Jayasree vs State of Kerala

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Court : Kerala

Decided On : Jan-15-2024

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/109/2023

Appellant : Jayasree

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 15TH DAY OF JANUARY 2024 / 25TH POUSHA, 1945 WP(C) NO. 109 OF 2023 PETITIONERS:

1 JAYASREE AGED 62 YEARS W/O BALAKRISHNAN, VELLOOR HOUSE, KOLAZHY.P.O., THRISSUR DISTRICT, PIN - 680010 2 ADDL.P2. SHYAMALADEVI, AGED 60 YEARS, D/O.GOURI AMMA, VELLOOR HOUSE, KOLLAZHY.P.O., THRISSUR DISTRICT, PIN - 680010 3 ADDL.P3. SREELATHA, AGED 56 YEARS, W/O. RAJAN, PANTHAMPULAKKAL HOUSE, KOLLAZHY P.O., THRISSUR DISTRICT, PIN - 680010 4 ADDL.P4. RADHAKRISHNAN, AGED 56

YEARS, S/O.GOURI, 4/4, PASUMPON STREET, 80 FEET ROAD, OLYMPUS, COIMBATORE SOUTH, RAMANATHAPURAM, COIMBATORE, TAMIL NADU STATE, PIN - 641045 5 ADDL. P5. SURAJ BABU ALIAS SURAJ BABU NARAYANANKUTTY (S.B.N.KUTTY), AGED 56 YEARS, S/O.LATE MALATHY AND LATE NARAYANANKUTTY, MADHAVASSERY HOUSE, VATTEKKATTUKARA, THEKKUMKARA, KONATHUKUNNU.P.O., THRISSUR DISTRICT, PIN - 680123 6 ADDL.P6.SHYLAJA, AGED 55 YEARS, W/O.PRAKASH KAIMAL, ROOM NO.57, ARAM NAGAR-2, JAY PRAKASH ROAD, YARI ROAD, VERSOVA, ANDHERI (WEST), MUMBAI, MAHARASHTRA STATE, PIN - 400061 (IMPLEADED AS PER ORDER DATED 31-10-2023 IN IA2/23 IN WP(C) 109/2023) BY ADVS. DINESH MATHEW J.MURICKEN K.A.ABHILASH VINOD S. PILLAI MOHAMMED THAYIB N.M. NAYANA VARGHESE AHAMMAD SACHIN K.

WP(C) 109 of 2023 :2: RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, STATUTE JUNCTION, THIRUVANANTHAPURAM GENERAL.P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695001 2 THE DISTRICT COLLECTOR (THRISSUR) COLLECTORATE, CIVIL STATION.P.O., AYYANTHOLE, THRISSUR DISTRICT, PIN - 680003 3 THE DISTRICT REGISTRAR THRISSUR, OFFICE OF THE DISTRICT REGISTRAR, CHEMBUKKAV, THRISSUR DISTRICT, PIN - 680020 4 THE SUB REGISTRAR OFFICE OF THE SUB REGISTRAR, CHEMBUKKAV.P.O., THRISSUR DISTRICT, PIN - 680020 SMT.DEEPA NARAYANAN, SR.G.P SRI.V.RAMKUMAR NAMBIAR, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.12.2023, THE COURT ON 15.01.2024 DELIVERED THE FOLLOWING: WP(C) 109 of 2023 :3:

JUDGMENT

The petitioners 1 to 4 are the children of late Gouri

and the petitioners 5 and 6 are the legal heirs of Malathi, the deceased daughter of Gouri. The property having an extent of 8.90 Ares situated in Re Survey No. 322/41 (Old Survey No. 532/41) of Kolazhi Village, Thrissur Taluk was purchased by Gouri along with her son Sri.Chandrahasan and daughter late Malathi as per Ext. P1 sale deed dated 3.10.1950. Sri. Chandrahasan, as per Ext. P2 Release deed dated 20.02.1990, had released his share in the above mentioned property in favour of Gouri. As per Ext. P3 registered Settlement deed dated 25.02.2000, Gouri had settled her 2/7th share in the above mentioned property derived as per Ext. P1 sale deed and Ext. P2 release deed in favour of her daughters, Smt. Jayasree, the 1st petitioner, Smt. Shyamala Devi, the 2nd petitioner

WP(C) 109 of 2023 :4: and Smt. Sreelatha, the 3rd petitioner. In Ext. P3 Settlement deed, it is mentioned that the petitioners 1 to 3 and their brother Sri. Radhakrishnan, the 4 th petitioner, are having one share in the above mentioned property as per Hindu Succession Act, since they were born prior to 31.12.1970. 2.While so, the children of Gouri and legal heirs of

Malathi, who are in joint possession of the aforesaid property intended to execute a partition deed amongst themselves and prepared Ext. P4 partition deed dated 26.12.2022 and presented the same for registration before the 4th respondent Sub Registrar. The Sub Registrar objected to the registration of Ext.P4 partition deed for

the reason that Sri. Radhakrishnan, one of the shares/parties to the partition deed, was not having competency to be a party to Ext. P4. As per Ext. P5 order, WP(C) 109 of 2023 :5:

the Sub Registrar directed the 1 st petitioner to produce documents to show the competency of Sri. Radhakrishnan to be a party to Ext.P4 partition deed. The 1st petitioner produced Ext.P3 document before the Sub Registrar to show that Sri. Radhakrishnan is the son of late Gouri and is a necessary party to Ext.P4 Partition deed. However, the Sub Registrar, by Ext. P6 order, held that the stamp duty for Ext. P4 Partition deed is 8% on the valuation of the property shown in the document and for that purpose, invoking Section 33 of the Kerala Stamp Act, 1959, the document has to be forwarded to the 3rd respondent, the District Registrar to determine the stamp duty as per Section 37(2) of Kerala Stamp Act and for the said process, the petitioner has to remit 2% registration charges of Rs. 49,20,000/-, the valuation of the property shown in the document, and directed to remit a sum of

WP(C) 109 of 2023 :6: Rs. 62,700/- towards registration charges. The petitioners

have filed this writ petition challenging Ext. P6 order

passed by the Sub Registrar.

3. According to the petitioners, Ext. P4 partition deed

which was presented for registration is a partition among the sharers, namely, the children of Gouri and legal heirs of Malathi and therefore, there is no question of charging 8% stamp duty on the same. The petitioners contend that, on a conjoint reading of Sections 2(k), 2(fb) and Article 42 of the Kerala Stamp Act, Ext. P4 can only be treated as a partition deed between the legal heirs of late Gouri and that Sri. Radhakrishnan, being the son of late Gouri, is a necessary and proper party to Ext. P4 partition deed and therefore, the stamp duty payable on Ext. P4 is as per Article 42 of the Kerala Stamp Act and the stamp duty of Rs. 5,500/- [Rs. 35,70,000/-x 15/10,000] paid by

the petitioners is correct. The petitioners also contend that Ext. P6 order does not give any reason as to why a stamp duty of 8% of the total valuation of the property ought to be charged as there is no provision of law which empowers the Sub Registrar or the District Registrar to levy the same. Accordingly, the petitioners pray to quash Ext. P6 order and seek direction to the 4 th respondent to register Ext. P4 partition deed.

4. During the pendency of the writ petition, the

District Registrar passed Ext. P7 order dated 10.01.2023 upon a complaint submitted by the 1 st petitioner against Ext. P6, affirming the stand taken by the Sub Registrar.

5. Initially, the writ petition was filed by the 1 st

petitioner alone. When this Court suggested the 1 st writ petitioner to implead the other executants of Ext. P4 in the party array, they got themselves impleaded as WP(C) 109 of 2023 :8: petitioners in the writ petition as per order dated 06.11.2023 in I.A. No. 2 of 2023.

6. A statement dated 05.09.2023 of the Sub Registrar

has been placed on record by the learned Government Pleader contending that Sri. Radhakrishnan had no power to execute Ext. P4 document as he has no joint ownership in the property and therefore the stamp duty and registration fee should be levied at conveyance rate i.e., stamp duty at the rate of 8% of the total consideration of document and registration fee at the rate of 2% of the total consideration.

7. A reply affidavit has been filed by the 1 st petitioner

rebutting the contentions in the statement filed on behalf of the 4th respondent and contending that under Section 35 of the Registration Act, the registering authority, the Sub Registrar (Registration), cannot decide the title or the WP(C) 109 of 2023 :9: rights of parties to the document or to determine whether the recitals in the documents are legal and permissible in law or to undertake an analysis thereof.

8. The question that arises for consideration in this

writ petition is whether Ext. P4 partition deed is a document executed by the members of the same family to come within the ambit of Section 2(k) of the Kerala Stamp Act and whether the stamp duty payable is as per Article 42(a) of the said Act. In view of the importance of the

issues arising in this case, I requested Sri. V. RamKumar

Nambiar, learned counsel, to assist this Court as amicus, to which he readily agreed. The learned Amicus Curiae has also submitted a detailed argument note.

9. Heard the learned counsel for the petitioners, the learned senior Government Pleader and the learned Amicus Curiae. WP(C) 109 of 2023 :10: 10.The learned Amicus Curiae would submit that,

though the property covered by Ext. P1 was assigned by Narayana Menon to late Gouri, her son Sri. Chandrahasan and late daughter Malathi, it can be seen from Ext.P2 release deed and Ext.P3 settlement deed that the said property was enjoyed as a family property by the mother and all the children born subsequent to the execution of Ext. P1 deed. Taking me through the recitals in Exts. P2 and P3, it is submitted that the parties had treated the said property as family property and were enjoying the same as such and, therefore, Ext. P4 partition deed which was presented for registration can only be construed as an instrument of partition between the co-owners of such property and would squarely fall within the definition of Section 2(k) of the Kerala Stamp Act. After referring to Section 2 (fb) of the Kerala Stamp Act, which defines

WP(C) 109 of 2023 :11: family, Sri. Ramkumar would point to Ext. P4 partition deed and submits that the children of late Gouri are late

Malathi, Sri. Chandrahasan, Smt. Jayasree (the 1 st petitioner), Smt. Shyamala Devi (the 2nd petitioner), Smt. Sreelatha (the 3rd petitioner) and Sri. Radhakrishnan (the 4th petitioner) and since Malathy died, her children, Sri. Suraj Babu (the 5th petitioner) and Smt. Shylaja (the 6th petitioner) are shown as the legal heirs of late Malathi and the parties mentioned in Ext. P4 are all members of the same family, not strangers to one another and therefore

they fall within the definition of Section 2(fb). Consequently, Ext. P4 is a document executed by the members of same family, and Sri. Radhakrishnan is not a stranger at all. Further, in Ext.P2 release deed executed by one of the sons, Sri. Chandrahasan, in favour of his mother late Gouri, he clearly describes the said property

WP(C) 109 of 2023 :12: as family property and he had relinquished his 1/7 th share in the property in favour of the mother. The learned

Amicus Curiae would point out that the fact that Chandrahasan had described his share as 1/7th would clearly indicate that he had considered himself to be entitled to only one share among the total number of 7 sharers, who are late Gouri, Malathi, Shymala Devi, Sreelatha, Jayasree, Radhakrishnan, and himself, thus acknowledging and admitting Sri. Radhakrishnan as a co- owner of the said property, even as early as in 1990 itself.

11. Inviting my attention to Ext. P3 settlement deed

executed in 2000 by late Gouri in favour of petitioners 1 to 3, Sri. Ramkumar would point out that it is clearly mentioned therein that Sri. Radhakrishnan is the co-owner of the said property and that he had 1/7th share in the entire property and it was on that basis that the WP(C) 109 of 2023 :13:

mother had released her rights in favour of the daughters. Sri. Ramkumar would submit that, when the parties or the members of the family admit and acknowledge that all the members of the family had their respective right and shares in the property and that the same was being treated as family property, there is no reason not to

include Sri. Radhakrishnan who was admittedly considered to be a co-owner and a co-sharer of the family property, when Ext. P4 partition deed was executed.

According to the learned Amicus Curiae, Sri. Radhakrishnan is the son of late Gouri and a joint owner though he has not chosen to accept any share in the property, and is therefore a family member and a necessary party to a partition among the sharers of that property and his inclusion in the partition deed is absolutely necessary and his non inclusion in Ext. P4

WP(C) 109 of 2023 :14: would render the document legally unsustainable.

12. On the basis of Exts. P1 to P3 documents, the

learned Amicus Curiae would submit that Ext. P4 document presented for registration is one for partition and Article 42 (a) of the Stamp Act would apply and therefore the stamp duty of Rs 5,500/- paid by the petitioners is correct. Sri. Ramkumar would also point out that as per Article 42 (a) of the Stamp Act, the stamp duty to be paid is 6% and not 8% as indicated in Ext. P6 order. Referring to the statement of the Sub Registrar that, there is no joint ownership in the property as a whole, learned Amicus Curiae would submit that same would be applicable only under Section 37 of the Kerala Court Fees and Suits Valuation Act, 1959 where partition is effected by filing a Suit for partition and the Court Fee payable accordingly and that in a document executed for

partition of a property, joint possession does not have to be a consideration at all. Further, Section 37(2) of the Kerala Stamp Act, referred to in Ext. P6, has no application at present, as the said section deals with the impounding of a document upon non payment of the amount levied, and the said stage has not reached.

13. The children of late Gouri are late Malathi, Sri.

Chandrahasan, Smt. Jayasree (the 1st petitioner), Smt. Shyamala Devi (the 2nd petitioner), Smt. Sreelatha (the 3rd petitioner) and Sri. Radhakrishnan (the 4 th petitioner). Malathi had passed away. The legal heirs of Malathi are her children, Sri. Suraj Babu (the 5 th petitioner) and Smt. Shylaja (the 6th petitioner). As rightly pointed out by the learned Amicus Curiae, from Ext.P2 release deed and Ext.P3 settlement deed, it can be seen that the property was enjoyed as a family property by the mother and all

her children including those born subsequent to the execution of Ext. P1 deed. In Ext.P2 release deed executed by one of the sons, Sri. Chandrahasan in favour of his mother late Gouri in the year 1990, he had considered himself to be entitled to only one share among the total number of 7 sharers, thus acknowledging and admitting Gouri, Malathi, Shymala Devi, Sreelatha, Jayasree, Radhakrishnan, and himself, as co-owners of the property. The recitals in Ext. P3 settlement deed also show that Sri. Radhakrishnan is the co-owner of the property and that he had 1/7th share in the entire property. Section 2(fb) of the Kerala Stamp Act, 1959 defines 'Family' and provides that, "Family" means father, mother, grandfather, grandmother, husband, wife, son, adopted son, daughter, adopted daughter, grandchildren, brother and sister. Sri. Radhakrishnan is the son of late

WP(C) 109 of 2023 :17: Gouri. He is a member of the family and a joint owner of the property and not a stranger. The parties mentioned in Ext. P4 deed are all members of the same family; not

strangers to one another and therefore they unquestionably fall within the definition of Section 2(fb). Section 2(k) of the Kerala Stamp Act defines 'Partition' and provides that "Instrument of Partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severality. Ext. P4 is an instrument executed by the co-owners and co-sharers of the family property and is an instrument of partition coming within the definition of Section 2(k) of the Kerala Stamp Act. Sri. Radhakrishnan, being a family member and a joint owner of the said property, is a necessary party to a partition among the sharers of the property. The stand taken by the Sub Registrar in Ext. P5 that Sri.

WP(C) 109 of 2023 :18: Radhakrishnan is not having competency to be a party to Ext. P4 partition deed cannot, therefore, be sustained.

14. Article 42 (a) of the Kerala Stamp Act, 1959

provides that, in case of instrument of partition as defined under Section 2(k), where the partition is among all or any of the members of the family and the legal heirs of the deceased family member, if any, the proper stamp

duty payable would be fifteen rupees for every Rs.10,000/- or part thereof of the Fair Value of the separated share or shares of land and the value of other properties in such separated shares or share set forth in the instrument or of the value of all the properties of the separated share or shares as set forth in the instrument, whichever is higher subject to a minimum of Rs.1,000/-. Since Ext. P4 document presented for registration is one for partition among all the members of the family and

legal heirs of the deceased family member, Article 42 (a) of the Stamp Act would apply. Ext. P6 order cannot, therefore, be sustained and the same is set aside. Ext. P4 document presented for registration is one for partition as defined under Section 2(k) of the Kerala Stamp Act. The petitioners have already paid the stamp duty as per Article 42 (a) of the Stamp Act. Accordingly, there will be a direction to the 4th respondent to register Ext. P4 partition deed, as and when presented, if the same is otherwise in order. It is made clear that in view of the finding as above, I have not adverted to the question as to whether the Sub Registrar (Registration) can decide the title or the rights of parties to the document. It is also made clear that the findings herein are rendered for answering the issues raised in the context of the Kerala Stamp Act and shall not impede the rights of any parties

 in any civil litigation. Before parting with this case, I would like to place on record my deep sense of appreciation for the very able assistance provided by Sri. V. Ramkumar Nambiar, the learned Amicus Curiae and Smt. Nayana Varghese, the learned counsel for the petitioners and Smt. Deepa Narayanan, the learned senior Government Pleader.

Writ petition is disposed of. Sd/- MURALI PURUSHOTHAMAN JUDGE spc/ APPENDIX PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE SALE DEED NO.4443 OF 1950 OF S.R.O.THRISSUR (03.10.1950) Exhibit P1(a) LEGIBLE COPY OF THE SALE DEED NO.4443 OF 1950 DATED 03.10.1950 Exhibit P2 TRUE COPY OF THE RELEASE DEED NO. 713 OF 1990 OF SRO THRISSUR DATED 20/02/1990 Exhibit P3 TRUE COPY OF THE SETTLEMENT DEED NO.1207 OF 2000 OF SRO THRISSUR DATED 25/02/2000 Exhibit P4 TRUE COPY OF THE PARTITION DEED EXECUTED BY SHYAMALADEVI AND OTHERS SUBMITTED BEFORE THE 4TH RESPONDENT DATED 26/12/2022 Exhibit P5 TRUE COPY OF THE ORDER NO.C-743/2022 PASSED BY THE 4TH RESPONDENT DATED 26/12/2022

Exhibit P6 TRUE COPY OF THE ORDER NO.747/2022 OF THE 4TH RESPONDENT DATED 27/12/2022 Exhibit P7 TRUE COPY OF THE LETTER NO.DRGTSR/51/2023- INS4 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 10.01.2023