(2012) 07 KL CK 0070

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 14277 of 2012

Rukmini Bai @ T.N. Rukmini APPELLANT

Vs

District Registrar, Ernakulam and Another RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Kerala Stamp Act, 1959 — Serial No. 42(i)

Citation : (2012) 4 KLJ 536

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Joby Jacob Pulickekudy, Anil George, K.S. Sumeesh and T. Ancy, for the Appellant; Sanjeetha, (GP), for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The issue that arises for consideration herein is one under the Kerala Stamp Act. The petitioner along with nine others have entered into a partition deed executed on 30/12/2011 as per Ext.P1. The second respondent-Sub Registrar entertained a doubt as to the actual rate of stamp duty payable for the instrument, that is, whether it would come under Serial Nos. 42(i) or 42(ii) under Schedule 2 of the Kerala Stamp Act. The second respondent, therefore, without registering Ext.P1 partition deed sent the same to the first respondent for finding out proper stamp duty. Thereafter, Ext.P4 notice was issued to the parties and the petitioner filed an objection. Later, an order has been passed directing to pay stamp duty as per Sl. No. 42(ii) of the Kerala Stamp Act. The said order Ext.P6 is under challenge herein.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is contended that the property originally belonged to one Shri Damodara Vadhyar, who is no more. He had three sons, namely, Shri Guna Vadhyar, Shri Ranga Vadhyar and Shri Krishna Vadhyar and the property devolved on them jointly. On their death, the said property devolved upon the petitioner and nine others who are executants of the partition deed.

4. The learned counsel for the petitioner explained that the petitioner and others will be covered by the explanation introduced to Sl. No. 42(i) as they are members of the same family. It is submitted that the deceased Damodara Vadyar''s sons had obtained purchase certificate from the Land Tribunal and the present executors are their children. The partition is among co-owners within the same family.

5. The contention raised by the first respondent in the statement filed is that the three sons of late Shri Damodara Vadhyar, namely, Shri Guna Vadhyar, Shri Ranga Vadhyar and Shri Krishna Vadhyar had three separate families and, therefore, the legal heirs cannot be said to belong to a single family. It is thus contended that item 42(ii) of the Stamp Act, 1959 alone will apply.

6. Going by the Genealogy produced by the petitioner as per Ext.P2, she is the wife of late Shri Krishna Vadhyar. The first party in Ext.P1 is the petitioner and her children and the second party is the wife of late Shri Damodara Vadhyar and their children.

7. The entry herein is Sl. No. 42(i) and the explanation is also important. The same reads as follows:

8. Learned counsel for the petitioner stressed the fact that the legal heirs of the deceased children will also come within the meaning of ''family'' and, herein, all of them as specified under 42(i) fulfil the said character. Learned counsel also relied upon the decision of a learned Single Judge of this Court in Baburaj v. District Registrar, 2011 (3) KLT 835 wherein it was held that the expression ''wife and the deceased children'' would taken in ''grand children and great grand children'' also.

9. In fact, I had an occasion to consider the matter in the Judgment in W.P.(C). No. 11942/2012 (2012 ICO 1323) dated 04/07/2012 and in para.9, after referring to the Judgment in Baburaj''s case [supra], the position has been explained thus:

9. Herein, the partition is between the co-owners, viz. the first petitioner who is a grandson and petitioners 2, 3 and 4 who are the legal heirs of another son of Lakshmi. Therefore, all of them will come within the definition of ''family'' for the purpose of the Explanation. The Explanation shows that ''family'' is sought to be denoted on the basis of the relationship of the parties concerned. The issue is not whether they are residing under one roof or separately. In fact, if the position as canvassed by the respondents is accepted, then even in respect of the members covered by the Explanation, merely because they are residing under separate roof, the benefit will not be obtained. A purposive interpretation of the provision is therefore required.

10. Therefore, evidently, the term family will have to be understood on the basis of the relationship of the parties concerned and the question is not whether they are residing as one group or separately. A separate residence will not defeat the

rights of parties. The true issue is whether the partition is among all or some of the family members going by Sl. No. 42(i). Herein, the genealogy will show that the original land owner was Damodara Vadhyar, who had three sons and all of them are no more and the petitioner is the widow of one of the sons, namely, Shri Krishna Vadhyar. Their children have also joined the partition deed. All of them have been arrayed as first party in the partition deed Ext.P1. Guna Vadhyar, another brother, had one son Damodara Vadhyar, who is also no more. Ranga Vadhyar''s son Venkiteswara Vadhyar is also no more. Hence, now the first and second parties shown in Ext.P1 are the legal heirs who have inherited the properties and are enjoying them as co-owners. The second party includes Smt. Sarada @ Rajakumari, who is the widow of late Shri Damodara Vadhyar and their children. Therefore, all of them will come within the meaning of the term family being legal heirs of deceased children of the original owner Damodara Vadhyar whose grand children and great grand children along with their mother are the respective parties in the partition deed. The dictum in Baburaj''s case (supra) will squarely apply herein. The partition is among the co-owners. In that view of the matter, the writ petition is allowed. Ext.P6 is quashed. There will be a direction to the second respondent to register the partition deed (original of Ext.P1) with a stamp duty of Rs. 1,000/-. The same will be done within a period of three weeks from the date of receipt of a copy of this Judgment. No costs.

