(2001) 10 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 8559 of 1995

Mrs. Sakina Bi and 2 others APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:
Stamp Act, 1899 — Section 2(10), 23A

Citation : (2001) 10 MAD CK 0058

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A.J. Abdul Razack, for the Appellant; S.P. Prabakaran, Additional Government Pleader, for the Respondent

Judgement

P.K. Misra, J.—This writ petition has been filed for quashing the order dated 20.12.1994 calling upon the petitioners to pay enhanced stamp duty on the release deed dated 29.3.1993 and for a direction to the respondents to register the aforesaid release deed. Facts giving rise to the present writ petition are as follows:- One Mrs. Bathul Bai, wife of Sheik Yousuf Bhai was owner of undivided 7/41 share in the immovable properties known as "Rangwala Estate". She bequeathed her share in favour of her son Mr. Kuthbudeen by a Will dated 16.4.1982. Other legal heirs of Mrs. Bathul Bai confirmed the Will in favour of Kuthbudeen by executing registered documents. Thereafter in partition among various co-sharers under the registered deed of partition dated 24.6.1987, Kuthbudeen was allotted a property bearing Door No. 179. Linghi Chetty Street, Madras towards his 7/41 share in immovable properties of Rangwala Estate and thus became the sole and absolute owner of the said property. Thereafter Kuthbudeen sold undivided half share in the said property to the present petitioners under a registered sale deed dated 21.7.1989 and thus Kuthbudeen and the present petitioners became co-owners of the said property. Thereafter the aforesaid parties entered into an agreement agreeing to divide the rental collection from the said property, 50% going to Kuthbudeen and 50% to the present petitioners and for facilitating collection of rent, a joint bank account was opened in the name of the aforesaid persons. The property was also jointly recorded in the name of the aforesaid persons in the Register of Corporation of Madras and Madras Metropolitan Water Supply and Sewage Board. Subsequently Kuthbdeen released his undivided half share in the property in favour of the petitioners under a release deed dated 29.3.1993, wherein it was recited that a sum of Rs. 2 Lakhs was paid and balance of Rs. 75,000/- was to be paid. Said release deed was sought to be registered, but the fourth respondent treating the same as a deed of conveyance under Article 23of Schedule I of the Stamp Act, called upon the petitioners to pay the stamp duty accordingly. It is the case of the petitioners that the deed being a release deed falling under Article 55-A, the petitioners are not liable to pay enhanced stamp duty demanded from them by the fourth respondent and subsequently reiterated by other authorities, namely the respondents 2 and 3. Orders of the aforesaid three respondents including that of the second respondent, the Revisional authority, are challenged.

Revisional Authority appears to have concluded that since the petitioners, who were subsequent purchasers of half share from Kuthubudeen are not co-heirs of joint purchasers, they cannot be treated as Co-owners and as such the deed of release must be considered as a deed of conveyance.

Article 23of Schedule I and Article 55A, which are relevant to the present case are quoted hereunder:-

23. Conveyance (as defined by Section 2(10), not being a transfer charged or exempted under No. 62-

(a) of immovable property situated within the cities of Madras and Madurai and Municipal towns of Coimbatore, Salem and Tiruchirapalli.

Eight rupees for every Rs. 100 or part thereof the market value of the property which is the subject matter of conveyance.

(b) of any other property

Seven rupees for every Rs. 100 or part thereof the market value of the property which is the subject matter of conveyance.

Explanation.-In the case of an instrument chargeable with the same duty as a conveyance under schedule, such instrument shall be charged with duty:-

(a) at the rate specified in clause (a) of this article, if such instrument relates to immovable property situated within the city of Madras and Madurai and Municipal towns of Coimbatore, Salem and Tiruchirapalli; and

(b) at the rate specified in clause (b) of the article, if such instrument relates to any other property.

Article 55-A.-Release that is to say, any instrument (not being such a release as is provided for by Section 23-A of a release of benami right, whereby a person renounces a claim upon another person or against any specified property.

The same duty as a bottomory bond (No. 16) for such amount or value as set forth in the release.

2. Core question is as to whether the document under question can be treated as a deed of conveyance coming within the scope of Article 23or deed of release coming under Article 55-A of the Stamp Act. The question has to be decided considering the nature of the transaction. Language used in the document may not be decisive though is of some relevance. In the present case, the document has been characterised as deed of release but the lower authorities were of the opinion that the document was a sale deed.

3. It is of course true that the document itself recites that release had been made for a consideration. As observed in Board of Revenue v. Lakshmanan Chettiar AIR 1970 Mad 348 (F.B.)= 83 L.W. 205 the question of consideration is not vital in determining the nature of the transaction.

4. In the present case the re visional authority has observed that three subsequent purchasers from Kuthbudeen, who have purchased half share in the property were not co-owners as neither they have inherited the property along with Kuthbudeen nor they have purchased the property along with Kuthbudeen, This, in my opinion, appears to be a wrong approach. A person can become co-owner either being a common heir or being a joint purchaser or being a purchaser of undivided interest or undivided share. The fact that the petitioners have purchased undivided share is quite evident from the transaction and from the subsequent conduct, where they had agreed to enjoy jointly the rental value obtained from the property. The basic assumption of the Revisional Authority that subsequent purchasers cannot be co-owners appears to be unsustainable in law.

5. The Revisional Authority has also observed that the parties wanted to give a colour that the transaction was one of release, but actually it was a deed of conveyance. However, this conclusion is not based on any tangible material on record. On the other hand the circumstances clearly indicate that even though for a considerable period the parties continued as joint owners or co-owners, subsequently the deed of release was executed. Considering the gap of time (deed of release was executed three years and eight months after the purchase of original half share by the petitioners)it cannot be said that the document was colourable pretense to screen the actual conveyance.

6. In Board of Revenue and Another Vs. V.M. Murugesa Mudaliar of Gudiyatham, several persons were carrying on business in partnership owning certain properties as co-owners and subsequently one of them relinguished his share in favour of another. Considering the nature of the transaction, it was observed by the Full Bench that the document was a deed of release and not a deed of conveyance. The Full Bench purported to follow an earlier decision reported in ILR (1895) Mad 233 (FB) where a member of coparcener relinguishing his undivided interest in favour of another and the transaction has been considered as a deed of release and not a deed of conveyance.

7. In Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, following the aforesaid decision observed that

admittedly a release deed can be validly executed also for some benefit accruing to the releasor subsequently

The following quotation from the earlier decision Board of Revenue and Another Vs. V.M. Murugesa Mudaliar of Gudiyatham, was cited with approval.

In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owners. It is sufficient if he releases his interest. The result of such a release would be enlargement of the share of the other co-owners. There can be no release by one person in favour of another who is not already entitled to the property as co-owners

Ultimately the document was considered as a deed of release as one co-owner had relinguished his right over the property.

8. Similar views had been expressed in AIR 1970 Mad 348 (F.B.) (The Chief Controlling Revenue Authority, Board of Revenue, Madras v. R.M.L. Lakshmanan Chettiar) and 1994 (1) L.W. 317 (T.T. Meenakshi Achi and 4 others v. The District Registrar, Coimbatore and the Chief Revenue Controlling Authority, Madras). For the aforesaid reasons, the writ petition is allowed and the orders passed by the respondents 2, 3 and 4 are quashed and the respondents are directed to register the deed of release by charging stamp duty accordingly. There shall be no costs.