

(1985) 07 AP CK 0011

In the Andhra Pradesh High Court

Case No : Case Referred No. 113 of 1979

T.G. Thimmaiah Chetty and Others

APPELLANT

Vs

The District Registrar, Kurnool

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Stamp Act, 1899 — Article 40, 2(15)

Citation : AIR 1986 AP 14

Hon'ble Judges : P. Chennakesav Reddy, Acting C.J.;Punnayya, J;Amareswari, J

Bench : Full Bench

Advocate : M. Ram Mohan Rao, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Judgement

Amareswari, J.—This is a reference under S. 57(1) of the Stamp Act.

2. Petitioners 1 to 3, the father of the 4th Petitioner late T. G. Viswanatha Chetty and the father of the 5th petitioner late T. G. Padmanabha Chetty are brothers. All the five members are the sons of late T. G. Pompaiah. They are members of undivided Hindu family. After the death of T. G. Padmanabha Chetty, the major sons, the 4th and 5th petitioners herein were participating in the family business and other affairs as representatives of their respective branches. To distribute and divide the Immovable properties, the assets and liabilities they have appointed five arbitrators, who passed an award on 2-1-1976. The arbitrators effected a division and allotted the "A" Sch. properties of the value of Rs. 46,700/- to the 1st petitioner, and "B" Sch. properties of the value of Rs. 1,20,000/- to the 3rd petitioner. The residue contained in "C" Sch. Of the value of Rs. 6,15,900/- was kept towards the joint share of petitioners 2, 4 and 5. When the award engrossed on a stamp paper of Rs. 5,710/- was submitted for registration, it was impounded by the Sub Registrar on the ground that the stamp duty payable was Rs. 20,550/- and sent the same to the District Registrar, Kurnool. By proceedings dt. 17-7-1978, the District Registrar, Kurnool affirmed the decision of the Sub Registrar after hearing all parties concerned. The

petitioners went up in revision before the Commissioner of Survey, Settlements and Land Records (Chief Controlling and Revenue Authority). Before the Commissioner, it was mainly contended that the stamp duty payable was only on the total value of "A" and "B" Sch. properties at the rate mentioned in Art. 40 of Sch. I-A of the Stamp Act and that the value of "C" Sch. i.e., Rs. 6,15,900/- which represented the largest share remaining after the property is partitioned should be eliminated and "A" and "B" Sch. properties must be deemed to be the properties separated from the "C" Sch. properties. The Commission opined that stamp duty was payable only on the value of "A" and "B" Sch. and not on "C" Sch. and referred the following question for our opinion.

"Though division is one, among five brothers one share is given to one brother, one share to another brother, but the third share is given to three brothers, would this be called division in severalty or not."

3. We are afraid that the question is not happily framed. The point for consideration is whether the award is an instrument of partition involving division in severalty and if so, what the stamp duty payable ?

4. The learned Counsel for the petitioner Mr. Rammohana Rao, submitted that there was division in severalty and as such the value of the largest share should be eliminated for the purpose of stamp duty.

5. On the other hand, the learned Government Pleader supported the view taken by the District Registrar that the entire property must be deemed to have been divided into five shares and only the value of largest share is to be excluded and stamp duty should be paid on the value of the remaining four shares.

6. To appreciate the rival contentions and to decide the principal question, it is necessary to refer to the definition of "Instrument of partition" contained in S. 2(15) of the Stamp Act. It is as follows :-

"2 (15) :- "Instrument of partition" means any instrument whereby co-owners of any property divide to agree to divide such property in severalty and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition."

The definition contemplates that there should be a division of property in severalty. When does a division in severalty occur ? This point came up for consideration before a Special Bench of the Madras High Court consisting of three Judges, in *The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another, Varadachariar, J.*, speaking for the Court observed that where the original common ownership had ceased to exist there is a division in severalty and the question whether the substitute ownership is created by way of allotment to each individual among the original common owners or to group of individuals is immaterial. The facts in this case are, there were two firms to be divided between five partners. One firm was allotted to three partners who were undivided members of a family and other firm to the

other two members, one of whom was a distant coparcener and the other a stranger. It was contended that it was only a dissolution of partnership. The Court repelled that contention and held that the document fell as well under the definition of "instrument of partition". With respect, we agree with this view of the Madras High Court and applying this principle, we hold that there was a division in severalty inasmuch as the original common ownership of five had ceased and a different ownership had been created. The property was divided into three parts, one each of two members of the same branch and the other to three persons jointly. The award of the arbitrators is undoubtedly an instrument of partition within the meaning of S. 2(15) of the Stamp Act.

7. The subsidiary question that arises is what is the stamp duty chargeable ? Section 3 of the Stamp Act says that every instrument shall be charged with duty mentioned in the Schedule. Article 40 is the relevant Article in Sch. I-A which deals with instruments of partition. Article 40 recites that in cases of instruments of partition, the duty chargeable is on the value of the separated share or shares of the property and the note thereto explains that the largest share remaining after the property is partition shall be the property from which the other shares are separated. Now in the present case, what is the share that is separated and what is the share from which it is separated. "A" Sch. property is of the value of Rs. 46,700/- allotted to first petitioner and "B" Sch. property of the value of Rs. 1,20,000/- was allotted to the 3rd petitioner and "C" Sch. property of the value of Rs. 6,15,900/- was allotted to the share of three joint owners. Therefore, the largest share is the "C" Sch. property and the said property must be deemed to be the property from which "A" and "B" Sch. properties are separated. "A" and "B" schedule properties represent the share separated and "C" Sch. Represents the share from which the property is separated. Thus "C" Sch. is the residue after partition. We are unable to accept the contention of the learned Government Pleader that the entire property must be deemed to be divided into 5 shares and only the largest out of them is exempt from duty. We cannot spell out a notional partition either on the construction of S. 2(15) or Item 40 of Sch. I-A. The document must be read as it is. It clearly says that the property was divided into three shares out of which two were given to the individuals and the residue left joint. When once it is held that the award is an instrument of partition. Art. 40 in Sch. I-A is directly attracted and as per the said Article the largest share must be eliminated and the stamp duty is chargeable on the separated share. The intention seems to be to tax the share or shares divided off, and not the residue. The largest remaining share contained in the "C" Sch. properties of the value of Rs. 6,15,900/- is the residue while the separated properties are those contained in "A" and "B" Schs. of the value of Rs. 46,700/- and Rs. 1,20,000/- respectively. Hence stamp duty is chargeable on the value of the "A" and "B" schedule properties alone and the value of "C" Sch. properties cannot be taken into account. We answer the reference accordingly. No Costs. Advocates fee Rs. 500/-.

8. Order accordingly.