(1997) 10 KL CK 0010

In the High Court Of Kerala

Case No : C.R.P. No. 1238 of 1997

Mary Simon APPELLANT

Vs

Mrs. Tressa Xavier RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:
Kerala Stamp Act, 1959 — Article 42

Citation : (1998) 1 KLJ 260

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : Joseph Franklin, for the Appellant; P.F. Thomas, for the Respondent

Judgement

K. Narayana Kurup, J.—The 2nd defendant in O.S. No. 112 of 1984 on the file of the Sub Court, Ernakulam is the revision petitioner. The revision is directed against the order of the trial court in I.A.4747 of 1996 in the aforesaid suit recording that deficit amount for engrossing final decree has been deposited by the plaintiff and directing engrossment of the decree on the stamp paper to be purchased from the amount deposited and allowing the respondent - plaintiff to realise the amount from the revision petitioner brief facts necessary for disposal of the case are as follows:-

The suit was one for partition. By the preliminary decree, the trial court held that the plaintiff - respondent is entitled to one-third share of the plaint schedule properties. Pursuant to the preliminary decree, the plaintiff - respondent applied for final decree by filing I.A. 2099 of 1989 and final decree was passed by the court on 11.1.1996. Though the court passed the final decree as early as 11.1.1996 it was not issued since the value of non-judicial stamp paper was not produced. The plaintiff - respondent has remitted a sum of Rs. 45,866/- for the purchase of non judicial stamp paper on 25.7.1996 being 2 1/2% of one-third share of the value of the property as found by the Commissioner and accepted by the court in the final decree. According to the plaintiff - respondent, the revision petitioner - second defendant has to deposit the value of non-judicial stamp paper of the two-third share allotted to her for engrossing the decree. Since the revision petitioner - second defendant failed to deposit the value of the non-judicial stamp paper of the two-third share allotted to her, the plaintiff filed I.A.4747 of 1996 requesting the court to allow her to pay the share of the revision petitioner also. In the final decree, the court has fixed the "total value of divisible properties as Rs. 58,93,310/-. Deducting the value of one-third share will work out to Rs. 39,28,873.33". Since the second defendant-revision petition failed to remit the value of non-judicial stamp paper of her two-third share, the plaintiff filed I.A. 4747 of 1996 dated 16.9.1996 to allow her to deposit the value of non-judicial stamp paper of the two-third share of the revision petitioner contending that it is so ordered in the final decree and allow the same to be realised from the petitioner. The revision petitioner filed objection to I.A.4747 of 1996 stating that such a petition is not legally maintainable. According to the revision petitioner, under Article 42 of the Kerala Stamp Act, a party need pay the amount for the value of the separated share excluding major share. In this case, one-third share is the separated share and the major share is two-third. Therefore for engrossing final decree, stamp paper for the value of one-third share alone is necessary according to the revision petitioner. Since the plaintiff - respondent has already deposited the amount, no further amount is required to be deposited by the revision petitioner-second defendant. However, the court below by order dated 11.6.1997 directed the respondent - plaintiff to deposit the deficit amount to purchase non-judicial stamp paper for engrossing the final decree and at the same time allowing the plaintiff-respondent to realise the amount from the revision petitioner - 2nd defendant. This revision is directed against the order of the trial court in I.A.4747 of 1996 dated 11.6.1997, as already noted.

2. The question to be considered is whether under Article 42 of the Kerala Stamp Act (for short ''the Act'') a party need pay the amount for the value of the separated share, excluding ''largest'' share or not. In this case admittedly one-third is the separated share and the larger share is two-third. Therefore, for engrossing final decree, stamp paper for the value of one-third share alone is necessary. The plaintiff has already deposited the amount necessary for purchase of stamp paper for two-third share which amounts to Rs. 98,222/-. Going by the provisions of Article 42 of the Act where the partition is among all or some of the family members, the duty payable is the same as a Bottomry Bond (No. 14) for the amount of the value of the separated share or shares of the property. The note to the said Article provided for the largest share remaining after the property is partitioned shall be deemed to be that from which the other shares are separated. On a plain reading of Article 42 of the Act, it becomes clear that duty payable on the instrument of partition is for the amount of the value of the separated share or shares of the property. Smaller shares which have been separated off from the larger share should be the criterion for fixing the stamp duty payable on the instrument. See in this connection the decision reported in Venkatappa v. Musal (AIR 1934 Mad. 204 - D.B.)- In like view is the decision of

the Division Bench of the Andhra Pradesh High Court reported in Pothla Vs. Pothula alias Gaddam Seshireddy and Others, wherein it has been held as follows:-

The purpose of the Article is to tax the share divided off and not the residue and the largest share is regarded as residue irrespective of at whose instance the partition is made. When a partition arrangement declaring the share of one of the parties grants him limited ownership in one item and allots absolutely two other items of a value of Rs. 9,000/-, in view of the Article the value of the separated share alone should be taken for stamp duty. Thus in respect of those properties of a total value of Rupees 1,96,500/-, duty is payable on Rs. 9,000/- alone which is the separated share, the largest share remaining after the partition being of the value of Rs. 1,87,500/-.

In the light of the aforesaid decisions and having regard to the plain language used in Article 42 of the Act, I have no hesitation in holding that in this case one-third is the separated share and ''largest'' share is two-third. In engrossing final decree, stamp paper for the value of one-third share alone is necessary. Admittedly, the plaintiff-respondent has already remitted the value of two-third share. Since the plaintiff is liable to pay the value of the separated share alone, there will be a direction to the trial court to fix the value of one-third separated share and the stamp duty payable thereon. Deducting the cost necessary for purchasing stamp paper for engrossing one-third share, the balance amount will have to be returned to the plaintiff. Accordingly, the impugned order is hereby set aside and there will be a direction to the trial court to get the decree engrossed on non-judicial stamp paper of the value corresponding to one-third separated share and to return the balance amount to the plaintiff. This shall be done within two months from today.

C.R.P. stands disposed of as above. No costs.

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