
(2002) 10 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 14357 of 2000 and W.M.P. No. 20793 of 2000

V.S. Somasundaram

APPELLANT

Vs

The Chief Controlling Revenue Authority, The District
Registrar and The Sub Registrar

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 LW 253

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : T. Murugamanickam, for the Appellant; R. Chandrasekaran,
Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner seeks for the issue of a writ of certiorarified mandamus to call for the records connected with the order of the first respondent dated 14.7.2000 and to direct the third respondent, Sub-Registrar, Sivagiri, Erode taluk, to register the partition deed dated 9.3.1999 kept pending for registration. The following facts are sufficient for the disposal of the writ petition.

Petitioner's late father, Shanmugha Gounder was possessed of ancestral properties. His father died intestate leaving behind the petitioner's mother, Vellammal, petitioner's sisters Parvathy , Gandhimathi and the petitioner being the son along with his own son Karthikeyan. By a family arrangement entered into among them in the year 1998, it was decided that the mother Vellammal will get "A" schedule property, the petitioner will be entitled to "B" schedule property and "C" schedule property to the son of the petitioner and the remaining "D" schedule property should go to the sisters of the petitioner. However, before the family arrangement could be reduced into writing, the petitioner's son Karthikeyan who got married subsequently, died leaving his wife Dhanalakshmi

and his mother Nagarathinam to succeed to his share. It is also stated that his son left behind huge debts which were more than the properties allotted to him in the family arrangement. The petitioner's son died within 15 days of marriage and his wife Dhanalakshmi left for her parental home.

2. The petitioner further submitted that the family arrangement was later reduced to writing by a partition deed dated 9.3.1999 wherein it was decided that the "C" schedule property allotted to his son Karthikeyan should go to his wife Dhanalakshmi and his mother Nagarathinam who were his legal heirs. However, the petitioner's daughter-in-law Dhanalakshmi, did not evince any interest and was satisfied with the maintenance given to her by the petitioner and his wife. She also desired that her share in "C" schedule properties be given to the petitioner's wife, Nagarathinam who was the other sharer entitled to succeed to the properties of the deceased son. Therefore, in the partition deed the properties were set out and allotted to the various sharers in terms of the previous family arrangement and in view of the subsequent developments and the later desire of the petitioner's daughter-in-law, her share in the "C" schedule properties was to be released in favour of her mother-in-law Nagarathinam. The partition deed was presented for registration before the third respondent. But the third respondent felt that though the partition among the various other sharers the registration could be effected, with reference to the release of the right by the daughter-in-law of the petitioner, in favour of her mother-in-law, Nagarathinam, a higher stamp duty was payable. With the result, the document was impounded and a demand of additional stamp duty was raised. The above writ petition has been filed to quash the same.

3. In the counter filed by the Chief Controlling Revenue Authority, it is contended that the disposition of property termed as release would amount to a settlement under Article 58(ii) of the Indian Stamp Act because Thirumathi. Nagarathinam was not a coparcener and has no right to any share in the Hindu Joint family property. The release made by the daughter-in-law could not be termed as legal. The property of Karthikeyan should be treated as having been merged with his family property on his death and in view of the present partition deed, it should be divided according to the Hindu Law among the co-parceners. Thirumathi. Nagarathinam is not a co-parcner and hence the release has to be treated as a settlement. She is not entitled to any share in the joint family property as her husband has been allotted a share under the document.

4. The main reason behind the Revenue seeking to treat the document as one of the settlement is that neither the releasor, nor the releasee is a co-parcener and hence there can be no question of any release and the document should be treated as settlement. One further reasoning appears to be that the releasor had absolute rights over the property over her share of the property and she was entitled to deal with the property as her own in any manner she liked. It is only by virtue of such an absolute right, she was conveying her property to her mother-in-law. Such a conveyance either with or without consideration would

result in transfer of title. If the conveyance is for consideration, it would be a sale or a settlement if it is gratuitous.

5. The stand taken by the Revenue appears to be logical but as I am bound by at least two judgments of two different Full Benches of this Court as detailed below, I am inclined to hold that the document has to be treated as a release deed. In Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, , the Full Bench had to consider a document termed as release deed executed between two co-owners. They were not coparceners. Rajamannar, Chief Justice held as follows:-

"In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not, therefore, necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner."

The Full Bench also took note of the situation as to whether the releasor and releasee should be coparceners and observed as follows:-

"We can see no difference in principle, between such a document as between members of a coparcenary and, the document in question, which is a document between co-owners."

6. This judgment was followed by another Full Bench in the CHIEF CONTROLLING REVENUE AUTHORITY v. RUSTORN NUSSERWANJI PATEL ILR 1968 Mad 651.

7. The above two judgments emphasise that one co-owner having absolute rights over an undivided share in the property can release his right in favour of co-owner and if such a document is termed as release, then it should be treated as a release deed. The parties to the document need not be coparceners.

8. In the result, the petitioner is entitled to succeed and the writ petition is allowed as prayed for. No costs. Connected miscellaneous petition is closed as unnecessary.