

(2013) 03 KL CK 0104
In the High Court Of Kerala
Case No : W.A. No. 2222 of 2012

State of Kerala

APPELLANT

Vs

Manuel

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Kerala Stamp Act, 1959 — Serial No. 42

Citation : AIR 2013 Ker 81 : (2013) 2 ILR (Ker) 95 : (2013) 1 KHC 765 : (2013) 1 KLJ 789 : (2013) 1 KLT 825

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The State is in appeal from a judgment of the learned Single Judge, directing the third appellant to register the document of partition, presented by the respondent/writ petitioner on payment of Rs. 1,000/- as stamp duty. The respondent along with his brothers and sisters and legal heirs of one deceased brother and a deceased sister entered into a partition of the properties which devolved upon them on the death of their parents and another brother, who died unmarried and intestate. The Registering Authority refused to register the same as a partition deed on a stamp paper of Rs. 1,000/- and insisted that stamp duty be paid at 6% of the ad valorem value. The learned single Judge, on an interpretation given to 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, rejected the claim of the appellants that the legal heirs of brothers and sisters do not form part of "family" as per the amendment.

2. We notice here the amended Serial No. 42 of the Schedule:

XXX XXX XXX

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

XXX XXX XXX

3. The contention of the State in the Writ Appeal is that the above partition has been effected by brothers and sisters and the legal heirs of brothers and sisters. Since the legal heirs of deceased brothers and sisters do not come within the definition of "family", the same is not a partition deed and ad valorem duty has to be paid, is the contention of the State. The State also relies on a Division Bench decision of this Court in W.A. No. 1697 of 2012 dated 29.11.2012 (District Registrar v. Bahuleyan-2013 (1) KLT 831)

4. Looking at the decision relied on by the State, we see that the facts disclosed in that case would show that one Smt. Lakshmi executed a Will with respect to her properties, bequeathing the same to her son Kumaran and grandson Bahuleyan. Her son Kumaran having died, the partition was effected between the wife and children of Kumaran and the grandson Bahuleyan. Hence, virtually the partition was between the first cousins and an aunt which, according to a Division Bench of this Court, disentitled the petitioners therein from claiming it to be a partition coming under Serial No. 42(i) of the Schedule to the Stamp Act. We are in perfect agreement with the above proposition, We also notice that in that case it was not an intestate devolution but a devolution occurred on account of a bequest in favour of two persons who were related to the testator. The fact remains that though the beneficiaries were related to the testators, their relationship did not come within that contemplated under the said amendment. However, we are of the view that in the instant case the said decision, on facts, is not applicable and is clearly distinguishable.

5. 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. A brief look at the facts of the case would disclose that Isahack and Mariyam had 8 children, one of whom, Seemon, died intestate, childless and unmarried. Isahack and Mariyam and Seemon left behind them 7 siblings, of which again two, by name Yohannan and Mariamma, expired. In Exhibit P1 partition deed, Sl. Nos. 1 to 5 were the children of Isahack and Mariyam; Sl. Nos. 6 to 12 being the children and Sl. No. 13 the wife, of deceased Yohannan; and Sl. No. 14 was the legal heir of deceased Mariamma. Hence, the family of Isahack and Mariyam, as it existed at the time of Exhibit P1, partitioned the properties of their pre-deceased parents and brother amongst themselves. The partition, hence, was

between the sons, daughters and legal heirs of the deceased children, which would clearly come under the amended definition of "family" under Serial No. 42 of the Schedule, as it exists now.

In view of the above finding, we do not find any reason to interfere with the judgment of the learned Single Judge and we uphold the same and dismiss the appeal with no order as to costs.