

**(1968) 11 KL CK 0017**  
**In the High Court Of Kerala**  
**Case No : Criminal Appeal No. 222 of 1968**

State of Kerala

APPELLANT

Vs

Kalathingal Abdullakutty and others

RESPONDENT

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**Date of Decision :** 08-11-1968

**Acts Referred:**

Kerala Stamp Act, 1959 — Section 2(k), 28, 60, 62

**Citation :** (1969) KLJ 143

**Hon'ble Judges :** T.C. Raghavan, J

**Bench :** Single Bench

**Advocate :** S. Easwara Iyer, C.S. Rajan, P. Sankarankutty Nair, E. Subramoni and Thomas John, for the Respondent

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## Judgement

T.C. Raghavan, J.—The conclusions of the Sub Divisional Magistrate are erroneous; and the order of acquittal passed by him has to be set aside. The respondents produced a document for registration before the Sub Registrar claiming that it was a deed of partition. The properties covered by the document were valued at Rs. 33,600/- and stamp duty was also paid on the basis of that valuation. The document was registered. Subsequently, the Sub Registrar felt that the valuation was very low and false; and he obtained sanction from the Collector for prosecuting the respondents. A prosecution was launched u/s 60 of the Kerala Stamp Act; and the lower court has acquitted the respondents.

2. One of the findings of the Sub Divisional Magistrate is that the document is not a deed of partition as defined u/s 2 (k) of the Stamp Act. The reasoning is that the document recites that a partition took place already and the document was executed only to evidence that transaction, so that there was no partition under the document. The document was produced by the respondents claiming that it was a deed of partition. The Sub Registrar accepted it as a deed of partition and registered it also. Thereafter, I wonder how the respondents could claim that the document they produced for registration and got registered was not a document of partition but some other document. They have also no definite

case now as to what type of document the deed was. Even otherwise, the reasoning of the Sub Divisional Magistrate is not correct. Even if there was already a partition and the document only evidenced the past partition, it is still a deed of partition. Another reasoning of the lower court on the same question is that all the executants mentioned in the document have not signed it, so that it is not a deed of partition. In a prosecution under the Stamp Act only those persons who signed the document and obtained its registration can be prosecuted. The others who did not sign the document cannot be prosecuted or convicted of any offence under the Act. The document produced before the Sub Registrar and registered was a deed of partition; and it could not have changed its character as some of the executants did not sign it. Again, such of the executants who did not sign could have obtained registration if they signed it within the time allowed by law. They could have also executed another document accepting the deed of partition; and if they did so, it cannot be said that the document which was already registered by some of the executants would have then changed its nature and become a deed of partition: Therefore, the document whether it was signed by all the executants or not had the same character from its inception; and the character was that it was a deed of partition.

3. Another conclusion of the Sub Divisional Magistrate is that the stamp duty paid was sufficient under Art. 41 of the schedule attached to the Act. Proviso (b) to Art 41 says that where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at twentyfive times the annual revenue. The reasoning of the Sub Divisional Magistrate is that the properties involved in the case were properties coming within this category (ryotwari lands) and therefore, stamp duty need be paid only on twenty-five times their annual revenue. This is equally erroneous. A piece of land having an annual revenue of say Rs. 5/- may have a palace thereon worth a few lakhs; and it is impossible to hold that a deed of partition dividing the land alone and a deed of partition dividing the land with the palatial structure on it need bear the same stamp duty. The proviso to Art. 41 of the schedule applies only to a case where the land alone is the subject-matter of the deed. Therefore, this line of reasoning and the conclusion reached are also erroneous.

4. The next conclusion of the lower court is that the document was duly stamped. The reasoning is that the value mentioned in the document was Rs. 33,600/- and stamp duty was also paid on the basis of that amount. Art. 41 of the schedule says that the duty should be for the amount of the "value" of the separated share. No provision of law has been brought to my notice to hold that such value is only the value adopted by the executants of the document for the purpose of the document. Normally, value is market value, the price a willing buyer pays to a willing seller, in the language of the laissez faire economist, the price that results from the free inter-play of supply and demand, the point at which the "supply blade" and the "demand blade" of the "market-scissors" cut. Unless there is indication in the Act to show that the value for the purpose of Art.

41 is something different from this, no value other than the market value can be accepted. This is self-evident; and no authority is required. However, I shall refer to a Full Bench decision of the Madras High Court, *The Joint Secretary, Board of Revenue, Madras v. K.R. Venkatarama Ayyar* (A.I.R. 1950 Mad. 738). Horwill J., speaking for the Court, said that value ordinarily meant market value and unless there was any other indication in the Act, value must be taken to mean only market value. The conclusion of the lower court on this question has again to be discarded.

5. At this stage, it is brought to my notice that the prosecution should really have been u/s 62 of the Act and not u/s 60. Section 60 provides the penalty for executing an instrument not duly stamped; and any person executing or signing otherwise than as a witness any instrument chargeable with duty without the same being duly stamped is made liable. It may be said in this case that the document is duly stamped: if the value mentioned in the document is the value of the properties, the stamping is due stamping. Really then, the offence committed is in giving a lower valuation for the properties. This contravenes section 28 of the Act, which provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth in the instrument. Evidently, this has not been done; and this is made an offence u/s 62 of the Act, which provides the penalty for such omission to comply with the provisions of section 28.

6. The Public Prosecutor pleads that this Court be pleased to give an opportunity for the prosecution to correct the mistake and have the case re-tried. The counsel of the respondents then urges that, in that event, the sanction given by the Collector might not be sufficient: a fresh sanction might have to be obtained. The sanction accorded by the Collector is Ex. P11; and what the Collector has really done was to consider whether sanction should be given for a prosecution u/s 62. The mention of section 60 in Ex. P11 appears to be a mistake. The body of the document clearly shows that what the Collector was considering was whether the actual value of the properties involved in the partition was mentioned in the document, and if it was not mentioned, whether what was done was with a view to defraud the Government of the proper stamp duty. The sanction, though the section mentioned therein is only section 60 was really intended to launch a prosecution u/s 62. The sanction is therefore sufficient.

7. Lastly, it is urged by the counsel of the respondents, that, if the charge is to be treated as one u/s 62, the respondents should be given an opportunity to meet the charge. Since they were charged only u/s 60, they attempted to meet only that charge in the lower court. This contention appears to have some force: and I feel that, in the interest of justice and in fairness to the respondents, this Court should not straightaway change the charge from section 60 to section 62 and convict them. In the result, the order of acquittal passed by the lower court is set aside; and the case is remanded for trial de novo after properly recasting

the charge and bringing it u/s 62 of the Act.