

(1983) 10 AHC CK 0006
In the Allahabad High Court
Case No : S.A.R. Case No. 129 of 1980

Smt. Balwant Kaur and Others	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 20-10-1983

Acts Referred:

Stamp Act, 1899 — Article 55

Citation : AIR 1984 All 107

Hon'ble Judges : Satish Chandra, C.J;H.N. Seth, J;A.B. Banerji, J

Bench : Full Bench

Advocate : A. Hajela, for the Appellant;

Judgement

H.N. Seth, J.—By this reference u/s 57 of the Indian Stamp Act (herein-after referred to as the Act), the Chief Controlling Revenue Authority seeks the opinion of this Court with regard to stamp duty payable on a document dated 9th March, 1970 executed by two sisters Smt. Balwant Kaur and Smt Pritam Kaur.

2. One Sardar Waryam Singh died on 26th February, 1970 leaving behind his widow Smt. Jiwan Devi, son Sardar Kuldeep Singh and two daughters Smt. Balwant Kaur and Smt. Pritam Kaur as his heirs and legal representatives. Subsequently on 9th March, 1970 the two daughters of Sardar Waryam Singh, namely, Smt. Balwant Kaur and Smt. Pritam Kaur executed a document describing themselves as the first party and their brother Sardar Kuldeep Singh and mother Jiwan Devi as the second party. That document contained following stipulation :--

"That in consideration of the receipt of a total sum of Rs. 2,200/- to be shared equally by the first party, they hereby release nil the properties movable and immovable possessed or owned by Sardar Waryam Singh, deceased at the time of his death from all their claims to any share or interest in the said properties or assets and declares that the said properties and assets will be free from all claim of any nature whatsoever against the said properties or assets by them or any

person or persons claiming through either of them and neither they will claim any right or interest at any time hereafter in any property or assets which may be inherited by the second party from Sardar Wariam Singh deceased."

3. When the said deed was presented for registration the Chief Sub-Registrar came to the conclusion that even though the document, on the face of it, appeared to be a deed of release, it in fact was a deed of conveyance by which the two executants had conveyed their share in the properties inherited by them from their father to their mother and brother for a consideration. as in his opinion the deed was deficiently stamped, he, after impounding the same, forwarded it to the Collector for necessary action u/s 38 of the Act. The Collector after considering the objections raised by Sardar Kuldeep Singh and his mother Smt Jiwan Devi, agreed with the view of the Chief Sub-Registrar that the said document was in fact a deed of conveyance, and directed the Tehsildar to ascertain the market value of the properties and business assets left by Sardar Waryam Singh. The Tehsildar reported that market value of the two houses left by the deceased was Rupees 70,000/- and Rs. 40,000/- respectively. But then he was unable to ascertain the value of the business assets left by the deceased. However, the Collector acting u/s 56 of the Act referred the matter-for decision to the Chief Controlling Revenue Authority.

4. After considering the submissions made on behalf of the objectors and the Department, the Chief Controlling Revenue Authority came to the conclusion that the two sisters, namely, Smt. Balwant Kaur and Smt Pritam Kaur had along with their brother and mother inherited the properties left by their father in terms of Section 14 of the Hindu Succession Act, 1956 as tenants-in-common and not as co-owners. It noticed a decision of the Madras High Court in the case of Chief Controlling Revenue Authority v. Rustom Nusserwanji Patel, AIR 1968 Mad 159, and observed that under the law a release can be made by one co-owner in favour of another co-owner where title to the property already exists and he is just as much seized of the whole as the release or himself. As in the instant case the two sisters along with their mother and brother owned the property left by their father as tenants-in-common and not co-owners, they were incompetent to release their share. In the result it concluded that the document in question was a conveyance and not a release and answered the reference made to it accordingly. It, however, directed the Collector to determine the market value of the property involved after notice to the parties and to thereafter determine the deficiency in stamp duty payable on the document, if any.

5. The two objectors then moved the Chief Controlling Revenue Authority and prayed that following five questions of law along with any other question deemed proper be referred for the opinion of the High Court:--

"1. Whether under the facts and circumstances of the case the provisions of Section 47-A of the amended Stamp Act could have any application so as to charge stamp duty on the market value of the property sought to be released ?

2. Whether on a proper and plain interpretation of the document dated 9-3-1970 and the conduct of the parties the transaction in question is to be regarded as release or conveyance within the meaning of the Indian Stamp Act ?

3. Whether under the facts and circumstances of the present case the provisions of Section 19 of the Hindu Succession Act are at all directed or the parties must be deemed to be absolute owners u/s 14 of the aforesaid Act ?

4. Whether the release of the entire share in property which is not gratuitous but is in consideration of a small benefit amounts to release or sale within the meaning of the Indian Stamp Act?

5. Whether the stamp duty under the facts and circumstances of the case is to be levied only on the amount which was actually paid in consideration of the release ?"

6. The successor Chief Controlling Revenue Authority, before whom the objectors' application came up for disposal, observed that the five questions of law formulated by the objectors were substantial questions of law which arose in the instant case and that they should be referred for the opinion of the High Court. Accordingly, it made the order dated 20th Dec., 1978 and referred the questions for the opinion of this Court.

7. Real point that needs to be tackled in the present case is one that is covered by question No. 2 mentioned above. First question would require consideration only when the second question is answered by saying that the document dated 9th March, 1970 is in fact a deed of conveyance. Likewise fifth question would require consideration only if it is held that the said document is in fact a release deed. Third and fourth questions-are subsidiary questions and they appear to have been formulated only because the Chief Controlling Revenue Authority thought that answer to them would help in resolving the main controversy involved in question No. 2. Accordingly, it will not be necessary for us to tackle these two questions except in so far as it becomes necessary to do so while dealing with question No. 2. Accordingly, under question No. 2, we now proceed to discuss as to whether the document dated 9th March, 1970 is to be construed as a release or as a conveyance within the meaning of the Act.

8. Expression "conveyance" has been defined in Section 2(10) of the Act thus :--

" "Conveyance" includes a conveyance on sale and every instrument, by which property whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule-I";

According to Article 55 of Schedule I-B to the Act, release is an instrument whereby a person renounces a claim upon another person or against any specified property.

9. It is now well settled that in order to determine the nature of an instrument, neither the nomenclature nor the language which the parties may choose to

employ in framing the document, is decisive. In each case what is decisive is the actual nature and character of the transaction intended by the executant. Normally, the intention of the executant is to be gathered from the language used in the instrument. Accordingly, where purpose underlying execution of the document fits in with the nature of the document as it purports to be, it would not be appropriate to treat it as an instrument of a different nature. However, where it is found that the executant could enter into the transaction specified in the document but then he chooses to describe it as an instrument of a nature which he is not competent to execute, it will be open to the Court to ignore the said description and to determine the correct head under which the document would fall. Accordingly, in a case where the executant while executing an instrument conveying property, but describes the same as a release deed, the description given by the executant can be ignored and the document can be dealt with on the footing that it was a sale deed. But then in a case where executant's objective can legally be achieved either by executing a deed of conveyance or by executing a deed of release and the executant executes a document which purports to be a deed of release, it will not be correct to construe it as a document of a nature different from what it purports to be, merely because the intention of the executant can be better achieved by executing an instrument of a different nature.

10. In the instant case, the recitals made in the document clearly show that the two sisters were, in consideration of receipt of a sum of Rs. 2,200/- renouncing whatever claim they had in the property left by their father. They do not purport to convey their share in the properties left by their father to their mother and brother. It is thus a document which on the face of it is a deed of release, specified in Article 55 of Schedule I-B to the Act.

11. Learned Chief Standing Counsel, who has appeared in this case to support the view of the Chief Controlling Revenue Authority, urged that even though the document on the face of it purports to be a release deed, the real object underlying its execution was to convey the interest of the two sisters in the properties left by their father to their mother and brother. The two sisters had succeeded to the properties left by their father as co-owners and not as joint-owners. It is only a joint-owner who can renounce his claim in favour of other joint-owner. A co-owner cannot, merely by renouncing his interest in the property, entitle the other co-owner to fully enjoy the same. For this purpose he has necessarily to execute a deed conveying his title to the other co-owner. As in the instant case the two executants owned and held the properties left by their father as co-owners with their mother and brother, they were, while reserving an absolute right of user of the properties to other co-owners, in fact conveying their interest in the property. In the circumstances the document in question cannot be construed as a release deed and it has necessarily to be treated as a conveyance.

12. We are unable to accept the submission that under the law it is not open to a

co-owner to renounce his rights in favour of another co-owner. In the case of Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, , the executants of a deed were three persons who along with two persons in whose favour the deed was executed were partners of a registered firm. The executants had ceased to be partners of the firm from and after 12-4-1949. The preamble of the deed recited that the releasers, that is, executants were co-owners of the immovable property described in the Schedule to the document as house and ground bearing Door No. 47 in Coral Merchant Street, G. T., Madras, entitled to 3/5 share therein. They desired to renounce all interest in the said property by deed receiving the proportionate value of the share in cash. The operative portion of the deed ran thus:

"This deed witnessed that, in consideration of the sum of Rs. 9,858-9-7 (Rs. nine thousand eight hundred and fifty-eight, annas nine and pies seven) receipt whereof on or before the date of these presents through adjustment of accounts the releasers hereby release, extinguish, abandon, cancel and otherwise relinquish all their respective rights, claims, demands or interest, in any manner or to any extent, in respect of the property set out and fully described in the Schedule hereunder."

Clearly in this case releasers owned the concerned properties in which they were seeking to release their interests as co-owners and not as joint-owners. It was conceded before the Madras High Court that had the executants been joint-owners as distinguished from co-owners, the document of the nature executed in that case could have been considered to be a deed of release. It was argued that the document having been executed by a co-tenant (co-owner) the objective thereof could only be achieved by conveying executants' title and as such that document could not be considered to be a deed of release. Rajamannar, C. J., speaking for Full Bench of the Court observed that in that case it was not the case of any one that there was a division of the property by metes and bounds and in accordance with the said shares. In such circumstances the document in and by which the co-owner purported to abandon or relinquish his claim to the share to which he would be entitled would be in the nature of release. According to this decision it is open to a co-owner of a property which does not stand partitioned by metes and bounds, to relinquish or renounce his claim to the property and if he does so then as a matter of law the interest of the remaining co-owners gets augmented. Law countenances that the object that some of the co-owners of an unpartitioned property should be enabled to enjoy the property without any let or hindrance or claim made by other co-owners can be achieved by such other co-owners executing a release deed and that if such co-owners set out to achieve that object by executing a release deed, there is no reason why such release deed should be construed as a deed of conveyance merely because such objective could also be achieved by executing a deed of conveyance.

13. Following observations made by the Supreme Court in the case of Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, , also go to

support the conclusions arrived at by Rajamannar, C. J., in the case of Board of Revenue v. V.M. Murugese Mudaliar AIR 1955 Mad 641 (at p. 1397):--

"Now it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right of interest to another person having limited estate, for example, by a remainder-man to a tenant for life and the release then operates as an enlargement of the limited estate."

It is true that in the case of Kuppuswami Chettiar v. A.S.P.A. Arumugam Chettiar (supra) the question that came up for consideration before the Supreme Court was whether a document styled as a document of release was to be treated as a document conveying title. The Supreme Court eventually came to the conclusion that the said document was a deed of conveyance; but that was because it found that, the said deed had been executed in favour of person who had absolutely no interest in the properties released. In the instant case, however, it cannot be said that the mother and brother of the two executants who were co-owners of the property had no interest in the property.

14. In the case of Chief Controlling Revenue Authority v. Rustom Nusserwanji Patel AIR 1968 Mad 159, another Full Bench of the Madras High Court concurred in the view expressed by Rajamannar, C. J., in Board of Revenue v. V.M. Murugesu Mudaliar (supra) to the effect that like a joint-owner a person who owns property as co-tenant can also execute a release deed in favour of his co-owner. When such a deed is executed, the share of the co-owner in whose favour the property is released gets augmented, and that in such cases it is not necessary for the executants to execute a deed of conveyance.

15. The view taken in the aforementioned two Madras Full Benches has been approved and the principles underlying therein applied with advantage by a Full Bench of our High Court in the case of Govind Das and Others Vs. The Board of Revenue, U.P., Lucknow, wherein it was observed thus (para 8):--

"Counsel for the appellant has drawn out attention to two decisions of the Madras High Court in Board of Revenue v. V.M. Murugesu Mudaliar of Gudivatham AIR 1955 Mad 641 and Chief Controlling Revenue Authority v. Rustorn Nusserwanji Patel AIR 1968 Mad 159 wherein the view has been taken that such a deed would be a deed of release. In 1955 Mad 641 (supra) Rajamannar, C. J., who delivered the judgment of the Full Bench has observed at page 642 of the report as hereunder :--

"In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be enlargement of the share of other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner."

16. It is thus clear that under the law it is open to a person holding property as a tenant-in-common to execute a release deed in favour of the other co-owner renouncing his claim to interest in the unpartitioned property and for this purpose it is not necessary for him to execute a deed of conveyance. Accordingly, where in fact such a deed is executed whereby the person in whose favour the property has been released is given a right to enjoy the property without any let or hindrance or claim to be made by the persons so releasing the property, there will be no justification in reading or construing the said document as a deed of conveyance.

17. So far as the instant case is concerned, the recitals made by the two sisters in the document dated 9th March, 1970, clearly amount to renunciation of their interest in the properties left by their deceased father. They do not contain any stipulation where-under they seek to convey their title to their mother and brother. The two sisters were fully competent to release their undivided interest in the property in favour of their mother and brother. When their objective could be achieved merely by executing a release deed, there is no reason to think that they in fact were executing a deed of conveyance misdescribing it as a release deed. Question No. 2, therefore, has to be answered by saying that on plain interpretation, the document dated 9th March, 1970 was a deed of release and not a conveyance deed within the meaning of the Indian Stamp Act.

18. Article 55 of Schedule I-B to the Act runs thus:--

"Description of Instrument

Proper Stamp Duty

55.

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

(a)

if the amount or value of the claim does not exceed Rs. 2500/-

The same duty as a Bond (No.15) for such amount or value as set forth in.

(b)

in any other case.

One hundred rupees."

19. Next question that, therefore, arises for consideration is whether stamp duty payable on the document is under Clause (a) of Article 55 to be computed treating the value of the claim released by it as Rs. 2,200/-, that is, the amount of consideration mentioned in the deed, or is it to be determined in accordance with the provision contained in Clause (b) thereof. Under Clause (a) the duty on

a deed of release is to be computed in the manner provided for computation of duty on a Bond under Item No. 15 on the value of the claim released, as set forth in the deed. In the instant case while consideration for giving up of the claim by the two sisters was mentioned as Rs. 2,200/-, but such consideration cannot be said to be the value of the claim which had actually been renounced by the two executants. The deed nowhere specifies value of the claim which had actually been renounced by the two executants. Since the value of the claim renounced has not been set forth in the release deed it is not possible to compute the stamp duty payable on the release deed under Clause (a) of Article 55. The case would thus fall under Clause (b) of Article 55 and the fixed amount of stamp duty specified therein would thus be payable. Question No. 5 is accordingly answered by saying that the document in question is liable to stamp duty under Clause (b) of Article 55 of Schedule I-B to the Indian Stamp Act.

20. In view of our answer to questions Nos. 2 and 5, it is not necessary for us to answer questions Nos. 1, 3 and 4 separately.

21. Let the Chief Controlling Revenue Authority be informed that the document in question is a deed of release liable to stamp duty under Article 55 of Schedule I to the Indian Stamp Act.