(1988) 07 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 2770 of 1981

P. Balakrishnan and Others APPELLANT

Vs

The District Registrar, Tuticorin, Tirunelveli District and Others RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:
Stamp Act, 1899 — Article 45, 27, 40, 56(1), 64

Citation : AIR 1989 Mad 257

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : N.T. Vanamamalai, for G. Desappan, G. Krishnan and G. Bharadwaj, for the Appellant; P. Samuel, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Swamikkannu, J.—This is a writ petition filed by the petitioners, P. Balakrishnan, Jawahar alias Ramakrishnan, R. Annamalai, R. Rangarajan

and R. Dhanabalakrishnan alias Dhanasekaran for issue of a writ of certiorari calling for the records relating to the proceedings of the District

Registrar, Tuticorin, the first respondent herein made in No. 1910/B1/17, dt. 28-11-1979 following the decision of the Inspector General of

Registration, Madras, the second respondent herein dt, 11-11-1976 in his proceedings No. 62644/B1/14/76 and quash the order therein dt. 28-

11-1979.

2. In the affidavit accompanying the writ petition, it is inter alia stated by P. Balakrishnan, the first petitioner herein, that Palanisamy Gounden father

of the two petitioners and Ramaiyya Nadar father of the petitioners 3 to 5, were brothers, that they jointly owned house properties and agricultural lands having purchased the same in either of their names or in their joint names) that they were enjoying those properties jointly for some time and

that after the demise of A. S. K. Ramaiya Nadar his brother, Palaniswami Nadar, the Petitioners 1 and 2 and the petitioners 3 to 5, enjoyed those

properties jointly till 31-12-1968. However with effect from 1-1-1969 Palaniswami Nadar and his sons on one side and the petitioners 3 to 5 on

the other entered into a family arrangement among themselves, divided the common property into distinguished separate items by metes and

bounds and allotted to each sharer specific items of the property and started enjoying them as their own. In pursuance of the said family

arrangement, the Municipal taxes in respect of the concerned property, and the land revenue in respect of the agricultural lands were transferred in

the name of the respective parties as the case may be. Since 1-1-1969 the land revenue and Municipal taxes in respect of items allotted to each

party were paid by the respective parties as the case may be and the concerned parties were ï¿½enjoying the allotted items separately by

themselves by paying the Municipal tax and land revenue accordingly.

3. It is further stated in the affidavit that however at the instance of some Panchayatdars, the petitioners 1 and 2 executed a release deed in favour

of the petitioners 3 to 5 in respect of the properties allotted to the share of the petitioners 3 to 5 relinquishing their right and interest in the said

property by means of a release deed dt. 17-2-1974. The said release deed was registered as document No. 414 of 1974 and registered at the

office of the District Registrar, Tuticorin, on 23-2-1974. Similarly the petitioners 3 to 5 executed a release deed in favour of the petitioners 1 and 2

in respect of the properties allotted tothe share of the petitioners 1 and 2 relinquishing their rights and interest in the said property by means of a

release deed dt. 17-2-1974. The said release deed was registered as document No. 415 of 1974 at the office of the District Registrar, Tuticorin,

on 23-2-1974.

4. It is further stated in the affidavit of the petitioner that the Registrar, Palayamkottai, the third respondent herein, while checking the accounts at

the office of the District Registrar, Palayamkottai, Tirunelveli District relating to receipts under stamps and registration fees, felt that there was short

levy of stamp duty and registration fees in respect of documents Nos. 414 and

415 of 1974. According to him, in terms of S.O. 351 of

Registration Manual Part-II the documents mentioned above will come under the classification of partition deed instead of release deed

Accordingly the Registrar had sent the local audit report to the Inspector General of Registration in his proceedings K. Dis. 13681/B1/76 dt. 28-

9-1976. There was aud it by the Accountant General''s Office at Madras and a report was sent to the Inspector Generalof Registration in the

proceedings of the Accountant General ISR/IV/RV/20/403/75-76 298 dt. 22-3-1976. On the basis of the reports mentioned above the Inspector

General of Registration had passed an order dt. 11-11-1976 in his proceedings 62644/B1/14/76. In the said order, the second respondent

ordered that document No. 414 of 1974 read with document No. 415 of 1974 was a partition deed chargeable with stamp duty of Rs. 5,765.60

and registration fee of Rs. 1,278.50. The second respondent further directed the District Registrar to take action for prosecution of the parties u/s

27 read with Section 64 of the Stamp Act. The petitioners herein submit that the entire proceedings mentioned above were taken behind their back

and that they were not put on notice at any stage of the proceedings mentioned above.

5. It is further stated in the affidavit of the first petitioner that the petitioners herein received a communication from the District Registrar, Tuticorin

dt. 31-12-1977 which was received by the petitioners on or after 5-1-1978. In thesaid communication it was stated that there was short levy of

stamp duty and registration fees to the extent of Rs. 6,840.63 in respect of documents Nos. 414 and 415 of 1974. It was further stated that an

enquiry into the present market value in respect of these properties was made and that a report had been called for from the concerned Sub-

Registrar. The District Registrar further stated that the matter was awaiting further action. The petitioners submit that the abovementioned

communication of the District Registrar dt. 31-12-1977 was the first communication received by them. Subsequently they addressed to the District

Registrar, Tuticorin to furnish them with copies of the orders passed by the Inspector General of Registration and S.O. 351 of the Stamp Manual

At the request of the petitioners, the District Registrar; Tuticorin, furnished the copy of the proceedings of the Inspector General of Registration and S.O. 351 by means of his proceedings No. 1935/B1/78 dt. 18-2-1978. The said communication was received by the petitioners on or after

24-2-1978. Inasmuch as it was stated in the communication of the District Registrar dt. 31-12-1977 that a report had been called for as regards

the present market value of the properties involved, the petitioners did not proceed with the further action in respect of the order of the Inspector

General of Registration dt. 11-11-1978 which was received by them only on or after 24-2-1978. The District Registrar in his proceedings dt. 28-

11-1979 assessed the market value of the property at Rs. 9,70,816/- and assessed the stamp duty and registration fees payable at Rs. 26,511/-

and called upon the petitioners to pay the said sum on or before 12-12-1979.

6. It is further stated in the affidavit accompanying this writ petition by the first petitioner, that the petitioners addressed the District Registrar on

several dates subsequently explaining the position that the determination of the document as partition deed was not correct and therefore, they

were not liable to pay any amount as demanded by the District Registrar. The petitioners wanted to approach the Board of Revenue u/s 56(1) of

the Indian Stamp Act. But the petitioners were informed that with the abolition of the Board of Revenue, the power u/s 56(1) could no longer be

exercised. Further, it is a matter in which the Inspector General of Registration already exercised his mind in holding that the document in question

was only a partition deed and not release deed. In the said circumstances, the petitioners have invoked the jurisdiction of this Court under Article

226 of the Constitution of India for the issue of a writ of certiorari to set aside the order of the District Registrar dt. 28-11-1979 made in his

proceedings No. 1910/81/17 following the decision of the Inspector General of Registration dt. 11-11-1976.

7. In the counter-affidavit filed on behalf of the respondents sworn to by the Inspector General of Registration, it is inter alia contended as follows :

-- The first and second writ petitioners, Balakrishnan and Jawahar alias Remakrishnan who are the sons of late Palanisami Nadar executed a

releasedeed on 17-2-1974 releasing the properties consisting of House sites, houses, shops etc., worth Rs. 2,50,000/- in favour of their brothers

(father''s elder brother''s sons) 3rd, 4th and 5th petitioners herein, Annamalai, Nagarajan and Dhana balakrishnan alias Dhanasekaran who are the sons of late Ramiah Nadar, after receiving Rs. 10,000/- as cash consideration. The. District Registrar of Palayamkottai admit ted the document of

registration on 22-2-1974 as No. 414 of 1974 of Book 1 and registered it on 23-2-1974. Similarly the writ petitioners 3 to 5 viz., Annamalai,

Nagarajan and Dhanabalakrishnan alias Dhanasekaran executed a release deed on 17-2-1974 in favour of Balakrishnan and Jawahar alias

Ramakrishnan, viz., writ petitioners 1 and 2, after receiving a cash consideration of Rs. 10,000/- and releasing their rights over the properties of

agricultural lands, house sites, houses, shops etc., worth Rs. 2,50,000/-This document was admitted to registration by the same District Registrar,

Palayamkottai (K. Kottaiswamy) on 22-2-1974, i.e., on the same day as document No. 4l5 of 1974 of Book 1 of Registrar''s Office,

Palayamkottai, on 23-2-1974. The District Registrar, Kottaiswami, admitted this document also 10 registration on the same day. :

8. It is submitted by the respondents 1ft their counter-affidavit that during the course of local audit of Registrar''s Office, Palayamkottai, by the

Accountant General''s audit party oh 26-2-1976 it was inter alia remarked on scrutiny, that documents Nos. 414 and 415 of Registrar''s Office,

Palayamkottai, read together have to be treated as partition. The Accountant General approximately arrived at valuation as follows : --

Shares of Annamalai, Nagarajan and Dhanabalakrishnan alias Rs. 2,50,000/-

Dhanasekaran under document No. 414/74 :

Shares of Balkrishnan and Jawahar alias Ramakrishnan under document No. Rs. 2,50,000/-

415/74 :

Total Rs. 5,00,000/-

9. It is further stated in the counter-affidavit that taking the value of each separated share as Rs. 2,500,000/- stamp duty payable under Article 45

of Schedule I of Stamp Act plus 2 1/2% towards surcharge on stamp duty worked out to Rs. 5,765.63 and after deducting the stamp duty of Rs.

46.50 already levied the short levy of stamp duty, according to the Accountant General amounted to Rs. 5,719.13 and the registration fee that was

levied was Rs. 157/- whereas a sum of Rs. 1,278.50 was the fee chargeable. Hence there was a short levy of Rs. 1,121.50. The loss of revenue

to the State comes to Rs. 6,840.63 in all.

10. It is further stated in the counter-affidavit filed on behalf of the respondents that the Board of Revenue (Land Revenue) which was the then

Chief Controlling Revenue Authority under the Stamp Act has in letter No. L1/2009/76.1, dt. 5-7-1976 called for the remarks of the Inspector

General of Registration, Madras-1, (Head of the Department of Registration) on the objection raised by the Accountant General. In Letter No.

62644/L4/76 dt. 31-12-1976 sent to Government (C.T. & R.E. Department) the Inspector General of Registration agreed with the views of the

Accountant General and further stated that the District Registrar who admitted these documents to registration ought to have impounded and

collected the deficit stamp duty etc. The District Registrar was therefore asked to take action against the parties u/s 27 read with Section 64 of the

Stamp Act, 1899 as the parties to the documents with a view to evade higher stamp duty suppressed the facts, making them liable for prosecution

in Inspector General''s Proceedings No. 62644/B1/14/76 dt. 11-11-1976. The District Registrar, Tuticorin, the first respondent herein, in

consultation with the Public Works Department decided the value of separated shares at Rs. 9,30,816/- and issued a show cause notice to the

parties to the documents in his proceedings No. 1910/B1/79 dt. 28-11-79 as to why they should not be prosecuted u/s 27 read with Section 64

of the Stamp Act, 1899. It is against this notice, this writ petition has been filed. However, before launching prosecution, the District Registrar

afforded an opportunity to the petitioners to have the offence compounded if they so desired u/s 70(2) of the Stamp Act, 1899 by paying a

compounding fees of Rs. 26,511.50. The petitioners have requested for a month''s time on 11-12-1979 and in their petition dt. 7-1-1980 applied

for further time up to 11-2-1980. In the meanwhile, the parties in their petition dt. 23-1-1980 contended that the documents under reference are

only deeds of release and they cannot be classified as partition and that therefore the question of deficit stamp duty does not arise. The District

Registrar has however issued a final show cause notice in his proceedings No. 19107B1779 dt. 11-2-1980 asking them to pay the compounding

fees fixed by him and informed that if the same is not paid within a month''s time, action for prosecution will be proceeded further. On their failure,

the first respondent herein, the District Registrar, Tuticorin, filed, a complaint on 19-9-1980 in the Court of the Sub Divisional Judicial Magistrate and it was taken on file in C.C. No. 907/80 and the case was adjourned finally on 3-1-1981. In the meantime, the parties have moved this Court

and filed this writ petition and obtained stay of all further proceedings in pursuance of the order of the District Registrar of Tuticorin in his

proceedings No. 1910/B1/79 dated 28-11-1979 following the decision of the Inspector General of Registration in his proceedings No.

62644/B1/14/76 dt. 11-11-1976 pending further orders in this writ petition.

11. It is admitted by the petitioners themselves that two mutual release deeds were executed between the co-owners and this is exactly what is

done in a partition. The parties have chosen to execute two release deeds, to evade payment of stamp duty on a partition which is much more than

a release. The documents Nos. 414 and 415/74/1 were registered at Registrar''s Office, Palayamkottai, and not at Registrar''s Office, Tuticorin, as

alleged by the petitioners.

12. It is further stated in the counter-affidavit that it was the Accountant General Tamil Nadu, was (who) pointed out this and the District Registrar,

Palayamkottai, was asked to submit his remarks. The District Registrar, Palayamkottai, in his letter No. K. Dis. 13681/N1/76 dt. 28-9-1978

reported the details of the case. Then the Inspector General of Registration, as departmental head, passed orders to prosecute the parties u/s 27

read with Section 64 of the Stamp Act, 1899.

13. It is also stated in the counter-affidavit that the entire proceedings mentioned above were taken behind his back and he was not put on notice

at any stage of the above proceedings as the question of issuing notice to the parties will arise only when the District Registrar takes action to file

the case u/s 27 read with Section 64 of the Stamp Act, 1899 and at that stage the parties were given due notice in District Registrar, Tuticorin No.

1910/B1/79 dated 28-11-1979.

14. It is further stated in the counter-affidavit that after the District Registrar has finalised the actual loss to the State, because of the action of the

parties is not fully and truly setting forth the facts and circumstances affecting the chargeability of the instrument with duty has issued the show cause

notice dt. 28-11-1979 afford the parties opportunity to put forth their case.

15. It is further stated in the counter-affidavit; that the petitioners were informed that the power of the Board of Revenue u/s 56(1) of the Stamp

Act could not be exercised as the Board of Revenue has been abolished, is not correct. The question of referring the matter u/s 56(1) of the Stamp

Act will not at all arise in this case because the documents have already been admitted to registration. The Board of Revenue to whose attention

the matter was brought by the Accountant General had also held that the documents should be treated as partition deed in their letter No.

L4/1383/77 dt. 28-11-1977 to the Government of Tamil Nadu. It is submitted on behalf of the respondents that none of the grounds urged by the

petitioners in support of this writ petition are tenable nor the relief sought for is sustainable.

16. Mr. N. T. Vanamamalai, learned counsel for the petitioners submitted that the concerned authority, while deciding the character of the

document, should go by the recitals in the document and not otherwise, that in this case, it can be found from the relevant dates given that there

was family arrangement between the two branches of the petitioners and that following that there were mutations of revenue records and

separation by metes and bounds and exclusive enjoyment of their respective shares.

17. On 17-2-1974, petitioners 1 and 2 executed release deed in favour of the petitioners 3 to 5 in respect of the properties already allotted to the

petitioners 3 to 5 and vice versa. Therefore it is submitted that the question is whether the document is a ""Release deed"" or a ""Partition Deed"".

18. It is further submitted by Mr. N. T. Vanamamalai, learned counsel for the petitioners that a Full Bench of our High Court in the decision

reported in The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. K. Manjunatha Rai, has laid down as follows : --

..... In our view, however, this statement in the release deed does not have the effect of rendering the transaction as a conveyance. For a release,

in law, may be effected either for consideration or for no consideration. In either case, if the transaction operates as a relinquishment or a

renunciation of a claim by one person against another or against a specified property, it will be a release. The stamp duty on a release, under the

Stamp Act, does not depend upon question of consideration or absence of consideration for release. On the contrary, it is made to depend on the

value of the claim which is renounced by the releasor.

19. According to Mr. N. T. Vanamamalai, learned counsel for the petitioners in the transaction now in question, petitioners 1 and 2 relinquished

their claim against a specified property in favour of the petitioners 3 to 5 and vice versa. In view of the said decision the two documents in question

can be characterised only as release deeds and not otherwise.

20. In the Full Bench decision referred to above in The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. K. Manjunatha Rai, ,

it is observed as follows : --

..... It is true that what name the parties choose to give to an instrument cannot be decisive, or even indicative of the true nature of the instrument

for purposes of stamp duty. But this rule does not mean that the revenue authority is empowered to go behind the recitals and terms of the

document before it and hold that the object of the transaction was something different from what the document discloses and therefore the

document should be deemed to be that which it is not. We do not think that the revenue authorities can, ignore the terms of the document which is

before them for adjudication and base their decision on the terms of some other collateral instrument.....

Referring to the above passage, Mr. N. T. Vanamamalai, learned counsel for the petitioners, submits that in another Full Bench decision of our

High Court reported in The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. V. Daniel, the same view was taken. The

relevant passage reads as follows (at p. 243 of AIR):--

It is by now well established that in order to interpret a document which is neither ambiguous nor incomplete, the recitals in the said document

ought to be generally the safe and sole guide for such interpretation, Any reliance aliunde on instrument other than the instruments under

consideration might lead to queries which are beyond the scope of an answer to the question posed by the Revenue.....

21. It is also contended by Mr. N. T. Vanamamalai, learned counsel for the petitioners, that the authorities concerned violated the principles of

natural justice in not giving notice to the petitioners before deciding the character of the documents in question. It is during the course of local Audit

the Accountant General Office raised the question as regards the character of the documents. They approximately arrived at the value of the two documents at Rs. 5,00,000/- and estimated the loss of revenue of Rs. 6,840.63 both by way of short levy of stamp duty and the loss in registration

fees. The erstwhile Revenue Board as the Chief Controlling Revenue Authority catling for remarks from the Inspector General of Registration on

the objections raised by the Accountant General''s Office. The Inspector General of Registration agreed with the views of the Accountant General

and^irected the District Registrar to impound and collect the deficit stamp duty. He had further directed him to take action against the parties u/s

27 read with Section 64 of the Indian Stamp Act. The Inspector General of Registration communicated this to the Government in his letter dt. 31-

12-1976. Prior to that the Inspector General of. Registration also passed orders on 11-11-1976 that the documents in question were only partition

deeds chargeable with stamp duty as partition deeds. According to Mr. N. T. Vanamamalai, learned counsel for the petitioners, the Inspector

General of Registration had already arrived at the conclusion that the documents in question were partition deeds and not release deeds as claimed

by the petitioners. In all these proceedings, there was no notice to the petitioners to make their representatioa Issue of notice is mandatory as has

been held in Board of Revenue v. Appalanarasimhalu AIR 1957 AP 237 and Sensmal Vs. State of Rajasthan and Others, .

22. It is observed in AIR 1957 AP 237 in para 9 as follows : --

..... These sections are part of an integral scheme for ascertaining the quantum of stamp duty and penalty payable on a document which depend

upon the interpretation of the document and the provisions of the Stamp Act and which sometimes raise complicated questions thereon. The duty

of the Collector is, therefore a judicial one and the fact that a hierarchy of tribunals is provided for emphasised that fact. Though Section 40 does

not in terms say that the opinion of the Collector should be expressed and implemented after giving notice to parties, the principles of natural justice

require that it should be done so.....

23. In Sensmal Vs. State of Rajasthan and Others, , it is stated in para 3 at page 212 as follows : --

When The Collector receives an instrument u/s 38(2) he proceeds u/s 40 to decide whether the instrument is sufficiently stamped or not.....

Section 40 does not specifically provide for notice to the executant of the document. But it is expected that the Collector, before he decides

whether the document is properly stamped or not, would give notice to the executant so that he may put forward his point of view before the

Collector.....

24. The contention of Mr. N. T. Vanamamalai, learned counsel for the petitioners is that there was no notice to the petitioners, while deciding the

character of thedocument and as such the impugned order is liable to be set aside on this ground.

25. Mr. N. T. Vanamamalai, learned counsel for the petitioners also contends that the impugned order itself is the due notice contemplated. A

mere reading of the document will falsify the said contention put forward by the respondents. Once the Inspector General of Registration had

already decided that what was registered was only a partition deed and not release deed, thereafter it was only demand for the payment of the

difference of the amount failing which prosecution u/s 27 read with Section 64 of the Stamp Act would be launched. The very first communication

dt. 31-12-1977 is only demand for the difference of the amount and further informing the petitioners that in case they fail to pay the difference,

prosecution would be launched. The impugned order is to the same effect and the only difference being that it had been issued after assessing the

alleged market value and making ""a demand for R. 26,000/- and odd. It is nowhere stated in the said impugned order that the petitioners could

make their representation as regards the character of the document. On the other hand, the impugned order is very clear that it is an offer to

impugned (compound) the offence by paying a sum of Rs. 26,000/- and odd failing which the petitioners would be liable for prosecution. It is

submitted that there is no substance in the contention that the communication dt. 28-11-1979 is the due notice given to the petitioners.

26. According to Mr. N. T. Vanamamalai, learned counsel for the petitioners once a final order had been made as to the character of the

document, whatever had been submitted subsequently is of no consequence. It is therefore submitted that the respondents cannot take shelter

under the letter addressed by, the petitioners on 23-1-1980 long after the impugned order. It is contended by Mr. N. T. Vanamamalai, learned

counsel for the petitioners that from the reply of the District Registrar dt.

11-2-1980 that the representation made by the petitioners on 231-1-

1980 was only with reference to the compounding of the offence. In that connection, the petitioners asserted that what was registered was only

release deed and not partition deed

27. The next submission made on behalf of the petitioners By Mr. N.T. Vanamamalai, learned counsel, is whether the High Court has jurisdiction

under Article 226 of the Constitution of India to direct the authority to state a case u/s 57(1) of the Stamp Act. The Inspector General of

Registration had already held by his proceedings dt. 11-11-1976 that the documents in question were partition deeds and not release deeds.

Against the said order, revision lies to the Chief Controlling Authority u/s 56. But the erstwhile Board of Revenue which happened to be the Chief

Controlling Authority u/s 56 had been abolished and the Revision power had been vested with the Inspector General of Registration. Therefore

there was no question of preferring any revision to the Inspector General of Registration. Even so, it is open to the High Court of Judicature in

exercise of its powers under Article 226 of the Constitution to set aside the impugned order and direct the Inspector General of Registration, the

revisional authority to state the case u/s 57(1). For this, the following decisions are relied upon : --

(1) Sensmal Vs. State of Rajasthan and Others, ;

(2) Chief Controlling Revenue Authority v. The Maharashtra Sugar Mills Ltd. AIR 1950 SC 218.

(3) Sundaram Finance Private Ltd. Vs. Board of Revenue and Another, ; and

(4) Union of India v. Sarup Singh AIR 1958 Del 219.

28. The point for consideration in this Writ Petition is : --

Whether a writ of certiorari has to be issued calling for the records relating to the proceedings of the District Registrar, Tuticorin, the first

respondent herein, made in No. 1910/B1/17 dt. 28-11-1979 following the decision of the Inspector General of Registration, Madras, the second

respondent herein dated 11-11-1976 in his proceedings No. 62644/B1/14/76 and quash the order therein dt. 28-11-1979?

29. The order dt. 28-11-1979 made in the proceedings No. 1910/B1/79 of the District Registrar, Tuticorin, reads as follows : --

30. The letter dt. 11-2-80 of the District Registrar, Tuticorin, No. 1910/B1/79, reads as follows : --

31. The relevant portion in the release deed dt. 17-2-1974 registered as document No. 414 reads as follows : --

32. With respect to the above document registered the Local Audit Report on the check of Accounts relating to receipts under Stands and

Registration Fees in the Office of the District Registrar, Palayamkottai, Tirunelveli District, it is seen that the father of the releasors and releasees

were brothers and the entire property (worth Rs. 5,00,000/) was in common enjoyment till 31-12-1968. From 1-1-1969 onwards, the individual

shares of properties (each share being Rs. 2,50,000/) were in possession and enjoyment by the respective parties as per their, oral arrangement

and now both the parties release their right over the other share of property mutually with a consideration amount of Rs. 10,000/-. In this

connection, the following observations were made : --

(a) The whole property was in common enjoyment by the two brothers (fathers of the releasors and releasees) in respect of both the documents.

(b) The value of each of this property was the same i.e. Rs. 2,50,000/- each.

(c) The consideration amount was the same i.e., Rs. 10,000/-, Rs. 10,000/- (the net effect of consideration is nullified).

(d) The properties were held by. each of the two parties by metes and bounds for the last five years.

(e) The parties were bound by similar instruments.

(f) The release was mutual i.e., the releasees in the document were the releasors in the other document and vice versa. In other words, both the

parties divided their share of property by metes arid bounds through the present documents.

(g) The documents were registered on the same day. In this connection, attention is invited to S.O. 351 of the Registration Manual Part II (revised)

which lays down that so long as, the share taken by a coparcener form a portion of the family assets, the transaction constitutes a division of, the

family property and the instruments which records it fall under the definition of ""instruments of partition'''' provided all the coparceners are equally

bound by the instrument either by itself or read together with one or more similar instruments.

33. After having made such a report, the Local Audit party has pointed out that it is clear that the mutual releases were made with a view to divide

the property, arid hence the above two documents should have been read together and classified as partition deeds as per S.O. 351 instead of

release deeds. They have also pointed out that the short levy of stamp duty in this regard is Rs. 5,719.13 being stamp duty and Rs. 1,121.50 being

registration fees making in all Rs. 6,840.63. It is also pointed as follows : --

Stamp Duty. Reg. Fees

To be levied for

Rs. 2,50,000/- Rs. 5,765.63 Rs. 1,278.50

46.5 157.00

Less already levied

Rs. 5,719.13 Rs. 1,121.50

Grand Total Rs. 6.840.63

34. S.O. 351 of the Registration Manual Part II :--

Property forming the subject of division among coparceners may include money and securities not converted into cash. So long as the share taken

by a coparcener forms a portion of the family assets, the transaction constitutes a division of the family property and the instrument which records it

falls under the definition of ''instrument of partition'' provided all the co-owners concerned are equally bound by the instrument either by itself or

read together with one or more similar instruments. But where the coparcener in lieu of his claim to a share takes money and renounces the claim,

the document falls under the definition of ''Release''.

[Matter in vernacular omitted--Ed.]

35. In his proceedings dt. 11-11-1976 in No. 62644/B1/14/76 the Inspector General of Registration, Madras, passed the following order : --

Doct. No. 414 of 1974 read with document No. 415 of 1974 is a partition deed chargeable with stamp duty of Rs. 5,765.60 and Registration fee

of Rs. 1,278.50.

2. The District Registrar should take action to prosecute the parties u/s 27 read with S. 64 of the Stamp Act and report result.

36. The letter bearing No. 1935/B1/77 sent by the District Registrar, Tuticorin, to

the petitioners reads as follows : --

37. The first and second petitioners, P. Balakrishnan and Jawahar alias Ramakrishnan, who are sons of late Palanisamy Gounder, executed the

deeds which they call as release deeds on 17-2-1974 therein stating that they are releasing the properties consisting of house sites, houses, shops

etc., worth Rs. 2,50,000/- in favour of their brothers, father''s elder brother''s sons, 3rd, and 4th and 5th petitioners herein viz., R. Annamalai, R.

Nagarajan and R. Dhanabalakrishnan alias Dhanasekaran, who are the sons of late Ramiah Nafar, after receiving Rs. 10,000/- as cash

consideration. The District Registrar of Palayamkottai admitted the document of Registration on 22-2-1974, as No. 414 of 1974 of Book 1 and

registered it on 23-2-1974. Similarly the writ petitioners 3 to 5 viz., Annamalai, Nagarajan and Dhanabalakrishnan alias Dhanasekaran executed

the deed called release deed on 17-2-1974 in favour of Balakrishnan and Jawahar alias Ramakrishnan viz., writ petitioners 1 and 2, after receiving

a cash consideration of Rs. 10,000/- and alleging that they are releasing their rights over the property of agricultural lands, house sites, houses,

shops etc. worth Rs. 2,50,000/-. This document was admitted to registration by the same District Registrar, Palayamkottai, K. Kottaiswamy, on

22-2-1974 i.e., on the same day as document No. 415 of 1974 of Book 1 of Registrar''s Office, Palayamkottai, on 23-2-1974. The District

Registrar, K. Kottaiswamy, admitted this document to registration on the same day.

38. It is a fundamental principle of law of alienation that when once a partition has taken place in a family and that is acted upon, even if it is an oral

one, thereafter there is no question of any release of any right with respect to that portion of the allotted property can take place and that property

which is allotted to the share of a person in partition can only be alienated by way of settlement or any alienation known to Transfer of Property

Act and not by way of any release or any right in it. When once a partition takes place in a family, there is nothing remaining in the property of the

joint family which had been so partitioned and which lies in the hands of an allottee for releasing the right in the share of property that is allotted in

the partition. Only if a property which is not capable of being partitioned is held in common by the persons, who got partition as members of a joint family, there can be a release of the interest in the said common property which is not capable of being partitioned becoming a subject matter of

release. In the instant case, there is no such kind of any release of interest by any of the sharers with respect to the property which was considered

indivisible in partition. A careful reading of the two deeds which are called as release deeds clearly show that the documents are partition deeds

though they are described as release deeds by the parties concerned.

39. During the course of local audit of Registrar''s Office, Palayamkottai, by the Accountant General''s audit party on 26-2-1976, it was inter alia

remarked on scrutiny, that documents Nos. 414 and 415 of 1974 of Registrar''s Office, Palayamkoitai, read together have to be treated as

partition. The Accountant General approximately arrived at valuation as follows : --

Shares of Annamalai, Nagarajan and Dhanabalakrishnan alias Rs. 2,50,000/-

Dhanasekaran under document No. 414/74

Shares of Balakrishnan and Jawahar alias Ramalcrishnan under Document Rs. 2,50,000/-

No. 415/74 :

Total Rs. 5.00.000/-

40. Taking the value of each separated share as Rs. 2,50,000/- stamp duty payable under Article 45 of Schedule I of Stamp Act plus 2 1/2%

towards surcharge on stamp duty worked out to Rs. 5,765.63 and after deduction the stamp duty of Rs. 46.50 already levied, the short levy of

stamp duty according to the Accountant General amounted to Rs. 5,719.13 and the registration fee that was levied was Rs. 157/- whereas a sum

of Rs. 1,278.50 was the fee chargeable. Hence there was a short levy of Rs. 1,121.50. The loss of revenue comes to Rs. 6,840.63 in all.

41. The erstwhile Board of Revenue (LR) which was the then Chief Controlling Revenue Authority under the Stamp Act has in letter No.

L1/2009/76.1, dt. 5-7-1976 called for the remarks of the Inspector General of Registration, Madras 1, (Head of the Department of Registration)

on the objection raised by the Accountant General. In the letter No. 62644/L4/76 dt. 31-12-1976 sent to the Government (CT & R.E.

Department) the Inspector General of Registration agreed with the view of the Accountant General and further stated that the District Registrar who admitted these documents to registration ought to have impounded and collected the deficit stamp duty etc. The District Registrar was

therefore asked to take action u/s 27 read with Section 64 of the Stamp Act, 1899 as the parties to the documents with a view to evade higher

stamp duty suppressed the facts and thereby they became liable for prosecution. So the Inspector General''s proceedings No. 62644/B1/14/76 dt.

11-11-1976 was to the above effect. The District Registrar, Tuticorin, the first respondent herein, in consultation with the Public Works

Department decided the value of separated share as Rs. 9,30,816/- and issued a show cause notice to the parties to the documents in his

proceedings No. 1910/B1/79 dt. 28-11-1979 as to why they should not be prosecuted u/s 27 read with Section 64 of the Stamp Act, 1899.

42. Mr. N. T. Vanamamalai, learned counsel for the petitioners, contend that when there was a decision arrived at that the documents concerned

were only partition deeds and not releasedeeds, the said decision ought to have been intimated to the petitioners and that the petitioners should

have been given an opportunity even during that stage. This Court is unable to uphold this contention because even before arriving at a decision to

prosecute whatever proceedings that take place in between the departments concerned need not be intimated to the parties concerned because it

is alleged surreptitious evasion of stamp duty that was being investigated into by the Audit party and the same was the subject matter of

communication between the Inspector General of Registration and his subordinates. Therefore the show cause notice sent to the parties to the

documents in proceedings No. 1910/B1/79 dt. 28-11-1979 as to why they should not be prosecuted u/s 27 read with Section 64 of the Stamp

Act, 1899 is a sufficient notice to the parties since thereafter there is ample opportunity for the petitioners herein to put forth their case. It is not as

if they were denied any opportunity relating to the charge made against them. It is against this notice, the present Writ Petition was filed by the

petitioners. However, it is seen that before launching the prosecution, the District Registrar had afforded an opportunity to the petitioners to have

the offence compounded if they so desired u/s 70(2) of the Stamp Act, 1899 by paying a compounding fee of Rs. 26,511.50. The petitioners have

requested for a month''s time on 11-12-1979 and in their petition dt. 7-1-1980 applied for further time up to 11-2-1980. In the meanwhile, the parties in their petition dt. 23-1-1980 contended that the documents under reference are only deeds of release and they cannot be classified as

partition and that therefore the question of deficit stamp duty does not arise. The District Registrar has however issued a final show cause notice in

his proceedings No. 1910/B1/79 dt. 11-2-1980 asking them to pay the compounding fees fixed by him and informed that if the same is not paid

within a month''s time, action for prosecution will be proceeded further. On their failure, the first respondent herein viz., the District Registrar,

Tuticorin, filed a complaint on 19-9-1980 in the Court of the Sub-Divisional Judicial Magistrate and it was taken on file in C. C. No. 907/80 and

the case was adjourned finally on 3-1981 (sic). Under these circumstances, it cannot be contended on behalf of the petitioners that opportunity

had not been given to the petitioners to put forth their case nor any notice legally required was not given to them with respect to the alleged act of

evading the stamp duty by the petitioners herein.

43. It is the specific contention of the respondents that the petitioners have chosen to execute two mutual release deeds to evade payment of stamp

duty on a partition which is much more than a release. The document Nos. 414 and 415/74/1 were registered at Registrar''s office, Palayamkottai,

and not at Registrar''s Office, Tuticorin, as alleged by the petitioners. It was the Accountant General, Tamil Nadu, who pointed out this and the

District Registrar, Palayamkottai, was asked to submit his remarks. These are. all inter departmental actions and for which no notice need be given

to the petitioners. It is only at the final decision arrived at by the Department, the District Registrar, Palayamkottai, in his letter No. K. Dise

13681/N1/76 dt. 28-9-1976 reported the details of the case. Then tne Inspector General of Registration, as department head, ""passed orders to

prosecute th''e parties u/s 27 read with Section 64 of the Stamp Act, 1899. The question of issuing notice to the parties will arise only when the

District Registrar takes action to file the case u/s 27 read with Section 64 of the Indian Stamp Act, 1899 and at that stage it is seen that the

petitioners were given due notice by the District Registrar, Tuticorin, in his proceedings No. 1910/81/79 dt. 28-11-1979.

44. The question of referring u/s 56(1) of the Stamp Act will not at all arise in this case because the documents have already been admitted to

registration. The Board of Revenue to whose attention the matter was brought by the Accountant General had also held the documents should be

treated as partition deeds in their letter No. L4/1383/77 dt. 28-11-1977 to the Government of Tamil Nadu.

45. Under these circumstances, none of the contentions raised on behalf of the petitioners can be upheld. There is no merit in this Writ Petition.

Hence it is dismissed, butunder the circumstances, there is no order as to costs.

