

(2013) 05 KL CK 0038

High Court Of Kerala

Case No: Writ Petition (C) No. 29308 of 2012

Jose

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: May 20, 2013

Acts Referred:

- Kerala Stamp Act, 1959 - Serial No. 42(i)

Citation: (2013) 2 KLT 853

Hon'ble Judges: P.R. Ramachandra Menon, J

Bench: Single Bench

Advocate: S. Ananthakrishnan and N.K. Subramanian, for the Appellant; M.J. Rajasree), for the Respondent

Final Decision: Allowed

Judgement

P.R. Ramachandra Menon, J.

Whether the petitioner does come within the purview of the term "family" as given in the "Explanation" to Serial No. 42(i) of the Schedule to the Kerala Stamp Act, 1959, to have the benefits flowing there from, by satisfying only the maximum stamp duty of Rs. 1000/- for registering the "partition deed" among the members concerned, is the issue involved herein. The father of the petitioner (by name Thomas) and his brother (by name Varkey) were the joint owners of the property having an extent of 2.27 acres comprised in Sy. No. 810/3 of Kaduthuruthy Village in Kottayam district. The said property was purchased in their names by their father by virtue of Ext. P1 sale deed dated 25.3.1964 of the SRO, Kaduthuruthy. Ever since the execution of the said deed, they were enjoying the property with joint possession, also remitting the tax, as borne by Ext. P2.

2. While so, the father of the petitioner executed Ext. P3 Will, whereby his undivided right over the property was bequeathed in favour of the petitioner, as Item No. 3 of A-Schedule in Ext. P3 Will. Subsequently, the father of the petitioner bid farewell to

this world and the Will became alive, virtually making him the owner of half of the undivided interest over the total property covered by Ext. P1. For better enjoyment of the above said property, the petitioner and his paternal uncle by name Varkey sought to effect partition of the property by metes and bounds and it was accordingly, that Ext. P4 document was executed on 9.11.2012. But when the said document was taken up for registration, it was refused to be registered by the registering officer, finally taking the proceedings to be dealt with by the second respondent, who considered the same and passed Ext. P5 order dated 28.11.2012 declining the relief, holding that the Stamp Duty had to be paid at higher rates as provided under Serial No. 42(ii) of the Schedule as the executants do not come within the definition of the term "Family" to have the benefit of lesser stamp duty under Serial No. 42(i) of the Schedule. This in turn is under challenge in this Writ Petition.

3. Mr. S. Ananthakrishnan, learned Counsel for the petitioner submits that the very idea and understanding of the second respondent as to the purpose of the enactment and the definition of the term "Family" as it now stands after the amendment (which gives a wider definition) is quite wrong and misconceived. It is also stated that the issue is clearly covered by the judgment rendered by this Court in [Bahuleyan Vs. District Registrar](#), and that the petitioner is entitled to have the benefit of lesser stamp duty as provided under Serial No. 42(i) of the Schedule to the Kerala Stamp Act.

4. The learned Government Pleader appearing for the respondents seeks to sustain Ext. P5 contending that the petitioner is liable to pay stamp duty as provided under Serial No. 42 (ii) of the Schedule to the Kerala Stamp Act. It is stated that the property came to the hands of the petitioner by virtue of Ext. P3 Will and that the Executant of the Will is no more and further that there is no co-ownership between the petitioner and his paternal uncle. It is contended that the term "family" is clearly defined as per the explanation given under the provision, which does not take in the petitioner and his paternal uncle, to have the benefit of lesser stamp duty under Serial No. 42(i) of the Schedule of the Act. The learned Government Pleader also points out that the decision sought to be relied on by the petitioner [Bahuleyan Vs. District Registrar](#), was intercepted by a Division Bench of this Court, as per the judgment dated 29.11.2012 in W.A. No. 1697 of 2012 (reported in [District Registrar Vs. Bahuleyan](#),). The Finance Act, 2011, by way of amendment introduced a beneficial provision for satisfying stamp duty to a lesser extent if the partition is among all or some of the members of the "family". Serial No. 42(i) of the Kerala Stamp Act and the "Explanation" thereunder clearly denotes that, in such cases, the stamp duty payable as per the amendment, is only to the extent of Rs. 1/- for every 100 rupees or part thereof, subject to a maximum of Rs. 1000/-. So as to have the above benefit, the partition has necessarily to be among the members of the "family" within the specified extent of relationship as it appears under the "Explanation" given.

5. It is true, that there may be several members in a family. But the benefit of paying lesser stamp duty in the case of a partition within the family was thought of and brought about only in respect of persons/members, who are clearly mentioned under the head "Explanation". The legislative wisdom or reason for fixing the boundaries to the appropriate extent is beyond the scrutiny of this Court. Unless the parties specifically do come within the parameters prescribed, the benefit intended to be provided to the deserving category cannot be extended or widened. The term "Family" as incorporated under the Head "Explanation", before the amendment of the Statute, meant only husband, wife, children and the legal heirs of the deceased children, if any as the case may be. But, after the amendment, the term "Family" means father, mother, husband, wife, son, daughter, grand children, brother, sister, legal heirs of the deceased children if any as the case may be.

6. Applying the legal position to the given set of facts and circumstances, it is seen that the property was originally purchased in the name of the father of the petitioner and the father's brother jointly, with equal rights. Going by the terms of the "Explanation", it was quite possible to have the property partitioned between the two brothers, availing the benefit of lesser stamp duty under Serial No. 42(i) of the Schedule to the Act. The petitioner stepped into the shoes of his deceased father, based on Ext. P3 Will and this however has not changed the characteristics of the "Family". As per the Will, no stranger has been inducted and even if no Will was executed, the petitioner would have naturally obtained the status of a legal heir (along with other legal heirs, if any). Along with the son and daughter, as well as brother and sister, lineal descendants such as grand children, and legal heirs of the deceased children, if any are also taken care of to be included within the term "Family". This Court is of the view that the purpose of legislation has to be given effect to, while interpreting the provision and merely for the reason that the petitioner's father is no more, the benefit which otherwise could have been drawn by the father, had he effected the partition with his brother during his life time, cannot be simply denied to the petitioner.

7. During the course of hearing, a recent decision rendered by a Division Bench of this Court headed by the Hon'ble the Chief Justice, as reported in State of Kerala Vs. Manuel, was also brought to the notice of this Court. The above decision, rendered on 1.3.2013, has also taken note of the earlier decision rendered by the Bench in W.A. No. 1697 of 2012, reported in District Registrar Vs. Bahuleyan, cited from the part of the State. After considering the matter elaborately, it was observed in paragraph "6" as follows:

6. On a reading of the amendment, the word "family" includes father, mother, son, daughter, brother, sister, legal heirs of deceased children and so on and so forth, as extracted above. It cannot be gainsaid that only if a father and mother are alive, the children could be considered as having the status of sons and daughters and otherwise they would only be brothers and sisters. Any permutation and

combination of the persons mentioned in the definition of "family" would be entitled to have a partition claiming the benefit of lesser Stamp duty as is provided in Serial No. 42(i) of the Schedule to the Stamp Act.

8. From the above, it is clear that any permutation and combination of persons mentioned in the definition of the term "Family" would be entitled to have a partition, claiming the benefit of lesser stamp duty as provided under Serial No. 42(i) of the Schedule to the Kerala Stamp Act. The Bench made it clear that, it would be a wrong proposition to say that, only if the father and mother were alive, the children could be considered as having the status of "sons and daughters" and otherwise, they would only be brothers and sisters. The dictum is applicable to the case in hand as well. In the said circumstances, this Court finds that the petitioner is entitled to succeed. Accordingly, Ext. P5 order passed by the second respondent is set aside, as not correct or sustainable. There will be a direction to the Registering Authority to register the original of Ext. P4 partition deed, accepting the stamp duty as provided under Serial No. 42(i) of the Schedule to the Kerala Stamp Act (subject to a maximum of Rs. One thousand), if and when presented. The parties are set at liberty to present the original of Ext. P4 Partition Deed before the Registering Authority and on satisfying other legal requirements, it shall be caused to be registered forthwith, extending the benefit as aforesaid. The Writ Petition is allowed. No cost.