

(1958) 01 AP CK 0017

In the Andhra Pradesh High Court

Case No : Appeal No. 627 of 1951 and C. M. P. No's. 388 and 389 of 1957

(sic)erusu Venkaiah and others

APPELLANT

Vs

Veera venkamma and others

RESPONDENT

Date of Decision : 10-01-1958

Acts Referred:

Stamp Act, 1899 — Section 2(15), 45, 57, 6

Citation : AIR 1958 AP 457

Hon'ble Judges : Srinivasachari, J; Indra Reddy, J

Bench : Division Bench

Advocate : T.S. Narasinga Rao and M. Dwarakanath, for the Appellant; N.C.V. Ramanujachari for Respondents 1 to 3 and M. Seshachalapathi, Govt. Pleader for the State, for the Respondent

Judgement

1. The question to be answered by us in this reference is whether a compromise which has resulted in partition of certain properties requires to be stamped as an instrument of partition within the meaning of S. 2 (15) of the Indian Stamp Act. The point arises in this way :

The Properties in appeal originally belonged to one Nerusu Venkataswamy. He died sonless. Some time after the succession opened, disputes arose as to the title to these properties. The daughter's daughter's daughters of the last male-holder who were in possession of the property brought a suit contending that they were disturbed in the enjoyment of their properties by the defendants who were trespassers. The defence to the suit was that as reversioners to the estate of Venkataswamy they were entitled to the properties. The suit was decided against the defendants by the Subordinate judge of Eluru, who found that the defendants were not reversioners of Venkataswamy. In the result, the suit was decreed.

An appeal was filed by the aggrieved defendants canvassing the decision of the Subordinate Judge on that issue, pending the appeal, the parties compromised agreeing to divide the properties, in a particular way. We are not concerned with

the mode of division. This court directed that a decree should be issued in terms of the compromise. The question is whether that decree should be engrossed on a non-judicial stamp or not. On an objection raised by the parties, the matter has been placed before us.

2. The submission made on behalf of the appellants is that a compromise of this description is not an instrument of partition within the mischief of section 2 (15) of the Stamp Act, for the reason that the parties did not divide the properties as co-owners. It is urged by Mr. Narasinga Rao, that each party asserted his or her exclusive title to the property in the suit and as such it is difficult to regard this division as one amongst co-owners.

To substantiate this, he placed reliance on a judgment of the Allahabad High Court in *Musammat Jiban Kuar Vs. Govind Das*, . There, two persons each of whom claimed sole rights to the property of a deceased relation entered into a compromise by and under which each of the defendants relinquished in favour of the other his claim to a portion of the estate of the deceased. When the matter was referred to the High Court by the Chief Controlling Revenue authority under S. 57 of the Indian Stamp Act, 1899, the Full Bench decided that the instrument was not one of partition but a release having regard to the terms of the deed. It was specifically styled a deed of release. In the course of the judgment, the learned judges observed :

Neither of them states himself or herself as a, co-owner with the other nor can they do so rightly. We, therefore, have not a case of persons purporting to be co-owners of the property and agreeing to divide the same. Each party before us claims to be the sole and full owner and, in order to avoid litigation, agrees to release in favour of the other a certain portion of the property which her or she claims to be his or her particular property in full.

It is needless for us to consider whether this decision embodies a correct principle of law since there the document was regarded as one of release. We, therefore, do not propose to place any reliance on that judgment.

3. Section 2 (15) of the Act, defines an instrument of partition as meaning

any instrument whereby co-owners of any property divide or agree to divide such property in severalty, 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.

In our judgment, the expression "co-owners" is of wide connotation and includes all kinds of co-ownership such as joint tenancy, tenancy in common etc., and is not confined in the strict sense of the term. To attract this clause, it is not necessary that one should be a co-owner in the real sense.

If the persons who divide the property purport to do it as co-owners the relevant provision of law governs such case. An instance of this is to be found in (*Gurram Pedda*) *Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others*, . *Sundaram*

Chetty and Walsh, JJ. ruled that although the persons that divided the property were not real owners in the eye of Law still if they purported to be co-owners and if the document was executed in that capacity it would come within the definition of instrument of partition. This case also answers the proposition advanced by Mr. Narasinga Rao, that in order to attract this clause it is essential that there should not be any dispute as to the right of either of the parties to the litigation.

4. In (Gurram Pedda) Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others, , the plaintiff claimed all the properties as belonging to him exclusively whereas the defendant also put forward a claim to all the properties as exclusively belonging to him, being self-acquisitions. Ultimately they compromised the matter by dividing it between them in some shares. So, in deciding a case involving the question of the applicability otherwise of S. 2 (15), the test is not whether originally the right of each of the parties was cognised to a part of the property but the ba(sic) upon which they settled to partition the proper.

It is only by recognising the antecedent title(sic) of one another that the agreement to divide it a particular mode is reached. It is not the language of the document alone that will determine the issue. Regard must be had to the substance(sic) and the effect of it and the basis on which division took place. In Reference Under State Act, S. 46(3), (ILR 12 Mad 198) (C) despite the fact(sic) that the documents were styled releases a (sic) Bench of the Madras High Court consisting Collins, C. J., Muttusami Ayyar, J., Parker, and Wilkinson, J., observed that although documents are styled releases they have to be stamped as instruments of partition. In that case(sic) a mother died leaving the property to her daughters to be enjoyed jointly.

One daughter died and her husband claimed an equal right along with the surviving daughter. The suit ended in a compromise partitioning property between the two. Although, on the (sic) of the documents, they were releases the (sic) Court thought that they amounted to instrument of partition. It is thus clear that it is not v(sic) purports outwardly that matters but it is the character of the document that should form the basis for the decision. In these circumstances we feel that the instant compromise which resulted in a division of the properties practically into equal shares is an instrument of partition regarding to be stamped on non-judicial stamps under S. 6 read with Art. 45 of the Stamp Act. The reference is answered accordingly.

5. We are thankful to the learned Government Pleader for assisting us in deciding matter.