
(1972) 10 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 5389 of 1970

V.K. Sundaram and Another

APPELLANT

Vs

The Tahsildar Palghat and Another

RESPONDENT

Date of Decision : 12-10-1972

Acts Referred:

Kerala Stamp Act, 1959 — Section 32, 47, 47(b), 47(c)(5), 48

Citation : (1973) KLJ 433

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : T.L. Viswanatha Iyer and E.R. Venkiteswaran, for the Appellant;

Judgement

V.P. Gopalan Nambiyar, J.—The petitioner seeks to quash the orders of the Tahsildar, Palghat, confirmed on appeal by the Board of Revenue, by which the petitioner's request to refund the value of unused stamp papers totalling to Rs. 540/- was refused. The petitioner is a coowner, along with five others, in respect of a property regarding which a jenmom deed had to be executed. Four of the coowners were in Bombay, and two in Jaipur. The document in question, in respect of which the unused stamp papers were affixed, was written up on 17-6-1967 and was sent to Bombay for execution by the four coowners there. Ex. P1, which is a copy of the power of attorney and the endorsement thereon will show that the jenmom assignment deed for Rs. 6000/- was written on 17-6-1967 and signed by the four Bombay coowners nearly two months thereafter, viz. on 18th August, 1967. The endorsement shows that the power of attorney was executed by the four persons at Bombay in the presence of the Notary Public. It was thereafter sent to Jaipur for execution and was executed by the two coowners at Jaipur also (exact dates unknown). But for some reason or other, the transaction could not go through, and the jenmom assignment deed did not materialise. On 7-12-1967, Ex. P5 application for refund of the value of the stamp papers used was made, which resulted in the impugned orders, copies of which have been filed as Exs. P2 and P4. S. 47 and 48 of the Kerala Stamp Act

read as follows:

47. Allowance for spoiled stamps:-- Subject to such rules as may be made by the Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made, within the period prescribed in S. 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely: -

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) the stamp used for an instrument executed by any part thereto which:

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured or by the refusal or non acceptance of any office thereby granted, totally fails of the intended purpose;

(6) become useless in consequence of the transaction intended to be thereby effected, being effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu thereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceedings has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation:-- The certificate of the Collector under S. 32, that the full duty with which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section.

48. Application for relief under S. 47 when to be made: The application for relief under S. 47 shall be made within the following periods, that is to say:

(1) in the cases mentioned in Clause (c)(5), within two months of the date of the instrument.

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled.

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument or, if it is not dated, within six months after execution thereof by the person by whom it was first or alone executed:

Provided that:

(a) when the spoiled instrument has been for sufficient reasons sent out of the state, the application may be made within six months after it has been received back in the State.

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given upto be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

There is no definition of what is meant by a "spoiled instrument" referred to in the proviso to S. 48(3). S. 47 refers to "stamps spoiled". Whether there is any subtle distinction between "spoiled stamps" and "spoiled instruments" and whether a document bearing spoiled stamps can be regarded as a "spoiled instrument" appear to be matters of some nicety and difficulty. But going through the provisions of S. 47, especially clause (b) thereof, the impression left in my mind is that stamps are said to be spoiled, even if they are affixed on any document written out wholly or in part, but which is not signed or executed by any party thereto. This impression which is discernible from S. 47(b) is still further reinforced by S. 48(2) of the Act, which provides for an application for relief, in respect of a stamped paper on which no instruments has been executed by any of the parties thereto. From these indications, I am of the opinion that the document in this case, written up on 17-6-1967 and signed by the Bombay executants on 18-8-1967 was a "spoiled instrument" in respect of which relief could be claimed under S. 47(c)(5), on the ground that though executed, the document had totally failed of the intended purpose by reason of refusal of any person to act under the same etc. Under the proviso to S. 48(3) it is enough if the application for relief is made within six months after it is received back in the State in case where the spoiled instrument is sent outside the State. The stand taken by the State is that under the proviso the instrument should have been

sent out of the State after it has been spoiled, and in this case it cannot be said that it has been so sent outside the State. I am afraid, looking into the provisions of the two Sections, and as a matter, essentially of first impression, I cannot agree with this contention. The instrument was spoiled when it was written up, and thereafter it was sent outside the State, to Bombay for execution by the four coowners there. This satisfies the proviso to S. 48(3) of the Act. There is no controversy that the application for refund was occasioned by reason of the refusal of any person to act under the document within the meaning of S. 47(c) (5). Under S. 48(1), the ordinary period for refund of the value was, no doubt, within two months of the date of the instrument. This was the view taken by the Tahsildar and by the Board of Revenue, but they completely ignored the proviso to S. 48(3) of the Act. In my view, the proviso is squarely attracted; and being so, the application for relief was within time.

2. I therefore allow this O.P. and quash Exs. P2 and P4 orders and direct the 1st respondent to pass an order of refund to the petitioner in accordance with law. There will be no order as to costs.