

PROCEEDING SOFT THE COMMISSIONER LAND REVENUE
THIRUVANATHAPURAM

(Present Sri. C. Chandran, I. A. S.)

D. Dis. 36997/93/LR(A) 3.

Dated 18-3-1999

Sub:- Report No.23/90-Documents No.112/4/90 of the SRO/ Thrissur- Deficit stamp Duty recovered from Sri. P.K. Padmanabha Panicker (Retired) District Registrar. Appeal submitted- Clarification requested- Orders Issued- Reg.

Read:- Report No. R. R. 2/4100/92 dated 3.5.1993 of the Inspector General of Registration.

The Inspector General of Registration has forwarded a copy of the document No.112/4/90 of SRO. Thrissur along with reference cited. The document under reference has been styled as declaration of Trust for Rs.20, 000/- under Art.57 of K. S. A. and drawn on stamp paper worth Rs. 500/- The Deputy Inspector General of Registration, has issued orders that the above document has also to be considered as a conveyance deed of Rs.20,000/- and the deficit stamp duty of Rs.1000/- and fees Rs. 200/- to be recovered from the Retired District Registrar General, Sri. P. K. Padmanabha Panicker, The Inspector General of Registration has also reported that Sri. P.K. Padmanabha panicker filled appeal petition against the above order.

The Inspector General of Registration has reported that the Board of Revenue has issued orders that the Trust documents to be considered as a declaration of Trust falls under Art. 57 of Kerala stamp Act as well as conveyance under sub Section 5 of Section 57 of Kerala stamp Act. He has point out some orders issued by the Board of Revenue as detailed below:

- 1) Order No. D. Dis. 49572/98/LR(A) 3- dated 2.12.1989.
- 2) Order No. D. Dis. 34505/88/LR(A) 3 dated 22.12. 1988.
- 3) Order No. D. Dis/ 25290/84/LR(A) 3 dated 19.11.1987
- 4) Order No. D. Dis/ 7466/84 LR(A) 3- dated 20. 2. 1988.

By the document referred in Board's file No. LR (A) 3-49572/88, it can be seen that the executant Sri. Abdul, Salam Bin Mohanmed, the Muthavalli of Vazhayil Namaskara Palli Trust entrusted the right over the schedule properties for the management of the Mosque to Sri. Aboobacker, Acting President Areacode Jam lyyathul Miyahidin society. Hence the document can be considered as a declaration of Trust and Board of Revenue issued orders in D. Dis. 49522/88/L.R. (A) 3 dated 2.12.1989.

In the document referred in Board 34505/88/LR (A) 3, it is seen that the their properties in the name of the Trust and trustees for the purposes of the Trust.

A per condition 50 of the document the trust deed is irrevocable. The stamp duty for the settlement (Art.51) and the declaration of trust (Art.57) is one and the same. As per section 6 of the stamp Act. An instrument so framed as to come within two or more of the description in the schedule shall, where the duties chargeable there under are different, be chargeable only with the highest of such charges. It embodies the principle, that where an instrument is liable to duty under two or more categories of taxation, the Government has an option to decide under which category it is to be assessed. The Inspector General of Registration has opined that the document is a deed of Trust and settlement falling under Section 6 of KSA. In the circumstance the Board of Revenue issued orders that the above document is a declaration of Trust and Settlement deed falling under section 6 of the Kerala Stamp Act as per order No. D. Dis. 34505/88/LR (A) 3. Dated 22.12.1988.

The document No.P4/83 of SRO. Balliapattom, referred in file No. LR(A) 3-25290/94, it is seen that the owned by Chirakkal Ayyappan Bhajan Sangam was declared as a Pallikulam Ayyappa Bhajana sangam, trust property. According to section 5 and 6 of the Indian Trust Act 1882 to effect a trust, there must be property transferred to the trust by another of the trust unless the author of the trust himself is the trustee. When the authors of the Chirakkal Ayyappa Bhajana Sangam themselves, are the trustees and sign as trustees of Ayyappa Bhajana Sangam agreeing to sign as trustees of the said trust, the trust is complete. Thus the document satisfies all the requirement of a declaration of Trust deed and hence the document attracts stamp duty as a declaration of Trust requiring stamp duty on the value of the property, at 2.5% as per Art. 57 (A) of Kerala stamp Act.

According to transfer of property Act Transfer of property means an act by which a living person conveys property in present as in future, to one or more other living persons, to himself, and the transfer property is to perform such act. By the above document a trust is being declared as well as property specified as trust property is being conveyed the trustees. Hence Board of Revenue issued order No. D.Dis.25290/34 LR (A)3 dated 19.11.87, that the document No.P4/83 of the SRO, Balliapettom is conveyance as well as a declaration of Trust falling under Art 21 of the schedule to the Kerala Stamp Act 1959 read with section 71 of the Kerala Panchayat Act and Art 57 (A) of the schedule to the Kerala stamp Act as opined by the District Registrar and the Inspector General of Registration.

In the document No.P2/82of SRO. Kuruvilangad, referred in Board's file No. LR (A) 3.7460/84 it is seen that the author of the Trust who is the owner of the property had disclosed her main intention that the instrument is for the benefit of her two daughters with certain conditions and her son is appointed as the 'trustee'. So it is clear that the property is transferred to the Trustee. According to section 5 and 6 of the Indian Trust Act, to effect a trust, there must be property transferred to the trustee, by the by the author of the Trust and the trustees should consent to it. The consent of the Trustee is not seen in the above document. It appears that the document has all the provisions of a trust owner in addition to the fact that properties are conveyed to the Trustee.

The creation of a Trust of a specified property necessarily involves the transfer of it from the author of the Trust to the Trustee, unless the author of trust himself is the Trustee. An instrument declaring a Trust and conveying property, specified as the Trust property to the Trustee will therefore, comprise two district subjects and will be liable for an aggregate of duties under section 5 of the Kerala stamp Act 1959. Hence Board of Revenue issued order No. D. Dis.7466/84/LR A3 dated 20.2.1988, that the document No. P2/92 of SRO. Kuruvilangad is a declaration of Trust, as well as a transfer of property for the purpose of stamp duty as opined by the Inspector General of Registration. In another document LIC policy No. 44627787 dated 14.12.70. effected under section 6 of the married women's property Act, Board of Revenue issued order that the document is a declaration of Trust which attract stamp duty under 57 A of the Kerala stamp Act 1959.

In the circumstances, the latter dated 3.5.93. of the Inspector General of Registration is to be examined in this letter the Inspector General of Registration have reported that the Board of Revenue issued different kinds of orders in respect of Trust Deeds and also requested issue a common order regarding the nature of Trust Deeds.

On giving through the orders pointed out by the Inspector General of Registration, it can be seen that the documents referred are different types and the opinion's of the District Registrar's and the Inspector General of Registration are different. Board issued orders on perusal of the report of the S R O, District Registrar, and the Inspector General of Registration and the document under reference. The Orders already passed by the Board of Revenue referred to by the Inspector General of Registration are distinct in nature and quite different from this case. A common order as requested by the Inspector General of Registration is therefore not required.

In the present case, the document No. 112/4/90 of SRO, Thrissur, has been styled as a declaration of Trust properties for the value of Rs. 20,000/- The document bears stamp duty of Rs. 500/- only. The District Register (General) Thrissur, in his letter No. D. Dis. 962/90 dated 8.10.1992, has reported that the document is a declaration of Trust and a conveyance of Rs. 20,000/- The Inspector General of Registration has no opinion about the above document.

The question for consideration in this case is whether the document in question is also to be considered as a conveyance deed of Rs.20,000/- and the deficit stamp duty of Rs.1000/- and fee of Rs. 200/- is to be recovered from the Retired District Registrar, in addition to the stamp duty levied styling the Document as declaration of Trust for Rs. 20,000/-.

On perusal of the document No.112/90 of the SRO, Thrissur be seen that the Author of the Trust Bharathakshamam a company registered under Section 25 of Indian Companies Act, has decided to create a Public Charitable Trust known as Bharathashamam Medical Trust, for the purpose of rendering Medical Relief and to undertake health care programmes for common good. The Author has already set apart and deposited Rs.20,000/- to the south Indian Bank, with the intention to make the same for trust fund. According to section 5 and 6 of the Indian Trust Act 1882, to effect a Trust there must be property transferred to the trustee by the author of the Trust and the trustees should consent to it. When Board of Directors of the Bharathashamam Medical Trust sign as trustee agreeing to act a trustee the trust is complete and attracts stamp duty as a declaration of Trust.

On a perusal of the definition of "Conveyance" it can be seen that there must be conveyance on sale and a transfer *inte vivos* which is not otherwise specifically provided for. In the instant case the members of the Board of Directors of the Author Company i.e., the 'Bharathakshamam company are the Board of trustees of the Bharathakshamam Medical Trust for charging stamp duty styling the document as a conveyance deed a transfer of property has to be effected, But in this case, as the members of the Board of Directors of the Author Company, are the Board of Trustees of the Trust. There is no transfer of property.

As per Section 6 (d) of the Indian Trust Act, the creation of a Trust of a specific property necessarily involves the transfer of it from the Author of the Trust to the trustee unless the Author of the Trust himself is the Trustee. In this case, the Author of the Trust himself is the Trustee and hence there is no transfer

of property and the document is not liable to be charged as a Conveyance deed also.

In the circumstances the Commissioner holds that the document No.112/4/90 of SRO, Thrissur is a declaration of Trust deed and the stamp duty already paid is sufficient and no deficit stamp duty need be recovered from the Retired District Registrar, Sri.P.K. Padmanabha Panicker.

By ORDER,

Sd/

Asst. Commissioner (LR).