

(1979) 07 AHC CK 0060

In the Allahabad High Court

Case No : Stamp Act Reference No. 991 of 1976

State of U.P.

APPELLANT

Vs

Smt. Shanti and Others

RESPONDENT

Date of Decision : 04-07-1979

Acts Referred:

Hindu Succession Act, 1956 — Section 15
Stamp Act, 1899 — Article 33, 55, 5
Transfer of Property Act, 1882 — Section 123

Citation : AIR 1979 All 305

Hon'ble Judges : Satish Chandra, C.J;R.R. Rastogi, J;K.C. Agrawal, J

Bench : Full Bench

Advocate : R.R.K. Trivedi, for the Respondent

Judgement

K.C. Agrawal, J.—This is a reference made by the Board of Revenue, u/s 57 of the Indian Stamp Act. The questions referred are :--

1. "Whether the instruments under consideration (Annexure 1 to the reference) embodies substance of a transaction which is a gift covered by Article 33 of Schedule I-B of the Act or is only a Release covered by Article 55 of Schedule I-B of the Act?

2. Keeping in view the provisions of Section 5 of the Act and the distinct interests of each and every executant demarcated with clear precision in the body of the instrument does the instrument under consideration, relate to such several distinct matters as are, under the said section, chargeable with the aggregate amount of duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the said Act?

2. One Shrimati Thagia widow of Malangilal was the owner of a house, having received the same from her father through a registered will dated 5-9-38. Shrimati Thagia had four daughters and one son. One of the daughters Smt. Kaushi pre-deceased her mother Smt. Thagia, Shrimati Thagia died on 9-8-1971,

leaving behind the following heirs :--

1.

Sri Krishna

son

2.

Smt. Shanti

All daughters

3.

Smt. Damyanti

4.

Smt. Annapurna

5.

Sri Jagdish Prasad

sons

6.

Sri Ramesh Chandra

7.

Sri Dinesh Chandra

8.

Smt. Kishori, daughter of one of predeceased daughter Smt. Kaushi.

3. After her death, the house devolved on her son, daughter and grandsons. On 6-9-1971 the three daughters of Smt. Thagia and four children of the pre-deceased daughter jointly executed a release deed renouncing all their claims against the house in favour of Shri Krishna and declaring him to be the exclusive owner of the property. The valuation of the house was as shown in the deed Rs. 8050/- and the deed was written on a stamp sheet of Rs. 50/-, as provided in Article 55 (b) of Schedule I-B of the Indian Stamp Act.

4. When this document was presented for registration, the Sub-Registrar impounded the same treating it as a conveyance and sent the same u/s 39 to the Collector for realisation of duty and penalty. The Collector referred the matter to the Chief Controlling Revenue Authority. Having found that the interpretation of the document involves substantial question of law, the Chief Controlling Revenue Authority referred the case to the High Court.

5. The main controversy in the present case is whether the document is a release of a gift. It is not disputed that Shrimati Thagia had received the house from her father under a will executed in the year 1938. She was the exclusive and full owner of this property. As Srimati Thagia died intestate, the property devolved according to the rules of successions laid down in Sections 15 and 16 of the Hindu Succession Act. Section 19 of the said Act provides :--

"If two or more heirs succeed together to the property of an intestate, they shall take the property :--

(a) Save as otherwise expressly provided in this Act, per capita and not per stirpes; and

(b) as tenants-in-common and not as joint tenants."

It would be found that the heirs succeeding to the property u/s 15 are the tenants-in-common. Tenancy-in-common means that the share of each owner is specified and on his death it devolves on his heirs, A tenant-in-common is as to his own share, precisely in the same position as an owner of a separate property. He can transfer his share during his lifetime or by a Will. In a case where a number of persons inherit as tenants-in-common, the share of each one of them is separate and distinct and has to be dealt with by the owner of that share.

6. In the instant case, on the death of Shrimati Thagia all the heirs succeeded together and each has equal share in his or her right. Shri Krishan, the son of the deceased Thagia had only 1/5th share in the house. The remaining 4/5th share belonged to the daughters and to the children of pre-deceased daughter Shrimati Kaushi. Shri Krishan could claim right or title only over 1/5th share which he got from his mother. He could get right over the remaining 4/5th share if the same was transferred to him either by gift or by sale. In the instant case, the document although was described as release deed but the label given by the executant to the document is not determinative of its character. The instrument, under consideration, records the specified share of each of the seven executants and none of the sharers had any interest in the share of others, The document was thus a gift and was covered by Article 33 Schedule 1-B of the Act, and the duty was liable to be paid under this Article.

7. Counsel for the applicant, however, contended that since the parties had described the instrument as release deed, the court has no power to go behind it and to treat it as a gift. The submission made is untenable. In order to interpret a document, the recitals in the said document are the safe and sole guide for such interpretation. It is not correct that what name, the parties chose to give to an instrument, could be decisive or even indicative of the true nature of the instrument for the purpose of stamp duty. Court is required to find out the true nature of the document and has not to surrender its judgment to the label or the name given by the parties.

8. In *Hutchi Gowder v. Bheema Gowder* (AIR 1960 Mad 33), the Madras High

Court held:--

"A release deed can only feed title but cannot transfer title."

In *S. P. Chinnathambiar v. V. R. P. Chinnathambiar* (AIR 1954 Mad 5), the observations were :--

"Renunciation must be in favour of a person who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in a person a title where it did not exist."

These cases were approved by the Supreme Court in *Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another*, . In the present case, the release was without any consideration but since property may be transferred without consideration, such a transfer is a gift. Under S- 123 of the Transfer of Property Act, gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, registered instrument releasing the right, title and interest of the releasor without consideration may operate as a gift. In! the present case, there was a clear intention to effect the transfer. It had been signed by all the releasors and had also been attested. That being so, the document had to be treated as a gift.

9. The second question is about the applicability of Section 5 of the Stamp Act. In the case of the Board of Revenue, the aforesaid section was applicable. Under this section, an instrument comprising or relating to several distinct matters is to be charged with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. In our opinion, as the instrument does not deal with distinct matters, Section 5 did not apply. The duty was not chargeable under this section. The document in question was not a multifarious instrument relating to several distinct matters. Therefore, as the essentials which could attract Section 5 were missing in the instant case, we are unable to see how this instrument could fall under the aforesaid provision.

10. For all these reasons, oar answer to the first question is that the instrument is a gift covered by Article 33 of Schedule I-B of the Act. Our answer to the second question is in the negative by holding that Section 5 of the Act would not apply to the present case.

11. Let the papers be returned with the above answers. No costs.