

(2013) 07 KL CK 0173
In the High Court Of Kerala
Case No : W.A. No. 975 of 2013

State of Kerala

APPELLANT

Vs

Jose

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Kerala Stamp Act, 1959 — Serial No. 42

Citation : (2013) 4 KLJ 266 : (2013) 3 KLT 412

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : P.I. Davis, for the Appellant; S. Ananthakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The definition of "family" given in the Explanation to Serial No. 42 of the Schedule to the Kerala Stamp Act, 1959 (hereinafter referred to as "the Stamp Act") as amended by Finance Act, 2011, is again brought up for consideration in the above Writ Appeal filed by the State. Infact this Court had, in an earlier judgment reported in State of Kerala Vs. Manuel, , clearly found that the amendment to the definition of "family" would take in any permutation and combination of persons mentioned therein and they 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. The brief facts to be noticed in the present case is that one Thomas and Varkey were the joint owners of a property having an extent of 2.27 acres comprised in Survey No. 810/3 of Kaduthuruthy Village in Kottayam District. It was purchased in their names by their father by virtue of Exhibit P1 sale deed dated 25.3.1964 and since then, they had been jointly enjoying the property. Thomas died, leaving his share of the property to his only son by a bequest. Varkey and the respondent/writ petitioner, being the legal heir of the deceased Thomas, decided to partition the property by metes and bounds and Exhibit P4 document was executed on 9.11.2012. The State's contention is that the said transaction is covered by the decision reported in

District Registrar Vs. Bahuleyan, .

2. The only similarity we can discern in Bahuleyan's case (supra) and the instant case is that both involved a bequest; but the facts are clearly distinguishable and infact the above cited decision was distinguished in Manuel's case (supra). Here two brothers were owning the property jointly. If both were alive and partition by metes and bounds were effected, then it would definitely be within Serial No. 42, i.e., a partition between family members. When one brother dies and his legal heir stands in the shoes of the deceased, can it be said that a partition effected between a legal heir of a brother and his uncle would take it out of the definition of family partition? We are of the definite opinion that it will not. We noticed in Manuel's case (supra) that 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 referred to in the judgment of Manuel "sense (supra) would take in a brother and a legal heir of a deceased brother. If a partition can be effected between a person and the legal heir of the deceased children of a deceased brother (brothers and legal heirs of children), then it would be absurd to say that it cannot be executed between a person and the legal heir of his deceased brother. We do not find any merit in the appeal. We uphold the judgment of the learned Single Judge and dismiss the appeal, however, with no costs.