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(1998) 04 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4178 of 1996

State — APPELLANT

Vs

Alokik Jain and Others — RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Rajasthan Stamp Law (Adaptation) Act, 1952 — Article 55

Citation : AIR 1998 Raj 348 : (1998) 1 WLN 616

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Advocate : N.L. Pareek, Addl. G.A, for the Appellant; Harshvardhan Nandwana, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Saxena, J.—This writ petition has been preferred against the order dated 29-7-1994 passed by the learned Member of Board of Revenue for Rajasthan whereby the revision petition filed u/s 56 of the Indian Registration Act, 1908 against the order of Deputy Inspector General (Stamps) Kota dated 5-10-1993 whereby the respondent No. 1 was directed to deposit Rs. 5355 of deficit stamp duty, Rs. 15/- penalty, total Rs. 5370/- in respect of the impugned release-deed dated 29-9-1989, was dismissed.

2. Heard and perused the relevant record. A careful perusal of the impugned instrument dated 29-9-1989 manifestly indicates that respondent No. 2 Shri Tej Singh has renounced his claim in the disputed joint agricultural land for which he was recorded as joint tenant, in favour of respondent Alok Jain. The circular No. 23/1994 dated 10-5-1994 issued by the Inspector General, Registration and Stamps Department, Rajasthan, Ajmer cannot override the provisions of Article 55 of the Rajasthan Stamp Law (Adaptation) Act 1952. From the perusal of the Jamabandi Samwat Year 2056 (Annexure-7), it becomes abundantly apparent that the respondent No. 2 Tej Singh along with Inder Prakash Singh and the respondent No. 1 Shri Alokik Jain were cotenants of the agricultural land bearing

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Khasra No. 85 (New No. 51) situated in village Naya Khera, Tehsil Rajpura, Kota. By the impugned instrument Shri Tej Singh has renounced his claim in respect of his share in favour of respondent No. 1 Alokik Jain.

3. It is needless to mention here that in order to determine whether a document is a release deed or gift deed, the decisive factor is the actual character of the transaction and the precise nature of the rights created by means of the instrument. The essential ingredients of release deed are that there should already be a legal right in the property vested in the release and the release should operate to enlarge that right into an absolute title for the entire property as far as the parties are concerned. Thus, there can be no release by one person in favour of another, who is not already entitled to the property as a co-owner. A release deed is valid not only when it is gratuitous. Thus by the release there is no transfer of interest or title to another person, who has no pre-existing right in such property. A release, therefore, can only be made in favour of aperson who has apre-existing right or interest in the property. A release can feed title, but cannot transfer title. On the other hand, ''gift'' is the transfer of certain existing movable or immovable property, made voluntarily and without consideration by one person, called the donor, to another, called the donee, and accepted by or on behalf of, the donee.

4. In the instant case, one of the co-sharers of the joint agricultural land Tej Singh has simply renounced his claim in favour of respondent Alokik Jain in respect of the said agricultural land. Therefore, the impugned documents is pure and simple a release deed and not a gift deed and the interpretation of Article 55 given by the Deputy Inspector General Registration and Stamps vide his order dated 5-10-93 is against the clear, cogent and unambiguous provisions of Article 55 and the same has been rightly set-aside by the learned Member of the Board of Revenue.

5. In the premises of the above discussion, I do not find any illegality or error apparent in the impugned order passed by the learned Member of the Board of Revenue, as such, this writ petition is hereby dismissed with cost.

The cost is quantified at Rs. 1000/-.

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