**(2007) 07 AP CK 0089**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 8711 of 2007

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| Poduri Satyavathi | APPELLANT |
| Vs | |
| District Registrar and Another | RESPONDENT |

**Date of Decision :** 12-07-2007

**Acts Referred:**
Stamp Act, 1899 — Section 2, 2(15), 2(24)

**Citation :** AIR 2008 AP 69 : (2007) 5 ALD 556 : (2007) 5 ALT 166 : (2007) 103 RD 643

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** M.V. Durga Prasad, for the Appellant; G.P. for Revenue, for the Respondent

**Final Decision :** Allowed

## Judgement

L. Narasimha Reddy, J.—This Writ Petition is filed challenging the notices issued by the second respondent proposing to levy a stamp duty on a document presented by the petitioner, by treating it as deed of settlement.

2. One Sri Poduri Viswanatham had three sons, by name, Venkata Satya Somayajulu, Subramanyam and Venkat Rao, and two daughters, by name, Ayyanki Gouri Devi and Vadlamannati Bhadrakali @ Bharathi. After his death, his property was being enjoyed by them in joint. His three sons, and daughter, by name, Gouri Devi, died by 2006. The petitioner is the widow of the eldest son, who is late Venkata Satya Somayajulu.

3. The legal heirs of three deceased sons and deceased daughter, and the sole surviving daughter, by name, Bhadrakali, partitioned the property left by late Viswanatham, comprising of an open site admeasuring 351 square yards, and a cash of rupees one lakh, through a partition deed, dated 16-10-2006. The plot was divided into three equal parts of 127 square yards each, and they were allotted to the legal heirs of the three sons. Out of the cash of rupees one lakh,

fifty thousand was allocated to the surviving daughter, Bhadrakali, and the balance, to the legal heirs of late Gouri Devi.

4. The stamp duty calculated at 1% was paid on the document. When the second respondent insisted that the stamp duty must be paid at 3%, the balance of 2% was also paid. However, the document was not released, even after the said payment, and through repeated notices, the second respondent demanded payment of Rs. 57,000/-, being deficit, by calculating the stamp duty at 6%. He treated the document as a deed of settlement as defined u/s 2(24) of the Indian Stamp Act, 1899 (for short ''the Act'').

5. The petitioner contends that the document presented by them is a partition deed, pure and simple, as defined u/s 2(15) of the Act, and there was absolutely no basis for the respondents in treating it as deed of settlement. It is further contended that in view of G.O.Ms.No.1129, dated 01-07-2005, issued by the Government of Andhra Pradesh, the stamp duty payable on the document is 1%, and there was absolutely no basis for collecting any amount over and above that.

6. On behalf of the respondents, a counter affidavit is filed. The gist of the same is that the deed answers description of deed of settlement, inasmuch as a person who cannot be treated as family member, i.e., husband of Gouri Devi, was included, and in that view of the matter, no exception can be taken to the impugned demand notices.

7. Heard the learned Counsel for the petitioner and the learned Government Pleader for Revenue.

8. The short question that arises for consideration is, whether the deed presented by the petitioner has to be treated as a partition deed or a deed of settlement?

9. Two definitions contained in Section 2 of the Act are important, in this regard. They are:

2(15) "Instrument of partition":

"Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition; and a memorandum regarding past partition.

2(24) "Settlement":- "Settlement" means any non-testamentary disposition, in writing of movable or immovable property whether by way of declaration of trust or otherwise made -

(a) in consideration of marriage;

(b) for the purposes of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose;

and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

10. From this, it is evident that in the course of partition, division or distribution takes place in accordance with the entitlement of the parties. By the time the partition takes place, the property is held in common. In contrast, the settlement is done, of a property, which is owned exclusively by an individual. One of the prerequisites, for settlement to come into existence is that the owner of the property must undertake a non-testamentary disposition of his movable or immovable properties in favour of others, be it, in consideration of marriage, or for the purpose of distributing the property of the settlor among the members of his family or others or for the religious or charitable purposes. In other words, the acts of distribution or disposition must flow from the owner, as per his volition and intention. The distribution would not take place as per the entitlement of the beneficiaries in accordance with the law of succession. On the other hand, the disposition under a deed of partition would be in accordance with the rights of the respective coparcener or co-owners, as the case may be. This fundamental aspect itself was, however, lost sight of, by the respondents.

11. It is not in dispute that no settlement or disposition has taken place to the deed in question. Assuming that late Viswanatham was the exclusive owner, the option to treat the document, as settlement, would have arisen, if only, he undertook the disposition or distribution, as per his wish during his lifetime. It is also not in dispute that the property is being divided among the legal heirs of late Viswanatham in accordance with their entitlement under the law of succession. When there is no settlor in the whole transaction, the question of treating the document as a deed of settlement would not arise. Therefore, the demand made by the respondents cannot be sustained in law.

12. Another aspect of the matter is that the Government issued G.O Ms.No.1129, dated 01-07-2005, restricting the duty payable on a partition deed, to 1%, as long as it is among the family members. None of the parties to the document in question are outside the family. The doubt expressed by the respondents about the husband of late Gouri Devi is without any basis. The reason is that the said individual did not get any share by himself, and his being added as a party is only to complete the description of the legal heirs of the deceased daughter, of late Viswanatham.

13. For the foregoing reasons, the Writ Petition is allowed, and the respondents are directed to levy the stamp duty on the document only at 1%. The amount paid in excess of that shall be refunded forthwith, and the document shall be released to the petitioner after admitting it to registration. There shall be no

 

order as to costs.

 