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**(1972) 10 AP CK 0006**

**In the Andhra Pradesh High Court**

**Case No : Case Referred No. 66 of 1971**

The Board of Revenue, Hyderabad

APPELLANT

Vs

Validity Ram Krishnaiah

RESPONDENT

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**Date of Decision : 06-10-1972**

**Acts Referred:**

Stamp Act, 1899 — Article 20, 46

**Citation : AIR 1973 AP 275**

**Hon'ble Judges : M. Lakshmaiah, J; Krishna Rao, J; A.V. Krishna Rao, J**

**Bench : Full Bench**

**Advocate : A. Suryanarayana Murty and Govt Pleader, for the Appellant; K.B. Krishna Murty and K.B. Ratna Sastry, for the Respondent**

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## **Judgement**

Krishna Rao, J.—The above case is posted before us for a decision on a reference made by the Chief Controlling Revenue Authority (Board of Revenue in this case) u/s 57 of the Stamp Act.

2. The facts giving rise to the reference may be stated. One Velvet Ramakrishnaiah and another Pasumarthi Seetharama Sastry, both residents of Vijayawada, purchased certain house property jointly under a registered sale deed on 30-11-1965. Pasumarthi Seetharama Sastry purported to execute a deed of release on 5-12-1967 in favour of Valiveti Ramakrishnaiah. The consideration recited was Rs. 9475 /-. The document was presented for registration before the Sub-Registrar, Vijayawada, on 6-12-1967. A stamp duty of Rs. 22-50 was paid on the document on the footing that it was a release deed under the provisions of Article 46 (b) of Schedule 1-A of the Indian Stamp Act ( II of 1899 ) as applicable in Andhra Pradesh. The Sub-Registrar thought that the stamp duty paid was not sufficient, as the document in question was a conveyance and not a release. The matter was referred to the District Registrar at Machilipatnam. After notice to the parties and hearing their objections, the District Registrar passed an order on 2-4-1948 holding that the document was a conveyance on sale and came under Article 20 of Schedule I. A. of the Act and

directed the respondent to pay a sum of Rs. 2,946-75. A penalty of Rs. 25 /- also was levied. There was a revision petition preferred to the Board of Revenue challenging the correctness of that order. The Board of Revenue had rejected the petition on 23-8-1968. Thereupon Valiveti Ramakrishnaiah had filed Writ Petition No. 4168 of 1968 before the High Court challenging the order of the Board of Revenue, which was the Chief Controlling Revenue Authority under the Act. In the said Writ Petition, the High Court directed the respondent ( Board of Revenue ) to refer the matter under Sec. 57 of the Stamp Act. The reference was accordingly submitted by the Board of Revenue to this Court u/s 57 of the Stamp Act.

3. Two questions were referred for opinion by this court and they are :

"(1) Whether the document No. P. 50/67 of the Sub-Registrar's Office, Vijayawada, executed by Pasumarthi Seetharama Sastry in favour of Valiveti Ramakrishnaiah is a release deed and the stamp duty of Rs. 22-50 under Article 46 (b) of Schedule I-A is sufficient ?

(2) Whether the document in question is a deed of " conveyance or sale " within Section 2(10) read with Article 20 of Schedule I-A and the levy of stamp duty of Rs. 2921.25 and the penalty of Rs. 25 /- is correct ?

4. In order to decide the points referred to us for discussion, it is necessary to reproduce the document in question, which is as follows :--

"1. Deed of release of joint right in the property described in the schedule below for the consideration of Rs. 9,475 /-.

2. Executed on fifth December, 1967 equivalent to 14th Margasira of 1989 of Salivahana Saka.

3. In favour of Valiveti Sadasiva Parabrahmam's son Ramakrishnaiah, resident of Vijayawada, Vijayawada Sub-Registry, Krishna district, by.

4. Pasumarthi Seetharama Sastry, son of Pasumarthi Parvatheesam, Hindu, Brahmin, resident of Vijayawada Sub-Registry, Krishna Dt.

5. Nature of Deed :-- You and I purchased jointly and as our self-acquired property the immovable property described in Schedule below under a registered sale deed on 30-11-1965. I have been residing on the upstairs portion of the said property. You have been realising all the rents for the downstairs portion and paying all the taxes as Rs. 43,000 /- out of the sale consideration for the said property remained unpaid purchase money by the date of the sale deed. Yourself and myself jointly executed a promissory note therefore in favour of the vendors. You paid Rs. 7,800/- from time to time towards the said promissory note debt. The rest of the debt has to be paid together with interest according to law there is a statutory charge for the said promissory note debt on the property mentioned in the schedule below. I intended to adopt Yati-Ashram and therefore to give up my practice as Pleader and I am leaving this town. My sons are

employed in Hyderabad and Warangal. Hence I have no necessity to discharge the statutory charge debt and retain some portion of the schedule property you have joint right. Adjacent to it on the eastern side there is your own property also. You represented that you require the entire schedule property for your own residence and your own business. Further, even though you and I purchased the schedule property jointly, I invested only a small amount for the purchase and the subsequent repairs. On looking into the account in regard to the amount invested by me, interest, rent etc., it is ascertained that you have to pay me Rs. 9,475 /-. I felt that it is in your interest to receive the said amount and execute a release deed in respect of my joint right in the schedule property vested in me under the sale deed without demanding any profits. Hence I agree to transfer to you my joint interest in the schedule property receiving Rs. 9,475 /- as consideration as fixed by you and me subject to the condition that you yourself shall discharge the entire unpaid purchase money which is a charge on the schedule property without my concern and I received in all Rs. 8,500 /- from you from time to time the balance of Rs. 975 /- is agreed to be paid before the Sub-Registrar, Vijayawada, at the time of the registration of this deed and thus I received the entire consideration of Rs. 9,475 /-. I hereby transfer to you my joint interest in the Schedule Property which vested in me under the sale deed and I delivered the possession of the same. Hence you shall from now onwards enjoy the schedule property with absolute rights. I or my heirs or representatives shall not raise any disputes in enjoyment thereof by yourself, your heirs or representatives. I have no ancestral property. All my properties are self-acquired. Hence my sons need not join in this deed. I transferred my joint interest hereby assuming you that I did not alienate the schedule property to anybody in any way. I vacated the upstairs portion and I delivered possession of the same to you. You and I have no disputes as regards rent for the said upstairs. The downstairs portions are in the possession of sub-tenants and we both filed jointly H. R. C. Nos. 524, 525, 526, 527 and 528 of 1966 in the Rent Controller's Court, Vijayawada, for evicting them. The said petitions are pending. As the said petitions were filed by us having joint interest, you shall contest the said petitions having obtained my joint interest, realising damages ( for use and occupation ) evict the tenants and enjoy the result thereof. Transfer forms for mutations of the schedule property in your name in the Municipal and Government accounts are filed herewith. An application for transfer of the electric service No. 5707 for the schedule property in your name is given to you herewith. The details of the property are given below.

#### 6. Schedule of property released :--

xx xx xx xx xx xx xx xx

This is the release deed in respect of joint right in immovable property executed by me with my consent.

Sd/- P. Seetharama Sastry. "

5. Our answer to the questions referred depend upon a construction of the above document. If it is a release deed, the stamp duty already paid is sufficient. If, on the other hand, the document is a conveyance or sale, the impounding of the document and the levy of stamp duty of Rupees 2,921.25 and the penalty of Rs. 25 /- would be correct.

6. If a document is a release deed, it is covered by Article 46 (b) of Schedule I-A of the Act. If the document is a conveyance or sale within the meaning of Section 2(10) of the Act, then the stamp duty is leviable under Article 20 of Schedule I-A of the Act.

7. From a reading of the document above extracted the following facts emerge ; The document is styled as a release deed, though by itself it cannot be said to be conclusive of the character or nature of the document. Ramakrishnaiah and Seetharama Sastry jointly purchased the immovable property referred to in the document. It would appear that Ramakrishnaiah contributed a major portion of the consideration for the sale. There was the unpaid purchase money of Rs. 43,000 /- still outstanding and there was a vendor's lien on the property purchased by them. After purchase and having been put in possession, they owned and enjoyed the property jointly as co-owners, though for purchase of convenience in the matter of enjoyment one was occupying the upstairs portion and the other the downstairs portion of the house property. Seetharama Sastry, with a view to take Sanyasa Asramam desired to give up the joint interest in the property as a co-owner in favour of the other co-owner. He had contributed only a small amount for the joint purchase. On looking into the accounts, it was found that Ramakrishnayya had to pay a sum of Rs. 9,475 /- and it was agreed that the said amount of Rs. 9,475 /- should be paid by Ramakrishnayya to Seetharama Sastry for the purchase of releasing the joint interest which Seetharama Sastry had in the property.

From the document, it is clear that there was no attempt by the parties to determine the then existing value of the share of the Seetharama Sastry on the date of the execution of the document and then make a conveyance of the property for a proper consideration. It was merely a case of a release by Seetharama Sastry of his rights in the property after taking back the amounts which he had originally contributed for the purchase. The document did not disclose any intention of the parties either to sell or purchase the same. The property was owned jointly until the date of the execution of the document and it cannot be said that a new interest or right was created in favour of Ramakrishnayya for the first time. It is really a case of the withdrawal of the executant Seetharama Sastry which operated as his effacement from co-ownership and thus resulting in an enlargement of the interest of the other co-owner Ramakrishnayya.

The word " release " is not defined in the Stamp Act. There is already a legal right in the property in Ramakrishnayya who is a co-owner. The incidents of the co-ownership are well established. Each co-owner in theory is entitled to enjoy

the joint property either in part or in its entirety and when one co-owner releases his interest or walks out, it cannot be said that there is any conveyance of his interest to the other co-owner. No doubt in the document, the language is employed which if not properly understood in the context of the document and the character of the ownership of the property, may lead to an argument that the transaction evidenced by the document was a conveyance. In fact stress was laid by the Government Pleader on the sentence in the document. " Hence I agree to transfer to you my joint right in the Schedule Property receiving Rs. 9,475 /-..... I received the entire consideration of Rs. 9,475 /-. I hereby transfer to you my joint interest. .... Hence you shall from now onwards enjoy the schedule property with absolute rights. " The word " transfer " employed in the document cannot be understood to mean a conveyance or sale. There is no warrant for the view that it is only in a case where the release deed is gratuitous it operates as a valid release deed. A document of release may be validly executed even if it recites some benefit to the executant simultaneously with the act of release. In our view, the fact that the document contained words like " consideration " and " transfer " do not affect the substantial or true character of the transaction. The designation given to the document is that it is a release deed, though by itself is not decisive of the character of the transaction. The contents of the document, the intendment of the parties as can be seen from the document and the joint nature of acquisition by both the parties and the mode of enjoyment are all decisive of the fact that the document in question evidences a transaction by way of release of the interest of the executant in favour of the release, the parties to the transaction being co-owners.

8. That the above is the correct position is borne out by the decision of the Madras High Court referred to before us : in Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, , a similar question was referred to by the Board of Revenue u/s 57 of the Stamp Act. The document in that case was styled as a release deed. It was dated 23-5-1949. The question before the Full Bench was whether Article 44 (b) of the Stamp Act in Madras which is the same as Article 46 (b) of the Andhra Pradesh Act was applicable to the instrument in question. There were five partners of a registered firm known as " Gudiyatham Lungi Company ". Three of the partners executed the deed in question in favour of the other two partners. The executants had ceased to be partners of the firm from and after 12-4-1949. The preamble recited that the executants were co-owners of the immovable property described in the schedule to the document and that the executants who had retired from the firm renounced all interest in the said property by and under the deed receiving the proportionate value of their shares in the property in cash. The deed recited that it was being executed in consideration of a sum of Rs. 9,858-9-7 and the executants had released all their respective rights, claims, interest etc. In respect of the property described in the schedule. The question that fell for determination before the Full Bench was whether the instrument in question fell within the definition of a conveyance under Article 19 of the Schedule I-A of the Madras Stamp Act. Their Lordships

were of the opinion that it was not a conveyance. It was observed that the property in question was owned by the parties to the instrument at co-owners, the executants being entitled to a 3/5th share and the other two being entitled to the other 2/5th share. They laid stress on the fact that there was no division of the property by metes and bounds at any time anterior in accordance with their respective shares. In such circumstances, the document in question was a release within the meaning of Article 44 of the Madras Stamp Act.

Reference was made by the Full Bench to a decision in " Reference under Stamp Act Section 46 " ( 1895 ) 18 Mad 233 ( FB ). The said Full Bench in a reference u/s 46 of the then Stamp Act had to consider the question of a document executed by Hindu son in favour of his father representing the other members of the family relinquishing his rights in the property of the family in consideration of certain lands being allotted to him for life and also certain debts incurred by him being paid. The learned Judges observed that it was a deed by which the co-owner renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of certain lands over which he had no power of alienation. It was held that the instrument in question was a release and should be stamped as such. The principle enunciated therein was in relation to a Hindu joint family and a relinquishment by one coparcener in favour of others in consideration of some benefit conferred on the relinquishing coparcener. Such an instrument was held to be a release deed. The principle decided in " Reference under Stamp Act, Section 46 " (1895) 18 Mad 233, was applied by the later Full Bench to the case of Co-owners and a release by one or more of them in favour of the others for a stated consideration. The Full Bench held that the document in question was a release deed and that it was neither a deed of dissolution of partnership nor a conveyance.

9. In another Full Bench decision of the Madras High Court in Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, , a somewhat similar question had arisen. That again was a reference u/s 57 of the Stamp Act and the question was whether the instrument in the case before the Full Bench was a release of conveyance amounting to a transfer of property for value. The Full Bench considered the essential ingredients of a release. They quoted with approval the observations from the Full Bench decision in Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, and held that the instrument before them was a release. In support of their conclusion, they referred to a decision of their Lordships of the Supreme Court in Kuppaswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, . The Supreme Court was concerned with a document of a release. It was observed by the Supreme Court that a release deed could only feed title, but could not transfer title and that renouncement must be in favour of a person who had already title to an estate, the effect of which was only to enlarge the right.

10. Now advertent to the document in the present case before us we have no manner of doubt that it is a release deed. We, therefore, unhesitatingly hold that

the document has been correctly stamped as a release deed.

11. Our answers therefore to the questions referred to us are as follows :--

(1) That the document No. P. 50/67 of the Sub-Registrar's Office, Vijayawada, executed by Pasumarthi Seetharama Sastry in favour of Valiveti Ramakrishnaiah is a release deed and the stamp duty of Rs. 22.50 paid under Article 46 (b) of Schedule I-A of the Stamp Act is sufficient ; and

(2) That the document in question is not a deed of conveyance or sale within the meaning of Section 2(10) read with Article 20 of Schedule I-A and that the levy of stamp duty of Rs. 2,921.25 and the penalty of Rs. 25 /- is incorrect and unsustainable.

12. The reference is answered accordingly.

13. Answer accordingly.