(1989) 03 MAD CK 0087

In the Madras High Court

Case No : R.C. No. 6 of 1983

The Chief Controlling Revenue Authority (Stamp Act) and Inspector General of Registration, Madras	APPELLANT
Vs	
Gunapala Nainar and Others	RESPONDENT

Date of Decision : 28-03-1989

Acts Referred:
Stamp Act, 1899 — Article 32, 46, 2(15)

Citation : AIR 1989 Mad 268 : (1989) 1 LW 374

Hon'ble Judges : Nainar Sundaram, J;K.M. Natarajan, J;Bellie, J

Bench : Full Bench

Advocate : V. Thiagarajah, for the Appellant; P. Narasimhan, for the Respondent

Judgement

Nainar Sundaram, J.—This is 3 reference u/s 57 of the Indian Stamp Act 2 of 1899 hereinafter referred to as the Act. The question referred for our consideration runs as follows :

"Whether the document dated 7-11-1976 executed by Thiru Gunapata Nainar, Thiru Appandai Nainar and Smt. Savithiriammal purporting to be a partition deed is just a partition or is an exchange as well as a partition?"

Gopala Nainar and Appandai Nainar are the sons of Boopala Nainar. Savithiriammal is the widow of Boopala Nainar. The apparent tenor of the document, dated 7-11-1976, is one of partition. There is a reference to an earlier deed of partition dated 5-7-1970 and it is stated that by that deed, the lands, nanja and punja, were divided amongst the parties; and houses, vacant sites, and gardens were left undivided, and the partition, as per the deed dated 5-7-1970 was not given effect to and there was no separate enjoyment as per the division, because the division was unequal and there were quarrels over the same; and the parties continued to be a joint family, and they are dividing all the family properties. The proper properties included those covered by the deed, dated 5-7-1970. The relevant recitals run as follows :

The Revenue wanted to say that in respect of the properties already covered by the deed, dated 5-7-1970, the transaction under the present deed, dated 7-11-1976 could only be an exchange and in respect of other properties, it could be a partition. On the other hand, the parties want to maintain that the present deed reflects only a partition since the earlier partition of the date 5-7-1970 in respect of the lands, nanja and punja was not given effect to and the family continued to be joint.

2. If we go by the explicit recitals in the present deed, it could be construed only as a partition amongst the parties of all the properties. The reference to the deed, of date 5-7-1970 need not necessarily militate against the present deed being construed only as one of partition. We may take note of the recitals in the present deed to the effect that in spite of the earlier deed of date 5-7-1970, the parties continued to be joint and there was no effectuation of the division set out in the earlier deed of dale 5-7-1970. The fact remains that the earlier deed of the date 5-7-1970 by its apparent terms did not bring about a total partition. It was only a partial partition of lands, nanja and punja. The parties continued to be joint in respect of houses, "vacant sites and gardens. Hence, there is no warrant to discredit the express recitals in the present deed that in spite of the earlier partition in view of the circumstances set out in the present deed, the parties did not effectuate the division and they continued to be joint. We also find that in the objections filed before the District Registrar, the parties have adverted to a subsequent acquisition in the name of Appandai Nainar on 26-2-1973 of a land, and which land has also been brought under the present deed of partition. If the parties have not continued to be joint there is no warrant for pooling this item also for the purpose of division under the present deed. The mere fact that the shares were ascertained, and allotted does not lead to an inference that there was effectuation of the division. The intention of the parties to continue as joint has been expressed. It is not case of reunion. It is also not a case of reopening the partition. It is a case of the Parties consciously not giving effect to the partition and continuing to be joint. In the objection filed by them, the parties wanted to produce evidence to demonstrate that even after the deed of date 5-7-1970, they were enjoying the properties in common. Admittedly no opportunity was given to them to place such evidence. On the other hand, the Revenue wants to take note of two deeds of mortgages; one executed by Gunapala Nainar and other executed by Appandai Nainar referred to in the encumbrance certificate as indicative of the partition of the date 5-7-1970, coming into effect. Admittedly the parties were not called upon to explain these documents, assuming that they have any relevance on the question. These documents may be stated, are not conclusive on the question of the earlier partition having been given effect to. There is nothing wrong in the parties, who brought about a deed apparently declaring a partition, to abandon the same or in other words not to effectuate the same and continue to be joint. This is exactly the position which seem to have happened in the present case and that is set forth in explicit terms in the present deed. Hence, we answer the question that

the deed dated 6-11-1976 executed by Gunapala Nainar, Appandai Nainar and Savithiri Ammal could only be classified as a partition deed and stamp duty thereon under the Act could be collected only on that basis. We answer the reference as above. We make no order as to costs. We fix the fees for the Government Pleader at Rs. 500.

