveable property described in the schedule to the document and entitled to three-fifths" share, therein, that the book

value of the said property was a sum of Rs. 16,431,26 and that the releasers, after having retired from the firm, desired to renounce all the interest

in the said property by a deed, by receiving the proportionate value of their shares" in cash. The question, which came up for consideration, was

whether the abovesaid instrument falls within the definition of conveyance, under Article 19 of Schedule I-A of the Stamp Act. As there was no division of property, by metes and bounds, it was contended that when the co-owner purports to abandon or relinquish his claim to the share to which, he would be entitled, the document should be construed only in the nature of a release deed. Though objections were raised to the effect that it should be treated as one of conveyance or dissolution of partnership, the same was rejected in the above reported case. There is no quarrel over the abovesaid preposition.

17. In Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, , the Full Bench of this Court observed that in order to determine whether a document is a release deed or conveyance, the nomenclature or the language used is not decisive. What is decisive is the actual character of the transaction and the precise nature of the rights created by means of the instrument. In Rustom's case, the essential ingredients of release were present, there was already a legal right in the property vested in the releasee and the release operated to enlarge that right into an absolute title for the entire property, insofar as the parties were concerned.

18. In S. Sathyanarayanan Vs. The District Registrar, Registration Department, The Sub-Registrar and The Assistant Inspector of Registration

(The Assistant Inspector General of Registration) , this Court held as follows:

22. There can be a creation of a co-ownership right by virtue of acquisition of right in respect of coparcenary properties jointly inherited

properties., devolved by succession release by general terms, release of conjugal rights, release of tenancy rights, release of mortgage rights and

other releases. Certainly, there is a difference between creation of rights between the former and the latter. That is why, in 2000, for levying

appropriate stamp duty, on an instrument of release, when there was a doubt, the Inspector General of Registration has issued the following

clarifications to all the District Registrars and all the Deputy Inspector General of Registration: The clarifications are as follows:

With reference to the letter and an cited chargeability of stamp duty under Article 55-A Act of Indian Stamp Act have been clarified hereunder:

2. Article 55(c) of Indian Stamp Act 1899, contemplates release between co-

owners. The co-ownership right is the creation of parties. This right may be created on account of sale, gift, settlement, assignment etc., or anyone of the parties acquiring undivided share in the property of the other.

Both the releasor and releasee should be co-owners of the property. A release of right by one co-owner in favour of another co-owner shall fall

under Article 55(c) of Indian Stamp Act, 1899. 3. Article 55(A) of the Indian Stamp Act, 1899, contemplates release in respect of coparcenary

properties, properties jointly inherited, properties devolved by succession, release general terms, release of conjugal rights, release of tenancy right,

release of mortgage rights and other released which are not come by Article 55(B), (C) and P).

All Deputy Inspectors General are requested as knowledge the receipt of this clarifications forthwith and further requested to get acknowledgments

from District Registrars and District Registrars from Sub Registrars

23. If a release of right in favour of a co-owner as per Article 55-A of the Act as stood in 2000 has to be interpreted than acquisition of co-

ownership right by any mode irrespective of the fact whether it is by sale, gift, by settlement, or assignment or anyone of the parties acquiring

undivided share in the property of the other to the co-owner by coparcenary right joint inheritance, co-ownership by devolution, include co-

ownership rights in respect of properties by succession, then, there is no need to issue a clarification by the Inspector General of Registration,

Chennai. Therefore, primarily, when Article 55-A speaks of release that is to say, any instrument (not being such a release as is provided for by

Section 23-A) or a [release referred to in clauses B, C and D of this Article] whereby a person renounces a claim upon another person or against

any specified property, then 55-A is referable only to a release of right of co-ownership in respect of properties acquired by coparcenary right,

joint inheritance, properties devolved by succession. Only in the case of acquisition and release of co-ownership right on account of any of the

modes like sale, settlement, etc., or anyone of the parties acquiring undivided share in the property or the other, Section 55-(would be applicable.

Further examination of Article 55-(would show that the Government in order to reduce the rate of duty to one percentage on the market value of

the property subject to the maximum of Rs. 10,000/- in respect of instruments

of settlement release, partition and partition dissolution, when the property transaction takes place within the family, have brought about an amendment to Article 55-C, by replacing with the expression ""another co-owner who is not a family member"" and such release of right in favour of a co-owner if it relates to immovable property situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirapalli and the City of Tirunelveli would be valued and fixed at Rs. 13/- of the market value of the property which is the subject matter of release.

24. Government Letter in Lr. No. 4860/J1/dated 01.03.1999 Commercial Taxes (J), Tax Secretariat, Chennai states that family includes brothers

and sisters. Therefore, in the case of release by an instrument between the brothers and sisters, a concession is given in the payment of stamp duty

considering their relationship, as family members. An instrument of partition, settlement and release of execution in favour of brothers and sisters is

an instrument in favour of a member of a family as defined under Article 58 of the Indian Stamp Act. The effect of the clarification of the Inspector

General in his letter dated 11.10.2000, addressed to all the District Registrars and to all the Deputy Inspectors General of Registration to the effect

is that in the case of release under Article 55A and 55A(1) is between the members of the family, the stamp duty that is attracted is one rupee or

every 100 part thereof of the market value of the property subject to maximum of Rs. 10,000/-.

25. From the above, it could be deduced that Article 55-A of the Act and the clarifications issued by the Inspector General of Registration,

Chennai, speak of acquisition of co-ownership rights, through two different modes namely, joint inheritance property rights devolved by succession

etc., and it specifically excludes acquisition of co-ownership rights by the following modes like sale, settlement and assignment etc.

26. In the case on hand, properties to the extent of 1126 sq.ft in S. No. 2487, Ward No. 2 and 840 Sq.ft in Old T.S. No. 1135, New Ward A,

New Block 13, New Town Survey No. 98, Trichy were purchased by the petitioner's mother in the years 1980 and 1995 and thereafter, she

executed a will and last testament, dated 10.06.1995 bequeathing both the properties purchased by her under two sale deeds to the petitioner and

his brother Nagarajan. It is stated that the mother of the petitioner died on 18.08.1995 and the will came into effect, making them as the joint

owners of the properties. Brother of the petitioner relinquished his half undivided right in favour of the petitioner for a consideration of Rs. 50,000/-

and to that effect, executed a release deed and that the same was presented for registration on 12.11.2002 before the Sub Registrar, Srirangam.

Therefore, there cannot be a doubt that, the petitioner and his brother Nagarajan had acquired co-ownership right by testamentary succession or in

other words, there was creation of co-ownership by inheritance by a will. The relinquishment of co-ownership right created by succession falls

under Article 55-A and not under 55-C of the Act.

27. In the light of the above discussion, this Court is of the considered view that the impugned order is not in accordance with the clarification dated

11.10.2000 issued by the Inspector General of Registration, Chennai. Therefore, the contention of the learned Special Government Pleader that

the co-ownership right acquired/created by any of the modes stated supra, and the release of such right in favour of another co-owner on any

specified property over which they have a common right would attract stamp duty at Rs. 13/- on the market value cannot be countenanced. The

further contention that the amendment came into effect only in 2004 and therefore, the document presented for registration on 12.11.2002 would

attract Article 55-C of the Stamp Act is not accepted.

The judgment in Sathyanarayanan's case, stated supra, in strict sense, is not applicable to the facts of this case, as in the above reported case, co-

ownership right between the parties, has been created by testamentary succession. In order to ascertain, as to whether, the releases 2 to 4, acquire

any right in the self-acquired property of late Krishnaiah Chetty, it is worthwhile to consider few decisions.

(i) In Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry Ltd., Bhavnagar and Another, , the

Supreme Court, held that,

It would be difficult to hold today that the property which devolves upon a son u/s 8 of the Hindu Succession Act read with Schedule would be the

property of Hindu Undivided Family vis-a-vis, his own sons.....the son inherits the property from his father as an individual as separate property

and the property do not belong to the joint family

(ii) In *Yudhishter Vs. Ashok Kumar*, the Supreme Court held that the property which devolves upon a Hindu male governed by Mitakshara Law

u/s 8 of the Act, will be his separate property and not the joint family property in his hand as against his sons.

19. But, reverting back to the case on hand, as rightly contended by the learned Special Government Pleader, releases 2 to 4 have not acquired

any right over the property, as per Section 8 of the Hindu Succession Act. Judgment in *Rajendran Vs. The Inspector General of Registration,*

Chennai 600 028, The Special Deputy Collector (Stamps), Cuddalore and The Joint-I Sub Registrar, Virudhachalam, is also not applicable to

the facts of this case.

20. Reverting back to the facts of this case, when the document has been presented, as captioning it, as release deed and valued at Rs. 2 Lakhs,

for the purpose of stamp duty, a notice, dated 21.10.2003, has been issued to the appellants, treating the document as ""conveyance"", chargeable

under Article 23 of Schedule I of the Indian Stamp Act, 1899, on the ground that the releases 2 to 4 do not have any pre-existing right, over the

property. In response to the notice, the appellants have given a reply, dated 04.12.2003, stating that invoking Article 55A of the Indian Stamp Act

and demanding a sum of Rs. 19,000/-, including fine of Rs. 1,000/-, towards penalty is illegal and arbitrary.

21. In the light of Section 8 of the Hindu Succession Act and the decisions, stated supra, as rightly contended by the 1st respondent, releases 2 to

4 do not have any pre-existing right over the subject property. They have not inherited any property, as per Section 8 of the Hindu Succession

Act. The value of the property shown in the document is Rs. 2 Lakhs. As per Section 5 of the Indian Stamp Act, any instrument comprising, or

relating to several distinct matters shall be chargeable with the aggregate amount of the duties, with which separate instruments, each comprising or

relating to one of such matters, would be chargeable under the Indian Stamp Act. Therefore, considering the above, the 1st respondent has passed

a detailed order, which does not warrant interference of this Court. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is also closed.