
(2012) 10 KL CK 0125
In the High Court Of Kerala
Case No : Writ Petition (C) No. 18855 of 2012

Manuel	Vs	APPELLANT
State of Kerala		RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Kerala Stamp Act, 1959 — Serial No. 51

Citation : (2012) 4 KLT 558

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : C.A. Chacko and C.M. Charisma, for the Appellant; K.C. Vincent Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair

1. The liability to pay stamp duty on a partition deed executed by the petitioner and other members of the family, is the subject matter of the Writ Petition. The partition deed is executed in a stamp paper of Rs. 1,000/-, but the third respondent insists for payment of stamp duty at 6%. The facts of the case are the following: The petitioner is the son of deceased Isahack. The document is executed between the petitioner and his brothers and sisters, legal heirs of Shri Yohannan, the deceased brother of the petitioner and the legal heirs " of his deceased sister Smt. Mariyamma. Ext. P1 is the copy of the deed. It is pointed out that even in respect of settlement deed under Serial No. 51 of the Schedule attached to the Kerala Stamp Act, which is executed in favour of the members of the family, the maximum stamp duty is only Rs. 1,000/-.

2. The stand taken by the third respondent in the statement, is that the properties included in the partition deed are those devolved on them after the death of the petitioner's father and mother and they also intend to partition the property devolved on them after the death of the brother of the petitioner. There

is no doubt regarding the right of the petitioner or other executants over the scheduled properties. As far as Serial No. 42(i) of the Schedule is concerned, the definition of family include father, mother, husband, wife, son, daughter, grand children, brother, sister and legal heirs of the deceased children. In Ext. P1 partition deed, all the executants are not coming under the definition of "family" and some of the executants are legal heirs of the brother and sister of the petitioner. It is further stated that the Explanation in the amendment does not include the relation "legal heir of the brother or sister" and therefore the document cannot be registered.

3. Learned counsel for the petitioner submitted that executants 1 to 5 are children of deceased Isahack, executants 6 to 12 are children of deceased Yohannan, who is a deceased brother of the petitioner, executant No. 13 is the widow of late Yohannan and executant No. 14 is the daughter of one pre deceased sister of executants 1 to 5. Thus, it is submitted that the executants are children of deceased Isahack, legal heirs of one deceased son of Isahack, Yohannan, the widow of Yohannan and daughter of the deceased sister of the petitioner and hence they are covered by the explanation.

4. Before going into the details, I shall refer to the document itself. The recital in the document shows that the property scheduled therein obtained by Isahack and his wife Mariyam in a family partition of the year 1976 and were included in "E" and "D" schedules therein. "E" schedule properties were allotted to them exclusively and "D" schedule was allotted to Seemon, another son of Isahack and Mariam, after retaining the life interest with the parents. Isahack, Mariyam and Seemon are no more. Seemon was unmarried. Therefore, it is stated that after the death of the parents as well as Seemon, the property devolved on executants 1 to 5 who are the children of Isahack and Mariyam, the father of executants 6 to 12 Yohannan and mother of executant No. 14, Mariamma. After the death of Yohannan, his rights were devolved on executants 6 to 13 and consequent on the death of Mariamma, her rights devolved on executant No. 14.

5. Therefore, the contention is that the partition deed is executed between parties 1 to 5 who are the children of Isahack and Mariyam, the other executants are legal heirs of deceased Yohannan, his wife and daughter of his deceased sister. All of them will be the legal heirs of Seemon also.

6. The Explanation and the schedule therefore requires consideration. In the Kerala Stamp Act, The Explanation to Serial 42 reads as follows:

Explanation:-- Family means father, mother, husband, wife, son, daughter, brother, sister and legal heirs of the deceased children, if any, as the case may be.

As far as the Explanation is concerned, originally the term "family" meant "husband, wife, children and the legal heirs of the deceased children, if any, as the case may be" and the present Explanation was introduced by an amendment by including "brother" and "sister". Therefore, the only questions whether the

partition is among the family members who are included within the scope of the Explanation.

7. Executants 1 to 5 will be the children of Isahack and Mariyam and therefore they are covered by the Explanation. Learned Government Pleader submits that deceased Seemon is a brother of executants 1 to 5 and only brother and sister are included in the Explanation and since the property was in the name of deceased Seemon, and as there is no inclusion of the term "legal heirs of deceased brother" in the Explanation, the contention of the petitioners cannot be accepted.

8. In fact, the property was obtained in the family partition deed of the year 1976. The parents retained life interest in respect of "D" schedule and it was allotted in favour of Seemon. The petitioners trace their title as devolved on them consequent on the death of Seemon who was unmarried as well as the parents. Therefore, it cannot be disputed that as regards the properties in question, the parties are having the right. It is not disputed in the statement also by the third respondent.

9. The question is whether Seemon will get the character as a "brother" in the Explanation and in the absence of any stipulation that legal heirs of brother can also be members of the family, the document could be registered by paying stamp duty of Rs. 1,000/-.

10. But the Explanation, if closely read, it can be seen that the contentions of the respondents cannot be accepted. The Explanation, as it stood before the amendment, read as follows:

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

Therefore, the children and legal heirs of the deceased children are also members of family and when the partition is among the family members, it will attract Serial No. 42. Here, it can be seen that the property originally was obtained by the parents and deceased Seemon and the executants now are the children as well as the legal heirs of two children, viz. Yohannan and Mariyamma and the widow of Yohannan. They are also the legal heirs of Seemon, a deceased son. The widow will also be one of the legal heirs of the deceased Yohannan. Therefore, all of them will come within the meaning of the expression "legal heirs of the deceased children". The deceased Seemon was a member of the family, being a son of Isahack and Mariam. All the parties to the document herein have inherited his property also as his legal heirs, since he was unmarried. The parties therein being the "legal heirs of the deceased son", they will be covered by the Explanation.

In the light of the above, the contention that as one item of the property belonged to one deceased brother and as the Explanation does not take in legal heirs of brother, cannot be accepted. The petitioners will really fulfil the character

of the expression "legal heirs of deceased children" since they have inherited the property which originally belonged to Seemon apart from those of the parents. The properties are jointly owned by the parties herein.

Therefore, the Writ Petition is allowed. There will be a direction to the third respondent to register the document of partition on payment of Rs. 1,000/- as stamp duty. No costs.