(2015) 09 KL CK 0124

In the High Court Of Kerala

Case No : W.A. No. 390 of 2015 in WP(C) 25707 of 2014

State of Kerala and Others APPELLANT

Vs

Shibu RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2016) AIR (Ker) 45 : (2015) 4 ILR Ker 163 : (2015) 4 KHC 698 : (2015) 4 KLT 131

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : P.I. Davis, Government Pleader, for the Appellant; C.A. Chacko and C.M. Charisma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J—Heard Sri. P.I. Davis, learned senior Government Pleader appearing for the appellant and the learned counsel appearing for the respondents.

2. This writ appeal has been filed by the State against the judgment dated 17/11/2014 in W.P.C. No. 25707/2014, by which the learned Single Judge disposed of the writ petition by modifying the impugned judgment to the effect that the instrument in question falls under Article 48 of the Kerala Stamp Act, 1959. The State, aggrieved by the said judgment, has come up in this appeal.

3. Necessary facts to be noted for deciding this appeal are:

"One Kannan, S/o. Appu was the original owner of the property. On his death, Kochupennu, wife of Sri. Kannan and seven children became the legal heirs. Release deed was executed by the legal heirs in favour of the writ petitioner, Sri. Shibu, S/o. late Appu. Release deed was presented by preparing the same in a stamp paper worth Rs. 1,000/-. Ext. P2 order was issued by the District Registrar holding a deficiency of registration fee with a penalty of Rs. 500/-, making a total amount of Rs. 59,395/-. The District Registrar opined that the stamp duty is to be paid as per Article 48(b) of the schedule to the Kerala Stamp Act, 1959. Aggrieved by the said order, the writ petition was filed praying for the following reliefs:

"i) Issue a writ of certiorari or any other appropriate writ, order or direction to quash Ext. P2 order issued by the 2nd respondent after calling for the records leading to its issuance;

ii) declare that the petitioner is coming under the persons mentioned in Article 48(a) of the Schedule to Kerala Stamp Act being the grandson of original owner of the property and entitled to get registration of Ext. P1 on payment of stamp duty @ Rs. 1,000/-;

iii) issue a writ of mandamus or any other appropriate writ, order or direction to the 3rd respondent to register Ext. P1 release deed in the light of amendment to the Stamp Act, 1959 vide Kerala Finance Act, 2012 (Act 16 of 2012) by accepting stamp duty of Rs. 1,000/- forthwith;"

4. Petitioner''s case in the writ petition was that the petitioner being the grandson of deceased Kannan, the release deed is covered by Article 48(a) and the release deed should have been registered accordingly. The learned Single Judge accepted the said submission and disposed of the writ petition accordingly.

5. The learned senior Government Pleader submits that since the release deed comes under the amended Article 48(b), the order of the District Registrar is perfectly justified. It is also submitted that the release deed is not in favour of any of the relatives as mentioned in Article 48(a).

6. Replying to the submission of the learned counsel for the appellant, the learned counsel for the writ petitioner contended that the relationship between the parties has to be looked into and the petitioner, being the grandson, the case is clearly covered by Article 48(a). Reliance has also been placed on the Division Bench judgment of this Court in State of Kerala Vs. Manuel, AIR 2013 Ker 81 : (2013) 2 ILR (Ker) 95 : (2013) 1 KHC 765 : (2013) 1 KLJ 789 : (2013) 1 KLT 825 wherein it was held that the children and legal heirs of the deceased are also members of the family and partition among family members will attract Article No. 42.

7. Learned counsel for the appellant further submitted that out of the 11 executants who have executed the release deed, only one person is the brother of the petitioner, whose release deed could have fallen under Article 48(a). Others, being sons and other legal heirs of Kannan, are beyond the purview of Article 48(a).

8. We have considered the submission of the parties and perused the records. Article 48(a) and (b) of the schedule to the Kerala Stamp Act, 1959, as amended, provides as follows:

9. Perusal of the release deed indicates that all the executants except Executant

No. 4 are either sons of deceased Kannan or legal heirs of other sons. Petitioner, in whose favour the release deed was executed, is the grandson of Kannan. Article 48(a) begins with the words "when such release operates in favour of father...... ". Thus the criteria or basis for fixing stamp duty is ''relationship'' between the persons executing the release deed and the person in whose favour the release deed is executed. The submission of the learned counsel for the writ petitioner is that the case is covered by Article 48(a), in the last but one item that is "grandchildren". It is submitted that petitioner, being the grandchild of late Kannan, the deed falls under Article 48(a). The submission, according to us, is baseless. Grandchildren has been mentioned in the context of relationship between the persons who execute the release deed and the person in whose favour release deed is executed. Thus there should be relationship of "grandchildren" in favour of both the persons. Present is not the case. Deceased Kannan was admittedly the grandfather of the petitioner. The persons who are executants are not grandfather of the petitioner. Thus, the said item of Article 48(a) is not applicable. As observed above, except one executant, that is his brother, others are not covered by Article 48(a).

10. We, thus, are of the view of that the release deed is not a joint release deed which may be covered by Article 48(a) and the District Registrar did not commit any error in finding deficiency in the stamp duty and holding that it is covered by Article 48(b). In the judgment in Manuel (supra), which has been relied upon by the learned counsel for the writ petitioner, the Court was interpreting Article 42, that is regarding partition. Article 42 provides as follows:

By amendment, ''family'' was defined, which is to the following effect:

"Family means father, mother, grandfather, grandmother, husband, wife, son, daughter, grandchildren, brother, sister and legal heirs of the deceased children, if any, as the case may be."

In the above context, the Division Bench laid down the following in paragraph 6.

"6. On a reading of the amendment, the word "family" includes father, mother, son, daughter, brother, sister, legal heirs of deceased children and so on and so forth, as extracted above. It cannot be gainsaid that only if a father and mother are alive, the children could be considered as having the status of sons and daughters and otherwise they would only be brothers and sisters. Any permutation and combination of the persons mentioned in the definition of "family" would be entitled to have a partition claiming the benefit of lesser stamp duty as is provided in Serial No. 42(i) of the Schedule to the Stamp Act."

11. The context in which the definition of family was interpreted by the Division Bench was entirely different. Present is the case where the issue is not as to whether petitioner belongs to the "family" or not. The relevant factor in the present case is the relationship between the executants of the release deed and the person in whose favour the release deed is executed. The judgment in Manuel (supra), thus, is clearly not applicable in the present case and no help

can be sought by the learned counsel for the petitioner from the said judgment.

12. In view of the foregoing discussion, we allow the writ appeal setting aside the judgment of the learned Single Judge and dismissing the writ petition.