(2014) 02 MAD CK 0248

In the Madras High Court

Case No : Writ Petition (MD) No. 58 of 2012 and M.P. (MD) No. 1 of 2012

T. Muthu Balu APPELLANT

Vs

The Inspector General of Registration RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(bb)
Insurance Act, 1938 — Section 2
Succession Act, 1925 — Section 38, 39

Citation : AIR 2014 Mad 240 : (2014) 5 CTC 265 : (2014) 4 LW 33

Hon'ble Judges : V.M. Velumani, J;R. Sudhakar, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—This writ petition is before us, consequent upon the order of reference made by a learned Single Judge, dated 02.02.2012, by issuing the following direction to the Registry.

"The Registry is, therefore, directed to place the matter before the Hon''ble Administrative Judge for the purpose of posting the Writ Petition before the appropriate Division Bench, so as to decide the issue once for all." Accordingly, on the orders of the Hon''ble Administrative Judge, dated 08.02.2012, the matter is before us.

The brief facts, necessary for disposal of this writ petition, are as follows:

The writ petitioner executed a Settlement Deed, in respect of certain items of properties mentioned in the schedule to the document, in favour of his great-grand daughter S. Sugirtha, bearing Document No. 7211/2011, dated 11.11.2011, on the file of the Sub-Registrar, Chokkikulam, Madurai, the 2nd respondent herein. The petitioner claimed exemption from payment normal Stamp Duty stating that the settlement is coming under the term "Family" mentioned in Article 58(a) of Schedule-I to the Indian Stamp Act, 1899. However, the 2nd respondent did not release the document and insisted on payment of normal stamp duty on the ground that the registration fee in the instant case would not be covered under Article 58(a), in view of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act.

2. Article 58(a) of Schedule-I to the Indian Stamp Act, 1899 reads as under:

"58. Settlement--

(a) instrument of (including a deed of a dower)--Explanation.--

For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter.

(ii) in any other case.--........."

3. According to the petitioner, "great-grand child" comes within the definition of ''grand-child'' and therefore the 2nd respondent is not justified in declining the grant of relief of payment of concessional stamp duty for the aforesaid settlement deed and hence the writ petition has been filed seeking a writ of mandamus to direct the release of the document, on payment of concessional stamp duty.

4. Substantial plea in the writ petition is as to whether the benefit of Explanation should be extended to the settlement deed which is executed in favour of great-grand child. In support of the plea, the learned counsel for the petitioner relied upon the following decisions of this Court: (i) W.P. No. 9734 of 2008, decided on 28.04.2008-Minor S. Karthick, rep. by his father and natural guardian K. Srinivasan vs. The Inspector General of Registration; (ii) S.V.L.S. Ranga Rao Vs. Secretary to Govt. Commercial Taxes and Another, .

5. In the first decision relied upon, the learned Single Judge, placing reliance upon the Circular issued by the Inspector General of Registrar in 9/K/vz/56264-rp 3-2000, dated 24.12.2001, came to the conclusion that the term "great grand-children" will come within the definition of the term "Family". Paragraph 7 of the order in W.P. No. 9734/2008, reads as under:

"7. The word "great grand children" will definitely come under the definition of family members and the refusal on the part of the second respondent to register the document and that too, without passing any written orders is not justified. When the petitioner have produced the proceedings of the first respondent dated 24.12.2001 issued in similar circumstances, holding that the word "great grand children" will come under the definition of the family members, the second respondent, who is the subordinate of the first respondent ought to have followed the clarification issued through the proceedings and ought to have registered the document without insisting for payment of Stamp duty on the basis of the market value. The stand taken by the second respondent cannot be legally sustained."

6. In the second decision relied upon, another learned Single Judge of this Court

took the view that "step-mother" would also become a member of the Family. In the said case, the learned Single was inclined to interpret the provisions of Article 58 of Schedule-I to the Indian Stamp Act to state that the definition to the term "family" given in Explanation is only illustrative and not exhaustive and therefore, cannot be construed to include only those persons who have been named as ''family members''. Paragraph 10 of the order of the learned Single Judge, reads as follows:

"10. However, I am unable to accept the contentions of the learned Government Advocate appearing for the respondents. Though Explanation to Article 58 of Schedule 1 of the said Act defines the persons coming under the word ''family'', it could be said that it is only an illustration and not an exhaustive one. Therefore, strict meaning cannot be construed so as to include only those persons who have been named as ''family members''. Further more, when adoptive mother and adoptive father could be included as members of the family, it is neither legal nor logic to say that the stepmother could not be construed as a family member."

7. While hearing the writ petition, the learned Single Judge entertained some doubts and recorded the same as under:

"8. The explanation appended to Section 58 indicates that the great grand children would not come under the definition "family". The petitioner has not challenged the validity of the explanation appended to Section 58. His claim is on the basis of the two earlier orders of this Court giving an extended meaning to the word "family".

When the legislation has explained the word "family", it is not for this Court to give an extended meaning to the said word so as to treat the settlement deed executed in favour of great grand daughters also as a valid deed of settlement. Therefore, with respect, I am not in a position to agree with the views expressed by the learned Single Judges of this Court, as indicated above. Since there should be judicial consistency, I cannot dismiss this Writ Petition by disagreeing with the views expressed earlier. Therefore, I am of the view that the matter requires consideration by the Division Bench."

Accordingly, the learned Single Judge has referred the matter to the Division Bench for an authoritative finding on the issue and thus the matter is before us.

8. We have heard the submissions of Mr. T.S. Mohammed Mohideen, the learned Additional Government Pleader, who would plead that the Circular of the Inspector General of Registration, referred to by the learned Single Judge, may not have legal bearing or justifiable in the light of the specific provisions contained Article 58(a) and Explanations contained in Schedule-I to the Indian Stamp Act. According to him, the definition to the word "family" given in the Explanation is exhaustive and not illustrative. In support of his argument, the learned Additional Government Pleader relied upon G.O.Ms. No. 126, Commercial Taxes and Registration (J1) Department, dated 30.09.2013, to emphasize that

where the word "family'' appearing in Article 58(a) of Schedule-I of the Indian Stamp Act has been amended to include "brother or sister", after grand child. The said Government Order reads as under:

"ORDER:

By way of the Tamil Nadu Act 19 of 2013 read above, amendment has been made to the explanation to the term ''family'', appearing in Article 58 of the Schedule I to the Indian Stamp Act, 1899 including ''brother or sister''.

2. The Government have decided to bring the above Act into force with effect from 01.10.2013 and accordingly direct that the Notification appended to this order will be published in an extraordinary issue of the Tamil Nadu Government Gazette, dated the 30th September, 2013."

Therefore, according to the learned Additional Government Pleader, if the Government wanted to include great-grand children also within the ambit of the term "family", they would have specifically added so. The specific inclusion of certain members and omission of others is a clear indication.

9. We find much force in the arguments of the learned Additional Government Pleader and are inclined to accept the same, as we find that the Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act, specifically sets out the persons who could be brought within the ambit of the definition "family". The Explanation has to be purposefully understood. It states that for the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child, (brother or sister-G.O. No. 126, dated 30.09.2013). In the case of any one whose personal law permits adoption, "father" shall include an adoptive father "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter.

10. The Explanation uses the word "means". The import of the word "means" as understood in legal parlance and interpreted will have to be considered. The word "means", found in the Industrial Disputes Act, has been interpreted by the Apex Court in Bharat Co-Operative Bank (Mumbai) Ltd. Vs. Co-Operative Bank Employees Union, . While interpreting the words "means and includes", the Supreme Court clearly came to hold that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively, which means it is not illustrative. The said decision clearly clarifies the issue on hand and paragraph 23 of the judgment reads as follows:

"23. Section 2(bb) of the ID Act as initially introduced by Act 54 of 1949 used the words "means.... and includes" and was confined to a "banking company" as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one province and includes Imperial Bank of India. Similarly, Section 2(kk), which was also introduced by Act 54 of 1949, defines insurance company as "an insurance" company as defined in Section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one province". It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition, to borrow the words of Lord Esher, M.R. in Gough v. Gough [(1981) 2 QB 665] it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see P. Kasilingam and others Vs. P.S.G. College of Technology and others, . On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the terms defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

11. The view taken in Bharat Co-Operative Bank (Mumbai) Ltd. Vs. Co-Operative Bank Employees Union, was following the earlier decision of the Supreme Court in P. Kasilingam and others Vs. P.S.G. College of Technology and others, of the said judgment reads as under:

"10. We will first deal with the contention urged by Shri Rao based on the provisions of the Act and the Rules. It is no doubt true that in view of clause (3) of Section 1 the Act applies to all private colleges. The expression ''college'' is, however, not defined in the Act. The expression "private college" is defined in clause (8) of Section 2 which can, in the absence of any indication of a contrary intention, cover all colleges including professional and technical colleges. An indication about such an intention is, however, given in the Rules wherein the expression ''college'' has been defined in Rule 2(b) to mean and include Arts and Science College, Teachers'' Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College. While enumerating the various types of colleges in Rule 2(b) the rule-making authority has deliberately refrained from including professional and technical colleges in the said definition. It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word ''means'' or the word ''includes''. Sometimes the words "means and includes" are used. The use of the word ''means'' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See: Gough v. Gough-(1891) 2 QB 665; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, . The word ''includes'' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand indicate "an exhaustive explanation of the meaning which for the purposes of the Act, must invariably be attached to these words or expressions". (See: Dilworth v. Commissioner of Stamps-1899 AC 99, 105-106 (Lord Watson); M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh, . The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of ''college'' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as the engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTC from time to time. As noticed earlier the Grants-in-Aid Code contains provisions which, in many respects, cover the same field as is covered by the Act and the Rules. The Director of Technical Education has been entrusted with the functions of proper implementation of those provisions. There is nothing to show that the said arrangement was to working satisfactorily so as to be replaced by the system sought to be introduced by the Act and the Rules. Rule 2(d), on the other hand, gives an indication that there was no intention to disturb the existing arrangement regarding private engineering colleges because in that rule the expression ''Director'' is defined to mean the Director of Collegiate Education. The Director of Technical Education is not included in the said definition indicating that the institutions which are under the control of Directorate of College Education only are to be covered by the Act and the Rules and technical educational institutions in the State of Tamil Nadu which are controlled by the Director of Technical Education are not so covered."

12. Considering the import of the word "means" in the above mentioned decision and the ordinary dictionary meaning of the word ''exhaustive", as per Concise Oxford English Dictionary, Tenth Edition, is "fully comprehensive". The interpretation of the word "means" in the Explanation will be specific to the members of the family mentioned therein. Therefore, it is very clear that the word "family" is not illustrative and cannot extend to any other members than those mentioned. The specific members mentioned in the Explanation alone will be entitled to the benefit of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act and none else. Court will not include a person not specifically included as member of the family for the purpose of Explanation to Article 58(a) of Schedule-I to the Indian Stamp Act.

13. Therefore, the finding of the learned Single Judge in S.V.L.S. Ranga Rao Vs. Secretary to Govt. Commercial Taxes and Another, that the definition "family" is only illustrative and not exhaustive will not hold good and it is not the correct interpretation of the word "family" found in Article 58 of Schedule-I to the Indian Stamp Act, 1899. Similarly, the decision in Minor S. Karthick, rep. by his father and natural guardian K. Srinivasan vs. The Inspector General of Registration-W.P. No. 9734 of 2008, decided on 28.04.2008, is also based on the Circular issued by

the Inspector of Registration, which is not in consonance with the provisions of the Indian Stamp Act. It has no statutory basis and it cannot over-ride the specific definition given in Article 58(a) of Schedule-I to the Act. The learned Single Judge has only gone by the said clarification issued by way of circular and has not interpreted the definition of the word "Family" found in Explanation to Article 58(a).

14. We find that in the light of the decisions of the Apex Court and the use of the word "means" in Explanation to Article 58(a) of Schedule-I to the Indian Stamp Act, 1899, there cannot be an extended or expanded meaning to the word "grand-child" to include "great grand-child" also, unless the Schedule specifically includes ''great grand child'', as in the case of ''brother or sister'', which was included vide G.O. No. 126. We find that the definition of the word "family" found in Article 58(a) is exhaustive and not illustrative.

15. Even under the Indian Succession Act, 1925 the grandchild and great-grandchild have specific rights under different circumstances. Sections 38 and 39 of Indian Succession Act can be referred to for the above purpose. Sections 38 and 39 of the Indian Succession Act reads as follows:-

"38. Where intestate has left no child, but grandchild or grandchildren:-Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is only one, or shall be equally divided among all his surviving grandchildren.

Illustrations: (i) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren will have one-ninth.

(ii) But if Henry has died, leaving no child, then the whole is equally divided between the intestate''s five grandchildren, the children of John and Mary.

39. Where intestate has left only great-grandchildren or remote lineal descendants:-In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree." Section 38 of the Indian Succession Act speaks of grandchild or grandchildren, whereas Section 39 of the Indian Succession Act speaks of the rights of great grandchild or grandchildren. They are treated separately for the purpose of inheritance.

16. The interpretation of the word "family" as contained in Explanation to Article 58(a) of Schedule-I to the Indian Stamp Act should not be misunderstood to say that great grandchild is not a family member. As it is evident from Sections 38 and 39 of the Indian Succession Act, their rights under the Indian Succession Act or any other Act are not extinguished.

17. Further, the word "family", as per Black''s Law Dictionary means as follows:

"Family.

1. A group of persons connected by blood, by affinity, or by law, especially within two or three generations.

2. A group consisting of parents and their children.

3. A group of persons who live together and have a shared commitment to a domestic relationship."

The great grandchild, no doubt, forms a part of the family by blood, by affinity and by law, and that is within two or three generations. But, for the purpose of the Indian Stamp Act, they will not get the benefit unless they are specifically added. As has been already pointed out, brother and sister were added into said Explanation of "family" by G.O.Ms. No. 126, Commercial Taxes and Registration (J1) Department, dated 30.09.2013. It is, therefore, for the State Government to include great grandchild or other remote lineal descendants, as members of the family, if they chose to, for the purpose of extending the benefit of the concessional stamp duty applicable to settlements within the members of the family. We would recommend the Government to suitably amend the Explanation to Article 58(a) of Schedule-I to the Indian Stamp Act, more particularly the word "family" to include great grandchild as member of the family for the purpose of the said explanation.

We, therefore, hold that the word "family" defined in the Explanation to Article 58(a) of Schedule-I, appended to Indian Stamp Act, 1899, would mean only such of those persons mentioned in the Explanation. Further, the definition to the word "family" found in Article 58(a) of Schedule-I of the Indian Stamp Act, 1899, is exhaustive and not illustrative and it is applicable only to such of those persons indicated therein and it will not extend to other persons who do not form part of the definition "family". In the present case, since the settlement is in favour of great grandchild (great grand-daughter), the benefit of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act will not be applicable.

For the foregoing reasons, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

