

Manuel:

18855 of 2012

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 19TH DAY OF OCTOBER 2012/27TH ASWINA 1934

WP(C).No. 18855 of 2012 (F)

PETITIONER(S):

MANUEL, AGED 66 YEARS
S/O.ISAHACK, PENGATTUKUNNEL HOUSE, SOUTH EZHIPRAM KARA
VAZHAKKULAM VILLAGE, KUNNATHUNAD TALUK
SOUTH VAZHAKKULAM P.O., PIN-683 105.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF REGISTRATION, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. THE DISTRICT REGISTRAR (REGISTRATION)
OFFICER OF THE DISTRICT REGISTRAR
ERNAKULAM DISTRICT-682 011.
3. THE SUB REGISTRAR OFFICER,
SUB REGISTRAR OFFICER, PERUMBAVOOR-683 542.

R1 BY GOVERNMENT PLEADER SRI.K.C. VINCENT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-09-2012, THE COURT ON 19-10-2012 DELIVERED THE FOLLOWING:

AMACHANDRAN NAIR, J.

W.P.(C).No. 18855 of 2012

THIS THE 19th DAY OF OCTOBER, 2012

JUDGMENT

~~the~~ **Ability** to pay stamp duty on a partition deed executed by the ~~petitioner~~ and other members of the family, is the subject matter of the writ ~~petition~~. The partition deed is executed in a stamp paper of Rs.1,000/-, but the third respondent insists for payment of stamp duty at 6%.

2. The facts of the case are the following: The petitioner is the son of deceased Isahack. The document is executed between the petitioner and his brothers and sisters, legal heirs of Shri Yohannan, the deceased brother of the petitioner and the legal heirs of his deceased sister Smt. Mariamma. Ext.P1 is the copy of the deed. It is pointed out that even in respect of settlement deed under Schedule 51 of the Schedule attached to the Kerala Stamp Act, which is executed in favour of the members of the family, the maximum stamp duty is only Rs.1,000/-.

3. The stand taken by the third respondent in the statement, is that the properties included in the partition deed are those devolved on them after the death of the petitioner's father and mother and they also intend to partition the property devolved on them after the death of the brother of the

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petitioner. There is no doubt regarding the right of the petitioner or other executants over the scheduled properties. As far as Article 42(i) of the Schedule is concerned, the definition of family include father, mother, husband, wife, son, daughter, grand children, brother, sister and legal heirs of the deceased children. In Ext.P1 partition deed, all the executants are not coming under the definition of 'family' and some of the executants are legal heirs of the brother and sister of the petitioner. It is further stated that the Explanation in the amendment does not include the relation 'legal heir of the brother or sister' and therefore the document cannot be registered.

4. Learned counsel for the petitioner submitted that executants 1 to 5 are children of deceased Isahack, executants 6 to 12 are children of deceased Yohannan, who is a deceased brother of the petitioner, executant No.13 is the widow of late Yohannan and executant No.14 is the daughter of one pre deceased sister of executants 1 to 5. Thus, it is submitted that the executants are children of deceased Isahack, legal heirs of one deceased son of Isahack, Yohannan, the widow of Yohannan and daughter of the deceased sister of the petitioner and hence they are covered by the explanation.

5. Before going into the details, I shall refer to the document itself.

The recital in the document shows that the property scheduled therein obtained by Isahack and his wife Mariyam in a family partition of the year 1976 and were included in 'E' and 'D' schedules therein. 'E' schedule properties were allotted to them exclusively and 'D' schedule was allotted to Seemon, another son of Isahack and Mariam, after retaining the life interest with the parents. Isahack, Mariyam and Seemon are no more. Seemon was unmarried. Therefore, it is stated that after the death of the parents as well as Seemon, the property devolved on executants 1 to 5 who are the children of Isahack and Mariyam, the father of executants 6 to 12 Yohannan and mother of executant No.14, Mariyamma. After the death of Yohannan, his rights were devolved on executants 6 to 13 and consequent on the death of Mariyamma, her rights devolved on executant No.14.

6. Therefore, the contention is that the partition deed is executed between parties 1 to 5 who are the children of Isahack and Mariyam, the other executants are legal heirs of deceased Yohannan, his wife and daughter of his deceased sister. All of them will be the legal heirs of Seemon also.

7. The Explanation and the schedule therefore requires consideration. The Kerala Stamp Act, The Explanation to Schedule 42 reads as follows:

"Explanation:- Family means father, mother, husband, wife, son, daughter, brother, sister and legal heirs of the deceased children, if any, as the case may be."

As far as the Explanation is concerned, originally the term 'family' meant "husband, wife, children and the legal heirs of the deceased children, if any, as the case may be" and the present Explanation was introduced by an amendment by including 'brother' and 'sister'. Therefore, the only question is whether the partition is among the family members who are included within the scope of the Explanation.

8. Executants 1 to 5 will be the children of Isahack and Mariyam and therefore they are covered by the Explanation. Learned Government Pleader submits that deceased Seemon is a brother of executants 1 to 5 and only brother and sister are included in the Explanation, and since the property was in the name of deceased Seemon, and as there is no inclusion of the term "legal heirs of deceased brother" in the Explanation, the contention of the petitioners cannot be accepted.

9. In fact, the property was obtained in the family partition deed of the year 1976. The parents retained life interest in respect of 'D' schedule and it was allotted in favour of Seemon. The petitioners trace their title as devolved on them consequent on the death of Seemon who was unmarried

as well as the parents. Therefore, it cannot be disputed that as regards the properties in question, the parties are having the right. It is not disputed in the statement also by the third respondent.

10. The question is whether Seemon will get the character as a 'brother' in the Explanation and in the absence of any stipulation that legal heirs of brother can also be members of the family, the document could be registered by paying stamp duty of Rs.1,000/-.

11. But the Explanation, if closely read, it can be seen that the contentions of the respondents cannot be accepted. The Explanation, as it appears, reads as follows:

"Explanation:- Family means "husband, wife, children and the legal heirs of the deceased children, if any, as the case may be".

Therefore, the children and legal heirs of the deceased children are also members of family and when the partition is among the family members, it will attract Schedule 42. Here, it can be seen that the property originally was obtained by the parents and deceased Seemon and the executants now are the children as well as the legal heirs of two children, viz. Yohannan and Mariamma and the widow of Yohannan. They are also the legal heirs of Seemon, a deceased son. The widow will also be one of the legal heirs of the deceased Yohannan. Therefore, all of them will come within the

meaning of the expression "legal heirs of the deceased children". The deceased Seemon was a member of the family, being a son of Isahani and Mariam. All the parties to the document herein have inherited his property also as his legal heirs, since he was unmarried. The parties therein being the "legal heirs of the deceased son", they will be covered by the Explanation.

12. In the light of the above, the contention that as one item of the property belonged to one deceased brother and as the Explanation does not take in legal heirs of brother, cannot be accepted. The petitioners will really fulfil the character of the expression "legal heirs of deceased children" since they have inherited the property which originally belonged to Seemon apart from those of the parents. The properties are jointly owned by the parties herein.

Therefore, the writ petition is allowed. There will be a direction to the third respondent to register the document of partition on payment of Rs.1,000/- as stamp duty. No costs.

Sd/-
(T.R.RAMACHANDRAN NAIR, JUDGE)

Writ Appeal

Partition + family members - legal heirs.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT -

THE HON'BLE THE CHIEF JUSTICE MRS. MANOJA CHELLER

&
THE HONOURABLE MR. JUSTICE KVINOD CHANDRAN

FRIDAY, THE 1ST DAY OF MARCH 2013/10TH PITHULAM 1934

W.A.No.2222 of 2012

AGAINST THE JUDGMENT IN W.P.(C).No.18855/2012, DATED 19-10-2012.

APPELLANTS/ RESPONDENTS IN THE WRIT PETITION

1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF REGISTRATION, SECRETARIAT,
THIRUVANANTHAPURAM.
 2. THE DISTRICT REGISTRAR (REGISTRATION),
OFFICE OF THE DISTRICT REGISTRAR, ERNAKULAM DISTRICT.
 3. THE SUB REGISTRAR OFFICER,
OFFICE OF THE SUB REGISTRAR, PERUMBAVOOR.
- BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS.

RESPONDENT/ PETITIONER IN THE WRIT PETITION:-

MANUEL, S/O.ISAHACK, PENGATTUKUNNEL HOUSE,
SOUTH EZHIPRAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNAD TALUK, SOUTH VAZHAKULAM P.O. - 686 670.

BY ADVS. SRI.C.A.CHACKO
SMT.C.M.CHARISMA.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-02-2013.
THE COURT ON 01-03-2013 DELIVERED THE FOLLOWING:-

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Manjula Chellur, C.J. &
K.Vinod Chandran, J.

Dated this, the 1st day of March, 2013

K.Vinod Chandran, J.

The State is in appeal from a judgment of the learned Single Judge, directing the 3rd appellant to register the document of partition, presented by the respondent/writ petitioner on payment of Rs.1,000/- as stamp duty.

2. The respondent along with his brothers and sisters and legal heirs of one deceased brother and a deceased sister entered into a partition of the properties which devolved upon them on the death of their parents and another brother, who died unmarried and intestate. The Registering Authority refused to register the same as a partition deed on a stamp paper of Rs.1,000/- and insisted that stamp duty be paid at 5% of the *ad valorem* value. The learned single Judge, on an interpretation given to Explanation to Serial No.42 of the Schedule to the Kerala Stamp Act, 1959 (hereinafter referred to as "the Stamp Act") as amended by Finance Act, 2011,

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rejected the claim of the appellants that the legal heirs of brothers and sisters do not form part of "family" as per the amendment.

3. We notice here the amended Serial No.42 of the Schedule:

"42. Partition - Instrument of
(as defined by Section 2(k):

(i) Where the partition is
among all or some of the
family members.

One rupee for every
rupees 100 or part
thereof of the amount
of the value or fair
value of the separated
Share or shares of the
property, whichever
is higher.

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Explanation.- Family means father, mother, husband,
wife, son, daughter, brother, sister and legal heirs of the
deceased children, if any, as the case may be.

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xx".

4. The contention of the State in the Writ Appeal is that the above partition has been effected by brothers and sisters and the legal heirs of brothers and sisters. Since the legal heirs of deceased brothers and sisters do not come within the definition of "family", the same is not a partition deed and *ad valorem* duty has to be paid, is the contention of the State.

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The State also relies on a Division Bench decision of this Court in W.A.No.1697 of 2012 dated 29.11.2012.

5. Looking at the decision relied on by the State, we see that the facts disclosed in that case would show that one Smt.Lakshmi executed a Will with respect to her properties, bequeathing the same to her son Kumaran and grandson Bahuleyan.. Her son-Kumaran having died, the partition was effected between the wife and children of Kumaran and the grandson Bahuleyan. Hence, virtually the partition was between the first cousins and an aunt which, according to a Division Bench of this Court, disentitled the petitioners therein from claiming it to be a partition coming under Serial No.42(i) of the Schedule to the Stamp Act. We are in perfect agreement with the above proposition. We also notice that in that case it was not an intestate devolution but a devolution occurred on account of a bequest in favour of two persons who were related to the testator. The fact remains that though the beneficiaries were related to the testators, their relationship did not come within that contemplated under the said amendment. However, we are of the view that in the instant

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case the said decision, on facts, is not applicable and is clearly distinguishable.

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.

7. A brief look at the facts of the case would disclose that Isahack and Mariyam had 8 children, one of whom, Seemon, died intestate, childless and unmarried. Isahack and Mariyam and Seemon left behind them 7 siblings, of which again two, by name Yohannan and Mariyamma, expired. In Exhibit P1 partition deed, Sl.Nos.1 to 5 were the children of Isahack and Mariyam; Sl.Nos.6 to 12 being the children and

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Sl.No.13 the wife, of deceased Yohannan; and Sl.No.14 was the legal heir of deceased Mariyamma. Hence, the family of Isahack and Mariyam, as it existed at the time of Exhibit P1, partitioned the properties of their pre-deceased parents and brother amongst themselves. The partition, hence, was between the sons, daughters and legal heirs of the deceased children, which would clearly come under the amended definition of "family" under Serial No. 42 of the Schedule, as it exists now.

In view of the above finding, we do not find any reason to interfere with the judgment of the learned Single Judge and we uphold the same and dismiss the appeal with no order as to costs.

Sd/-
Manjula Chellur,
Chief Justice

Sd/-
K.Vinod Chandran,
Judge.

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Sir,

W A 2222/12 നൽകിയിരിക്കുന്ന വിവരങ്ങൾക്ക് അനുസരിച്ച്

മുൻകൈ (നൽകിയിരിക്കുന്ന വിവരങ്ങൾ)

RR 6-26722/12 നൽകിയിരിക്കുന്നു

To
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ജി.എസ്.എസ്.എസ്.

6/3 ചങ്ങനാശ്ശി, കിഴക്കൻ മലപ്പുറം ജില്ല

നൽകിയിരിക്കുന്ന വിവരങ്ങൾ
അനുസരിച്ച് 6/3/2017

മുൻകൈയട
ചെയ്തതുകൊണ്ട്
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