

(1975) 03 AP CK 0006

In the Andhra Pradesh High Court

Case No : Appeal No. 129 of 1971 and Memo for Cross Objections and C.M.P.
No. 8760 of 1974

Pothla

APPELLANT

Vs

Pothula alias Gaddam Seshireddy and Others

RESPONDENT

Date of Decision : 21-03-1975

Acts Referred:

Stamp Act, 1899 — Article 40

Citation : AIR 1976 AP 45

Hon'ble Judges : Shiv Shanker, J; Alladi Kuppuswami, J

Bench : Division Bench

Advocate : C. Sadasiva Reddy for K. Somakonda Reddy, for the Appellant;
M.S.K. Sastry and N. Ramamohana Rao, for the Respondent

Judgement

Shiv Shanker, J.—This matter comes up before us at the instance of the office to decide the quantum of non-judicial stamp deposited by the appellant-plaintiff.

2. The facts in brief are that the appellant-plaintiff on the demise of her husband in 1965 filed O.S. No. 5 of 1968 on the file of the Court of the Additional Subordinate Judge, Kurnool for partition and separate possession of her 7/36th share in the plaint schedule properties. The contesting defendants set up the plea that there was a partition of the joint family properties in 1962 during the lifetime of the plaintiff's husband and that her husband also adopted defendant No 6 on 22-8-1965

The learned Subordinate Judge, after trial, arrived at the finding that the partition as set up by the contesting joint family members was false and that defendant No. 6 was duly adopted by the plaintiff's husband. In this view, the plaintiff was held entitled to a 7/144th share in the plaint schedule properties and a preliminary decree was accordingly awarded. Aggrieved by the said decree, the plaintiff preferred A.S. No. 129 of 1971 to the court and during the pendency of the Appeal, the parties filed a memo of compromise with a partition to record it and pass a decree in terms thereof. The matter having come up

before us on 4th November, 1974, we passed the decree in terms of the compromise. The question to be resolved is as to what is the value of the non-judicial stamp that has to be deposited by the appellant-plaintiff to engross the decree passed in her favour.

3. Under clause (1) of the compromise memo, the appellant-plaintiff has been allowed to enjoy the properties to the extent of 7/144th share as decreed by the Trial Court as an absolute owner. Under clause (3) of the memo, she has been given a house known as "Ramakrishniah Illu" bearing No. 4/11 of Tartur village as a limited owner; while under clause (2) thereof, she has been provided items 2 and 5 of the plaint schedule, the agricultural lands, absolutely as full owner. Clause (7) of the compromise memo treats the memo of compromise as a final decree. Despite this latest clause, the position that emerges is, that clause (1) of the compromise memo entitles the appellant-plaintiff to a 7/144th share which is in the nature of a mere declaration of her right as to share in the family properties. No specific properties having been allotted to her under this clause, this portion of the compromise could not be treated as final decree.

Under clause (3) of the terms of the compromise, only a limited right has been assigned to the appellant-plaintiff in the house property and the value thereof could not be taken into consideration for the purposes of calculating the stamp duty on the partition deed. Items 2 and 5 of the plant schedule properties, according to clause (2) of the compromise, have been absolutely allotted to the appellant-plaintiff and the value of the said item is Rs. 9,000/-.

4. According to the office, total value of the plaint schedule properties being Rupees 1,96,500/- the value of items 2 and 5 of the plaint schedule properties have to be deducted therefrom and the appellant-plaintiff should be called upon to pay a stamp duly of Rs. 5,625/- on Rs. 1,87,500/- the remaining value of the plaint schedule properties. This is disputed by Sri C. Sadasiva Reddy the learned counsel for the appellant-plaintiff. While being in agreement with the office that only items 2 and 5 of the plaint schedule properties valuing Rs. 9,000/- have to be reckoned for the purpose of final decree, he argues that the client's liability to pay the stamp duty is only on Rs. 9,000/- but not on the sum of Rs. 1,87,500/-.

5. Section 2(15) of the Indian Stamp Act defines the instrument of partition as an instrument whereby the co-owners of any property divide or agree to divide such property in severally including a final order for effecting a partition passed by a Civil Court etc. Article 40 of Schedule 1 of the Act postulates the stamp duty of partition payable as Bottomry Bond for the amount of the value of the separate share or shares of the property. The note added thereto recites that the largest share remaining after the property is partitioned shall be deemed to be that from which the other shares are separated. Therefore, what follows from reading Article 40 is that it is on the value of the separated share or shares that the stamp has to be calculated and the largest share remaining shall be deemed to be that from which the other shares stand separated. Provisos (a) (b) and (c) of the Article are unnecessary for our present purposes, and therefore, they need

no reference.

Thus, the intention behind the Article is to tax the share or the shares divided off and not the residue, and the largest share is treated as residue, regardless of at whose instance the partition is made. It is based on this Act that Mr. Sadasiva Reddy contends that he could only be called upon to pay the stamp duty on the value of items 2 and 5 of the plaint Schedule properties. He calls in aid the Full Bench decision in *The Collector of Vizagapatam Vs. Krishna Chandra Kharasudha Patnaik and Others* and *The President, Agency District Borad and Another*, to buttress his argument. In this case, Article 45 of the Indian Stamp Act as amended by the State of Madras similar in terms to Article 40 applicable to our State fell for consideration in assessing the stamp duty. The property in that case was to be divided into four shares, one of the shares being twice each of the other three shares. The largest share after the partition therefore was the share which was double the value of the other shares. The entire value of the property having been assessed at Rs. 80,000/-, the largest share worked out to Rs. 32,000/-. On separating the other shares from this share, the party was called upon to pay the stamp duty on the separated shares aggregated at Rs. 48,000/-.

A similar view was also taken in the Bench decision of the same Court in *(Gurram Pedda) Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others*, , where it was held that the smaller shares should be considered to have been separated from the larger share. Apart from the decisions referred to which are binding on us, on the language of the Article itself we have no hesitation in finding ourselves one with the contention of the learned counsel for the appellant-plaintiff and in this view we overrule the objection of the office and direct that the value of the separated share alone has to be reckoned for the purposes of the stamp duty under Article 40 of the Stamp Act. Thus, in that case, the largest share remaining after the property is partitioned is that valuing Rs. 1,87,500/- while the share separated stands valued at Rs. 9,000/-. The Office would thus collect the non-judicial stamp duty only on this sum.

6. Order accordingly.