(2010) 08 MAD CK 0469

In the Madras High Court

Case No : Writ Petition (MD) No. 4996 of 2007

S. Sathyanarayanan — APPELLANT

Vs

The District Registrar, Registration Department, The Sub-Registrar and The Assistant Inspector of Registration (The Assistant Inspector General of Registration) — RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:
Stamp Act, 1899 — Section 23A

Citation : (2010) 08 MAD CK 0469

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Geetha, for the Appellant; Pala Ramasamy, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Challenging the order of the District Registrar, Trichy, the first Respondent herein dated 19.02.2007, the present writ petition has been filed.

2. It is the case of the Petitioner that properties to the extent of 1126 sq.ft in S. No. 2487, Ward No. 2 and 840 Sq.ft in Old T.S. No. 1135, New Ward A, New Block 13, New Town Survey No. 98, Trichy were purchased by the mother of the Petitioner in 1985 and 1995 respectively. Thereafter, she executed a will and last testament, dated 10.06.1995 bequeathing both the properties purchased by her under two sale deeds to the Petitioner and his brother Mr. Nagarajan. It is further stated that the mother of the Petitioner died on 18.08,1995, and by virtue of the will, they became the joint owners of the properties. It is further submitted that the brother of the Petitioner relinquished his half undivided right in favour of the Petitioner for consideration of Rs. 50,000/-and to that effect, he executed a release deed and that the same was presented for registration on 12.11.2002 before the Sub Registrar, Srirangam. However, even after the execution, the second Respondent kept the document for want of clarification as to the nature

of the said document and the relevant Article of the Stamp Act to be applied to the present transaction from the District Registrar, Trichy, the first Respondent herein.

3. It is further stated that the first Respondent by proceedings dated 18.02.2003, clarified that documents in P. 173 and 174 of 2004 which were executed by the Petitioner''s brother would come under Article 55 (C) of the Indian Stamp Act and stamp duty has to be collected in accordance with the market value of the property and the first Respondent further informed the Petitioner that if he is aggrieved by the proceedings, dated 18.02.2003, he can prefer an appeal before the Inspector General of Registration, Chennai. On receipt of the same, the Petitioner preferred an appeal before the Inspector General of Registration, Chennai on 09.03.2004 with all the documents. The Inspector General of Registration returned the appeal filed by the Petitioner stating that no final order has been passed by the first Respondent herein and therefore, the appeal is not maintainable and further directed the Petitioner to make a representation before the first Respondent herein.

4. It is further stated that the first Respondent by his proceedings dated 03.04.2006 informed the Petitioner that the release deed executed by his brother in favour of the Petitioner would fall under 55(C) of the Indian Stamp Act and by taking proceedings under Sections 38 and 40 of the Indian Stamp Act, it was decided to collect a sum of Rs. 87,137/- as stamp duty. It is further submitted that since the document has been executed only on a stamp paper for value of Rs. 2,000/-, a further sum of Rs. 85,137/- has been imposed as deficit stamp duty and therefore, the Petitioner was called upon to show cause as to why the same should not be levied and a penalty was also sought to be imposed. On receipt of the same, the Petitioner submitted an explanation to the first Respondent herein stating that the release deed has been executed only by his brother and it is chargeable under Article 55A of the Indian Stamp Act.

5. Not satisfied with the explanation submitted by the Petitioner, the Respondents issued a show cause notice during March 2006 alleging that the documents in question has to be stamped under Article 55(C) of the Indian Stamp Act and a sum of Rs. 85,137/- is deficit for the aforesaid document. Therefore, the Petitioner was called upon to show cause as to why the said amount should not be imposed as stamp duty, within 15 days, failing which, penalty would be imposed. Thereafter, the Petitioner submitted an explanation dated " 03.07.2006 before the first Respondent. Pending consideration of the explanation, the Petitioner filed a writ petition in W.P. No. 1084 of 2007 before this Court for a direction to release the document No. P. 174/2002 forthwith on the file of the second Respondent herein. When the matter came up for hearing, on instructions the learned Special Government Pleader submitted that the Respondents have passed an order dated 12.02.2007 to the objections filed by the Petitioner. Therefore, this Court by order dated 19.02.2007 disposed of the writ petition directing the first Respondent to serve the order on the Petitioner

immediately. However, the Petitioner received the order dated 19.02.2007 only during March 2007 wherein the Petitioner was informed that by taking proceedings u/s 38 and 40 of the Indian Stamp Act, it was decided to collect a sum of Rs. 73,905/- as stamp duty and imposed a sum of Rs. 71,905/- as stamp duty and Rs. 2,155/- as penalty, totaling a sum of Rs. 74,060/- as deficit stamp duty. Aggrieved over the same, the present writ petition has been filed inter alia contending that the order of the first Respondent is arbitrary, illegal and unsustainable in law. It is further contended that had the Respondents conducted an enquiry before passing the impugned order, the Petitioner would have produced relevant circulars and Government orders to satisfy the Respondents that the document in question would fall only under Article 55(C) of the Indian Stamp Act.

6. Though the writ petition has been filed in the year 2007, no counter affidavit, has been filed by the Respondents refuting the averments made in the supporting affidavit,

7. Referring to Article 55-A of Schedule I to the Indian Stamp Act which prescribes the percentage of stamp duty to be paid on the instrument presented for registration, Ms. S. Geetha, Learned Counsel appearing for the Petitioner submitted that the release deed executed by the Petitioner''s brother in respect of his half share in an undivided property inherited through a will executed by their mother on 10.06.1995 not being a release as provided in Section 23A or a release as per Clauses B, C and D of Article 55-A, is liable for payment of stamp duty at Rs. l/- for every Rs. 100/- or part thereof of the market value of the property which is under release, subject to the maximum of Rs. 10,000/-.

8. In this context, she took this Court through Section 23-A of the Act, Articles 55-A, C and D of the I Schedule to the Stamp Act. Taking this Court through the Letter No. 45794/C-5/2001, dated 11.01.2002 of the Inspector General of Registration, Chennai, addressed to all the District Registrars and all the Deputy Inspector Generals of Registration, she submitted that in the case of release deed presented for registration under Article 55-A, specific instructions have been issued to the abovesaid officers regarding the stamp duty applicable to an instrument presented under Article 58(A)(1) of the schedule and that there is no need to apply the guideline value for the property, for the purpose of levying stamp duty. She also took this Court through the contents of the Government letter in Lr. No. 4860/Jl/98-A, dated 01.03.1999 of the Secretary to Government, Commercial Taxes (Jl), Department, Secretariat, Chennai and G.O. Ms. No. 85, Commercial Taxes and Registration Department, dated 10.08.2006 and submitted that the word ''family'' includes brothers and sisters. She therefore submitted that in the case of release deed executed between the brothers, Section 55C is not attracted and in such circumstances, the stamp duty to be paid on the instrument is Rs. 1/- for every 100 of part thereof and not Rs. 13/- of the market value of the property, which is the subject matter of release.

9. Referring to the clarifications of the Inspector General of Registration,

Registration Department, Chennai, dated 45794/C5/2001, dated 11.01.2002, the Head of Department, Registration Department, addressed to all the Deputy Inspector Generals of Registration and all the District Registrars and the difference in respect of co-ownership rights created on account of sale, gift, settlement, assignment, share etc., or any one of the parties acquiring undivided share in the property of the other and the specific instances of release of rights in respect of jointly inherited properties, properties inherited by succession, Learned Counsel for the Petitioner submitted that there is a difference between co-ownership rights created by an action of an individual in creating co-ownership rights by sale, gift etc., and creation of co-ownership rights by joint inheritance, testamentary succession etc., and further submitted that when the properties are inherited by testamentary succession, release of right acquired by will, to such property to a co-owner and a family member, in the case on hand, the brother of the Petitioner would attract stamp duty only u/s 55A and not under Article 55-C of the Schedule I to the Indian Stamp Act. For the above said reasons, she prayed that the impugned order has to be set aside and consequently, prayed for a direction to the Respondents to release document No P.174/02 on the file of the second Respondent.

10. Per contra, Mr. Pala. Ramasamy, learned Special Government Pleader submitted that the document No. 174/2002, release deed was presented on 08.11.2002 and therefore, the stamp duty to be paid is covered by Article 55-C of Schedule I to the Indian Stamp Act. He further submitted that earlier upto 05.03.2000 as per Article 55-A of Schedule I to the Indian Stamp Act, a release deed whereby a person renounces a claim upon another person or against any specified property, the stamp duty payable was 3% as bottomry bond and in the case of release of benami right under Article 55-B of the Schedule I of the Indian Stamp Act, the Stamp duty payable on the market value of the property, which is the subject matter of release.

11. He further submitted that the brother of the Petitioner, who is admittedly a co-owner executed a release deed on 18.12.2002, in favour of Petitioner renouncing his claim over which they have a common right and the said instrument not falling under Article 55-A of the Act has to be valued only at 13% only on the market value, upto 16.12.2004 till Article 55-C of the Schedule came to be amended, only in the year 2004 by Act 31 of 2004, by which, the expression "another co-owner" as stood before the amendment was substituted with the expression "another co-owner who is not a family member". Therefore, he submitted that till 16.12.2004, the stamp duty applicable to a release deed executed by a co-owner in favour of another co-owner was at 13% of market value and not 1 % on the value of the document.

12. He further submitted that 55-A as stood before the amendment Act 31 of 2004 was to the effect that a release, that is to say, any instrument (not being a release as is provided for by Section 23-A) or a release of benami right, whereby a person renounces a claim upon another person or against any specified

property, the stamp duty payable was the same duty as a bottomry bond and this provision is not applicable to the instrument presented by the Petitioner.

13. In reply to the submissions advanced by the Petitioner, with reference to the clarifications, dated 11.10.2000, issued by the Inspector General of Registration, Chennai to all the District Registrars and the Deputy Inspector General of Registration, he submitted that a co-owner who acquires an undivided share in the property by way of release of such right would fall under Article 55-C of the Indian Stamp Act and not under Article 55-A. According to him, the property devolved through a will would not fall under 55-A of the Indian Stamp Act and therefore, the Petitioner is liable to pay stamp at 13% on the market value. He further submitted that till the introduction of Act 31 of 2004 by which an amendment was brought about to Article 55-C of the Act, release deeds between co-owners or any specified property over which they have a common right attracted Rs. 13/- for every Rs. 100/- or part thereof of the market value of the property which is the subject matter of release and therefore, submitted that the clarifications are not applicable to the facts of this case.

14. It is his further contention that as there was some confusion over the applicability of Article 55-C, in respect of release deed in favour of a co-owner, the said provision came to be amended only on 16.12.2004 and therefore, in the case on hand, as the document was presented on 18.12.2004, it attracts Rs. 13/- on the market value. For the above said reasons, he submitted that there is no manifest illegality in the impugned order.

15. Heard the Learned Counsel appearing for the parties and perused the entire materials available on record.

16. Before adverting to the facts of this case, it is necessary to have a cursory look at the provisions. Section 23-A of the Indian Stamp Act which speaks of certain instruments connected with mortgages of marketable securities to be chargeable as agreements and it is extracted hereunder:

23-A. Certain instruments connected with mortgages of marketable securities to be chargeable as agreements: (1) Where an instrument (not being a promissory note or bill or exchange)

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security, it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under (Article No. 5(i)) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

17. Article 55-A to the Schedule I of the Indian Stamp Act, 1899 as stood before the amendment by way of Act 1 of 2000 with effect from 06.03.2000 is as follows:

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

18. By Tamil Nadu Act 1 of 2000, the expression "release of benami right" was substituted with reference to release deeds referred to in clauses B, C and D of this Article and after amendment it reads as follows:

55-A, Release, that is to say any instrument (not being such a release as is provided for by Section 23-A) or a (release referred to in clauses B, C and D of this Article) whereby a person renounces a claim upon another person or against any specified property.

19. Articles 55 C and D substituted by Tamil Nadu Act 1 of 2000 with effect from 06.03.2000 are as follows:

C. Release of Right in favour of co-owner, that is to say, any instrument whereby a co-owner of a property renounces his claim in favour of (another co-owner who is not a family member) on any specified property over which they have common right:-

(i) if it relates to immovable property situated with the Chennai Metropolitan Planning Area or the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirappalli and the City of Tirunelveli.

(Thirteen rupees) for everyRs. 100/- or part thereof of the market value of the property which is the subject matter of release.

(ii) if it relates to immovable property situated in any other area

(Twelve rupees) for every Rs. 100/- or part thereof of the market value of the property which is the subject matter of releases

(iii) if it relates to any other property

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

D. Release of right in favour of partner

Three rupees for every Rs. 100/-or part thereof of the market value of the immovable property which is the subject matter of release.

(i) A release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property when the release is between family members who constitute the partnership or when the property is movable property.

(ii) When such release is between partners who are not family members

(a) (Rupees thirteen) for every Rs. 100/- or part thereof of the market value of the immovable property which is the subject matter of release when such property is situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirappali and the City of Tirunelveli. (b)(Twelve rupees) for every Rs. 100/- or part thereof of the market value of the immovable property which is the subject matter of release, when such property is situated in other areas.

20. The expression "another co-owner" occurring in Article 55-C came to be amended by Act 31 of 2004 with effect from 16.12.2004 and ''another co-owner" has been substituted with the following expression "another co-owner who is not a family member", therefore, 55-C which stood at the time of introduction by Act 1 of 2000 and after the amendment by 31 of 2004 with effect from 16.12.2004, co-ownership right is created by parties and this right may be created by a joint acquisition like, sale, gift, settlement, assignment etc., or any one of the parties acquiring undivided share in the property of the other.

21. To illustrate there may be a right of co-ownership in respect of a common usage of a car park, well and path way, usage of storage tank, etc., by anyone of the modes like sale, gift etc., in a residential layout/apartments etc.

22. There can be a creation of a co-ownership right by virtue of acquisition of right in respect of coparcenary properties jointly inherited properties, devolved by succession release by general terms, release of conjugal rights, release of tenancy rights, release of mortgage rights and other releases. Certainly, there is a difference between creation of rights between the former and the latter. That is why, in 2000, for levying appropriate stamp duty, on an instrument of release, when there was a doubt, the Inspector General of Registration has issued the following clarifications to all the District Registrars and all the Deputy Inspector General of Registration: The clarifications are as follows:

With reference to the letter and an cited chargeability of stamp duty under Article 55-A Act of Indian Stamp Act have been clarified hereunder:

2. Article 55(c) of Indian Stamp Act 1899, contemplates release between co-owners. The co-ownership right is the creation of parties. This right may be created by going acquisit like sale, gift, settlement, assignment etc., or anyone of the parties acquiring undivided share in the property of the other. Both the releasor and releasee should be co-owners of the property. A release of right by one co-owner in favour of another co-owner shall fall under Article 55(c) of Indian Stamp Act, 1899.

3. Article 55(A) of the Indian Stamp Act, 1899, contemplates release in respect of coparcenary properties, properties jointly inherited, properties devolved by succession, release general terms, release of conjugal rights, release of tenancy right, release of mortgage rights and other released which are not come by

Article 55(B), (C) and (D).

All Deputy Inspectors General are requested as knowledge the receipt of this clarifications forthwith and further requested to get acknowledgments from District Registrars and District Registrars from Sub Registrars.

23. If a release of right in favour of a co-owner as per Article 55-A of the Act as stood in 2000 has to be interpreted than acquisition, of co-ownership right by any mode irrespective of the fact whether it is by sale, gift, by settlement, or assignment, or any one of the parties acquiring undivided share in the property of the other to the co-owner by coparcenary right joint inheritance, co-ownership by devolution, include co-ownership rights in respect of properties by succession, then, there is no need to issue a clarification by the Inspector General of Registration, Chennai. Therefore, primarily, when Article 55-A speaks of release that is to say, any instrument (not being such a release as is provided for by Section 23-A) or a (release referred to in clauses B, C and D of this Article) whereby a person renounces a claim upon another person or against any specified property, then 55-A is referable only to a release of right of co-ownership in respect of properties acquired by coparcenary right, joint inheritance, properties devolved by succession. Only in the case of acquisition and release of co-ownership right on account of any of the modes like sale, settlement, etc., or any one of the parties acquiring undivided share in the property or the other, Section 55-C would be applicable. Further examination of Article 55-C would show that the Government in order to reduce the rate of duty to one percentage on the market value of the property subject to the maximum of Rs. 10,000/- in respect of instruments of settlement release, partition and partition dissolution, when the property transaction takes place within the family, have brought about an amendment to Article 55-C, by replacing with the expression "another co-owner who is not a family member" and such release of right in favour of a. co-owner if it relates to immovable property situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tirachirapalli and the City of Tirunelveli would be valued and fixed at Rs. 13/- of the market value of the property which is the subject matter of release.

24. Government Letter in Lr. No. 4860/Jl/, dated 01.03.1999 Commercial Taxes (J), Tax Secretariat, Chennai states that family includes brothers and sisters. Therefore, in the case of release by an instrument between the brothers and sisters, a concession is given in the payment of stamp duty considering their relationship, as family members. An instrument of partition, settlement and release of execution in favour of brothers and sisters is an instrument in favour of a member of a family as defined under Article 58 of the Indian Stamp Act. The effect of the clarification of the Inspector General in his letter dated 11.10.2000, addressed to all the District Registrars and to all the Deputy Inspectors General of Registration to the effect is that in the case of release under Article 55A and 55A(1) is between the members of the family, the stamp duty that is attracted is

one rupee or every 100 part thereof of the market value of the property subject to maximum of Rs. 10,000/-.

25. From the above, it could be deduced that Article 55-A of the Act and the clarifications issued by the Inspector General of Registration, Chennai, speak of acquisition of co-ownership rights, through two different modes namely, joint inheritance property rights devolved by succession etc., and it specifically excludes acquisition of co-ownership rights by the following modes like sale, settlement and assignment etc.

26. In the case on hand, properties to the extent of 1126 sq.ft in S. No. 2487, Ward No. 2 and 840 Sq.ft in Old T.S. No. 1135, New Ward A, New Block 13, New Town Survey No. 98, Trichy were purchased by the Petitioner''s mother in the years 1980 and 1995 and thereafter, she executed a will and last testament, dated 10.06.1995 bequeathing both the properties purchased by her under two sale deeds to the Petitioner and his brother Nagarajan. It is stated that the mother of the Petitioner died on 18.08.1995 and the will came into effect, making them as the joint owners of the properties. Brother of the Petitioner relinquished his half undivided right in favour of the Petitioner for a consideration of Rs. 50,000/- and to that effect, executed a release deed and that the same was presented for registration on 12.11.2002 before the Sub Registrar, Srirangam. Therefore, there cannot be a doubt that the Petitioner and his brother Nagarajan had acquired co-ownership right by testamentary succession or in otherwords, there was creation of co-ownership by inheritance by a will. The relinquishment of co-ownership right created by succession falls under Article 55-A and not under 55-C of the Act.

27. In the light of the above discussion, this Court is of the considered view that the impugned order is not accordance with the clarification dated 11.10.2000 issued by the Inspector General of Registration, Chennai. Therefore, the contention of the learned Special Government Pleader that the co-ownership right acquired/created by any of the modes stated supra, and the release of such right in favour another co-owner on any specified property over which they have a common right would attract stamp duty at Rs. 13/- on the market value cannot be. countenanced. The further contention that the amendment came into effect only in 2004 and therefore, the document presented for registration on 12.11.2002 would attract Article 55-C of the Stamp Act is not accepted.

28. In the light of the above discussion, the impugned order is set aside and the writ petition is allowed and the Respondents are directed to release document No. P. 174/02 on the file of the second Respondent. No costs. Consequently, connected miscellaneous petitions are closed.