

**S. Manjunathan, Vs. the Joint Registrar,**

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**Court :** Chennai

**Decided On :** Oct-17-2006

**Reported in :** 2007(1)CTC552; (2006)4MLJ1538

**Judge :** D. Murugesan and ;V. Ramasubramanian, JJ.

**Acts :** Tamilnadu Indian Stamp Act, 1899 - Sections 46(2), 47A and 57 - Schedule - Articles 19, 23, 44, 55, 55A, 55B, 55C and 55D; Tamilnadu Indian Stamp (Amendment) Act, 1981; Tamilnadu Indian Stamp (Amendment) Act, 1998

**Appeal No. :** Writ Appeal No. 897 of 1999

**Appellant :** S. Manjunathan, ;s. Naresh Kumar, ;s. Mohan Raj and S. Uma Shankar

**Respondent :** The Joint Registrar, ;district Registrar and the Inspector General of Registration

**Advocate for Def. :** A. Arumugham, Addl. Govt. Pleader

**Advocate for Pet/Ap. :** S.K. Rakhunathan, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**V. Ramasubramanian, J.**

1. The appellants herein are aggrieved by an order of the District Registrar, Ootacamund, confirmed by the Inspector General of Registration and affirmed by the learned Judge in W.P. No. 16405 of 1990, holding an Indenture dated 24.4.1987 as a deed of conveyance chargeable to stamp duty as a conveyance under Article 23 of Schedule I and not as a deed of release chargeable to stamp duty under Article 55 of Schedule I of the Indian Stamp Act.

2. The brief facts leading to the above appeal are as follows:

a) By a deed of conveyance dated 26.4.1985 registered as document No. 997 of 1985, in the Office of the Registrar of Nilgiris at Ootacamund, one B. Shivasubramani describing himself as the Manager and Kartha of a Hindu Joint Family, conveyed 1/4 undivided share in the lands of the extent of about 22.46-5/16 acres together with the buildings thereon, in Ootacamund, Nilgiris District, to and in favour of the appellants herein.

b) By a subsequent Indenture dated 24.4.1987, the same B. Shivasubramani describing himself as the Manager and Kartha of the Hindu Joint Family, released and relinquished his 3/4 undivided share in the same properties, to and in favour of the appellants herein. The market value of the properties was stated in the document to be Rs. 10 lakhs and the executant valued his 3/4 undivided share released thereunder at Rs. 7,50,000/-. On this value, the appellants had paid a stamp duty of Rs. 22,500/- under Article 55 of Schedule I of the Indian Stamp Act, treating it as a deed of release.

c) The said deed of Indenture was assigned pending document No. 124 of 1987 and after about two years, the District Registrar, the second respondent herein, issued a show cause notice dated 3.5.1989 to the appellants, pointing out that the market value of the property as per the guidelines available with the Office of the District Registrar, was Rs. 73,25,917/- and that a stamp duty of Rs. 8,79,115/- was payable on the said document and that after giving credit to the actual stamp duty of Rs. 22,500/- paid by the appellants, a balance of Rs. 8,56,615/- was due and payable.

d) After receiving the reply of the appellants to the show cause notice, the second respondent herein (District Registrar) passed an order dated 27.6.1989, conveying the decision of the D.I.G. Of Registration to treat the document as a deed of conveyance chargeable to duty under Article 23.

e) The appellants filed an appeal to the Inspector General of Registration, the third respondent herein, on 26.7.1989, but the same was dismissed by an order dated 19.4.1990.

f) Challenging the said orders of the third respondent, the appellants filed W.P. No. 16405 of 1990 and the same was dismissed by the learned Judge by an order dated 11.3.1999. Aggrieved by the said order, the appellants have filed the above appeal.

3. In the conspectus of the above facts, the short question that arises for consideration is as to whether the deed of Indenture dated 24.4.1987 executed in favour of the appellants herein, is a deed of release chargeable to duty under Article 55 or a deed of conveyance chargeable to duty under Article 23 of Schedule I to the Indian Stamp Act.

4. We have heard Mr. S.K. Rakhunathan, learned Counsel appearing for the appellants and Mr. A. Arumugham, learned Additional Government Pleader appearing for the respondents.

5. In support of his contention that the document in question is only a deed of release, Mr. S.K. Rakhunathan, learned Counsel for the appellants relied upon three Full Bench decisions of this Court. The first decision relied upon by the learned Counsel for the appellants in *The Board of Revenue, The Chief Controlling Revenue Authority v. V.M. Murugesu Mudaliar of Gudiyatham* 68 L.W. 534, was on a reference made by the Board of Revenue under Section 57 of the Stamp Act. In the said case, the property involved in the transaction was owned by five persons, as co-owners, by virtue of being partners of a registered firm by name 'Gudiyatham Lungi Company'. Three out of the said five partners retired from the firm and after such retirement, they executed a document dated 23.5.1949 releasing and relinquishing their 3/5 shares in the said property to and in favour of

the remaining two partners. The Referring Authority was of the opinion that the document in question had three facets namely, it purported to be (i) a deed of dissolution of partnership, (ii) an instrument of release as well as (iii) a deed of conveyance and hence it was chargeable to duty under each of the Articles relating to a dissolution, release and conveyance. After rejecting the theory that the document could be a deed of dissolution of partnership, the Full Bench went on to decide whether it was a conveyance or release and the Full Bench held as follows:

It only remains to consider whether the instrument falls within the definition of conveyance under Article 19 of Sch. I-A of the Stamp Act. We are of opinion that it does not. The document proceeds on the footing that the five persons, namely, the three executants and the two persons in whose favour the instrument was executed, who were carrying on business of that firm owned the property as co-owners, the executants being entitled to a three-fifths share and the other two being entitled to the remaining two-fifths share. It is not the case of any one that there was a division of the property by metes and bounds and in accordance with the said shares. In such circumstances the document in and by which the co-owner purports to abandon or relinquish his claim to the share to which he would be entitled would be in the nature of a release within Article 44.

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 the 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.

6. The second decision relied upon by the learned Counsel for the appellants is the one in *The Chief Controlling Revenue Authority v. Rustorn Nusserwanji Patel* 80 L.W. 598. This was also a case referred to the Bench under Section 57 of the Indian Stamp Act. In the said case, the nature of an instrument executed by a person in favour of his brother was considered and the Full Bench followed the

decision of the earlier Full Bench reported in 68 L.W. 534 and held the instrument to be a deed of release and not a deed of conveyance.

7. In the third decision, The Chief Controlling Revenue Authority, Board of Revenue, Madras v. Rm. L. Rm. L. Lakshmanan Chettiar 83 L.W.205, which was again a reference under the Stamp Act, the Full Bench held as follows:

The essential difference between a conveyance and a release lies in the fact that, in the latter, there is no transfer of an interest or right to another, who had no pre-existing right in it to any extent. A release of a right or of a claim can only be in favour of a person who had a pre-existing right or claim and by reason of the release the latter's right or claim is enlarged or is made fuller in its content.

Therefore, the submission of the learned Counsel for the appellants is that the deed of Indenture in question should be treated only as a release deed and not as a conveyance.

8. The question as to whether a document is a release or a conveyance had come up frequently for judicial scrutiny, primarily on account of the differential rate of duty charged by the State on these instruments. This can be well appreciated by a statistical analysis of the rates of stamp duty charged on these instruments, over the past 30 years. In its application to the State of Tamilnadu, the Indian Stamp Act, 1899 was amended periodically by the State and rates of duty charged on instruments of conveyance and instruments of release, kept changing from time to time. The method of valuation of the properties and the rate of duty charged on the instruments varied from time to time, leading people to devise strategies to avoid higher incidence of Stamp duty. Such attempts on the part of the tax payers, forced the Legislature to bring forth various Amendments from time to time to plug the holes, but the tale of wild goose chase between the revenue and the tax payer is never ending like that of Sinbad. This can be well appreciated by having a peep into the legislative history of these Amendments.

9. In 1981, the State Legislature passed the Indian Stamp (Tamilnadu Amendment) Act, 1981 (Tamilnadu Act No. 42 of 1981), drawing for the first time, a distinction between genuine releases and releases of benami rights. Under the

said amendment, Article 55 dealing with 'Releases', was divided into 2 Parts, namely 55 A and 55 B. Under Article 55A, an instrument of release was made chargeable to duty as a bottomry bond, namely @ 3% on the amount or value set forth in the document. Under Article 55B, an instrument of release of benami right in favour of a real owner was made chargeable to duty @ 13% or 12% on the market value of the property depending upon its location. Thus the Amendment Act of 1981, drew a distinction for the first time between genuine releases and releases of benami rights and made the former chargeable to a concessional rate of duty at 3% on the value declared in the instrument and made the later chargeable to a higher duty @ 13% or 12% as the case may be, on the market value of the property. Thus, in effect, the releases of benami rights alone were sought to be differentiated from other releases and these releases of benami rights were placed on par with deeds of conveyance, under the said amendment of the year 1981. In other words, for the first time in the legislative history, a release of a benami right alone was sought to be equated to a conveyance under the State Amendment of the year 1981, and the other types of releases were left scot free.

10. By a subsequent amendment, namely The Indian Stamp (Tamilnadu Amendment) Act, 1998 (Tamilnadu Act No. 1 of 2000), 2 more types of releases were introduced under Article 55, by incorporating Article 55C and 55D. Article 55C dealt with the release of right in favour of a Co-owner and it was made chargeable to duty @ 13% and 12 % as the case may be. Article 55D dealt with the release of right in favour of a Partner. This Article 55D made a further distinction between partners who are members of the same family and partners who are not family members. In the case of partnership between family members, the duty chargeable was 3% and in the case of partnership among strangers, the duty chargeable was 13% or 12% as the case may be depending upon the location of the property.

11. In other words, the Amendment Act of 1981 divided the instruments of release into 2 types, namely (i) genuine Releases and (ii) Releases of Benami rights. The Amendment Act of 1998 (Act 1 of 2000) divided the instruments of release into 4 types namely (i) releases, (ii) releases of benami rights, (iii) releases in favour of co-owners and (iv) releases of rights in a partnership between family members

and strangers. By a subsequent amendment under Tamil Nadu Act No. 31 of 2004, Article 55-C underwent one more change in that it was made applicable only to release of right in favour of another co-owner who is not a family member.

12. Paragraph 2 of the Statement of Objects and Reasons for the Amendment Act of 1981, (Tamilnadu Act No. 42 of 1981) provides the clue as to why the instruments of release were sought to be divided into 2 types. The said paragraph reads as follows:

2. At present, the said Act provides different rates of stamp duty for 'conveyance' and 'release deeds'. A number of documents, styled as release of benami rights are not releases but in reality conveyances and are registered as releases so as to evade higher stamp duty. It is therefore considered necessary to make a distinction between genuine releases and releases so far as they relate to benami rights by suitably amending Section 47-A of the said Act and also Article 55 of Schedule I to the said Act so as to prevent malpractices.

To put succinctly, the legislature started drawing a clear and unequivocal distinction, from the year 1981, between genuine documents of release and those which tend to pass on benami rights. But even in the said Amendment, there was no attempt to draw a distinction between genuine releases and those made with the object of avoiding a higher incidence of stamp duty. Releases made between members of the same family and releases made between strangers were sought to be put on different pedestal by the statute only from the Amendment Act 1 of 2000.

13. In other words, though the aforesaid full bench decisions relied on by the appellant were rendered in the years 1955, 1967 and 1970, the Amendment of the year 1981 did not seek to cover the lost ground. It was only in the Amendment of the year 1998 that the release of the shares of some co-owners in favour of the other co-owners was made chargeable to duty at a higher rate than the normal releases.

14. More over even under the Amendment of the year 1998, the releases made between co-owners, were not directed to be treated as conveyances for the

purpose of stamp duty. The Amendment just stopped by prescribing a higher rate of stamp duty for instruments of release entered into between co-owners. Thus the Legislature seems to have accepted the fact that a 'release' is not a 'conveyance' as the former 'merely feeds title to a person having a pre-existing right' and 'enlarges the same' while the later 'creates title by transfer, in favour of a person who never had one'.

15. Keeping the above legislative history in mind, if we analyse the facts of the present case, it is apparent that the appellants who are total strangers to the family of their vendors, purchased 1/4 undivided share under a deed of conveyance dated 26.4.1985, thereby becoming co-owners of the property in question. After becoming co-owners, they employed the method of getting a deed of release executed in their favour on 24.4.1987, for enlarging their title to the properties, to 100%. This gave rise to a suspicion that the appellants had used the devious method, to avoid higher stamp duty. Therefore, the respondents treated the document as a deed of conveyance chargeable to duty under Article-23, since at that time Article 55 did not provide for a higher rate of stamp duty for releases between co-owners.

16. Viewed from another angle, if the document in question had been presented for registration, after the coming into force of the amendment of the year 1998, the respondents would have charged the same to duty under Article 55-C of Schedule-I to the Indian Stamp Act, which deals with releases between co-owners. Even then, it would not have been charged to duty under Article-23, as a conveyance.

17. Therefore the orders passed by the respondents 2 and 3, treating the document in question as a 'Deed of Conveyance' inspite of its nature as a 'Deed of Release', is not legally tenable. Admittedly, the appellants purchased 1/4 undivided share in the property under a sale deed dated 26-4-1985 and became co-owners of the property. Therefore, on the date on which the subsequent document was executed on 24-4-1987, the appellants had a pre existing title to the property, which merely got enlarged by the second document. The second document did not transfer title in favour of persons who had no legal right at all,

but fed title to the persons who had a pre existing right and title.

18. But the learned Judge was persuaded to uphold the orders of the respondents 2 and 3 in view of the fact that the appellants are strangers who had nothing to do with the family of their predecessors in title and the learned Judge felt that the appellants had adopted a dubious method, to avoid a higher stamp duty. Therefore the learned Judge distinguished all the 3 full bench judgments cited by the learned Counsel for the appellants, on the ground that the documents involved in those cases were either between family members or between partners of a firm.

19. It is true that the document that came up for scrutiny before the Full Bench in 1968 LW 534 was between partners of a firm. The document that came up for consideration before the Full Bench in 1980 LW 598 was between brothers and the document that came up for scrutiny before the Full Bench in 1983 LW 205 was between mother and son. But this fact did not really weigh with the learned Judges who constituted those 3 Full Bench references. As a matter of fact, in the earliest Full Bench decision, 68 LW 534 a contention was raised by the revenue, that there is a distinction between a document executed among the members of a coparcenary and a document executed among co-owners. The said contention was repelled by the Full bench, in the following words:

The learned Government Pleader was prepared to concede that a document under which one Hindu co-parcener purported to give up his rights to the family property in favour of the remaining co-parceners would not be a deed of conveyance, but a deed of release. He did this apparently because of a decision of a Full Bench of this Court in Reference under Stamp Act, Section 46(2). In that case the document was one under which a Hindu son executed in favour of his father, as representing the interest of the other members of the family an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. It was held that the instrument was a release, which should be stamped, as such. The learned Judges observed that it was a deed by which one co-owner renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of

certain lands over which he has no power of alienation. 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.

20. Therefore there was actually no scope for the learned Judge to distinguish those 3 full bench decisions, on the ground on which he had in fact distinguished them. Hence we are of the considered view that the full bench decisions have clinched the issue and there is no escape from the conclusion that the document in question is only a release deed and not a deed of conveyance.

21. That leaves us with the only question as to whether a party who had adopted such a tricky method to reduce the incidence of stamp duty, can be allowed to go scot free. It is this question which had actually troubled the minds of the respondents 2 and 3 and had a bearing in the thought process of the learned Judge.

22. But the said question cannot influence the ultimate decision regarding the nature of the transaction as well as that of the document. It is a settled proposition of law that in construing a document, the substance shall prevail over the form. But the said proposition has to be applied with great caution, in its application to a taxing enactment. A Full Bench of this Court in Board of revenue v. V.N. Narasimhan and Anr. : AIR1961 Mad504 considered the same question and held in paragraphs 31 and 32 as follows:

31. In the application of a taxing enactment to a subject the emphasis on the so called substance of the transaction in antithesis to the form of it should be made with a good deal of caution. In Bank of Chettinad Ltd. v. Commissioner of Income Tax , Sir Lancelot Saunderson delivering the judgment of the Board observed thus:

Their Lordships think it necessary once more to protest against the suggestion that in revenue cases, 'the substance of the matter' may be regarded as distinguished from the strict legal position. In Inland Revenue Commissioners v. Duke of Westminster 1936 A.C. 1 disapproval of this doctrine was expressed in the opinions of Lord Tomlin and Lord Russel of Killowen. A passage from the opinion of Lord

Russel of Killowen at page 24 may usefully be cited. It is as follows: I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a court's view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case.<sup>(32)</sup> There can be no legal impediment to a party selecting and adopting a particular form of transaction to minimise the expenses of stamp duty. The Revenue cannot say that the object of the transaction was to achieve a purpose not disclosed in the document and that therefore the document should be deemed to be that which it is not. In the words of Viscount Sumner in *Levene v. Inland Revenue Commrs.* (1928) 13 Tax Case 486. It is trite law that His Majesty's subjects are free if they can, to make their own arrangements, so that their cases may fall outside the scope of the taxing Act. They incur no legal penalties and, strictly speaking, no moral censure, if having considered the lines drawn by the legislature of the imposition of taxes, they make it their business to walk outside them.

23. The dicta laid down by the Full Bench in the aforesaid decision was followed by another Full Bench of this Court in *Chief Controlling Revenue Authority v. Tvl. Inca Cables (Pvt.) Ltd.* : AIR1982 Mad113 . Though in the said decision, the Full Bench held on facts that the document in question was a conveyance, (on account of there being no pre existing right), the Full Bench agreed with the view taken in : AIR1961 Mad504 that there can be no legal impediment to a party selecting and adopting a particular form of transaction to minimize the expenses of stamp duty.

24. In *A.V. Fernandez v. The State of Kerala* : [1957]1SCR837 , the Constitution Bench of the Supreme Court laid down the law on the following lines:

29. It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference

or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.

Before coming to the said conclusion, the Supreme Court actually referred to the very same observations of Lord Russell of Killowen in *Inland Revenue Commissioner v. Duke of Westminster* and that of Lord Cairns in *Partington v. The Attorney general* as well as the decision of the Privy Council in *Bank of Chettinad* case which were followed by the Full Bench of this Court in : AIR1961 Mad504 .

25. The ratio laid down in : [1957]1SCR837 was followed in several subsequent decisions of the Supreme Court including the one in *Saraswathi Sugar Mills v. Haryana State Board* : AIR 1992 SC224 . In paragraph 11 of the said judgement, the Supreme Court also extracted the observation from another judgement in *Member Secretary Andhra Pradesh State Board for Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Limited* : AIR 1989 SC611 , which reads as follows:

It has to be borne in mind that this Act with which we are concerned is an Act imposing liability for cess. The Act is fiscal in nature. The Act must, therefore, be strictly construed in order to find out whether a liability is fastened on a particular industry. The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to its natural construction of words. See the observations in *Re. Micklethwait* (1855) 11 Exch 452. Also see the observations in *Tenant v. Smith* 1892 AC 150 (and Lord Halsbury's observations at page 154). See also the observations of Lord Simonds in *St. Aubyn v. A.G.* (1951) 2 All ER 473 Justice Rowlatt of England said a long time ago, that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used.

26. Tax planning as opposed to tax evasion has legal sanction. What the appellants have done in this case falls within the parameters of law and the fact that they have saved some stamp duty in the process, cannot alter the character of the document. As we have seen from the above discussion, the law relating to

the distinction between a conveyance and the release has been well settled and reiterated in several Full Bench decisions. Unfortunately, the State woke up to the position only in the year 1998 and sought to plug the hole by the Amendment Act of the year 1998. Under such circumstances, we are of the considered view that the document in question should be treated only as a deed of release chargeable to duty under Article 55 of the Schedule I of the Indian Stamp Act, as it stood as on date of the document, namely 24.4.1987.

28. Consequently, the Writ Appeal is allowed. The order of the learned Judge is set aside and the Writ Petition shall stand allowed. The respondents are directed to charge stamp duty on the document in question, treating it only as a Deed of Release chargeable to duty under Article 55 of the Schedule I of the Indian Stamp Act, as it stood as on the date of the document.

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