Cleetus and Others Vs. the Sub Registrar and Another

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Court : Kerala

Decided On : Mar-05-2012

Judge : S. Siri Jagan

Appeal No. : WP(C).No. 15206 of 2011 (A)

Appellant : Cleetus and Others

Respondent : The Sub Registrar and Another

Judgement :

S. Siri Jagan, J.

1. The 1st petitioner executed a settlement deed in favour of the 2nd petitioner by Ext.P1 registered document dated 6.2.2007. Subsequently, they presented Ext.P2 cancellation deed for registration cancelling Ext.P1 settlement deed. On the said document, the petitioners paid stamp duty as provided under Article 14 of the Schedule to the Kerala Stamp Act. But the 1st respondent insisted on the petitioners paying stamp duty as applicable to a conveyance deed as defined under Section 2(d) of the Kerala Stamp Act on the ground that the cancellation of Ext.P1 would amount to re-conveyance of the property by the 2nd petitioner to the 1st petitioner. According to the petitioners, when Article 15 specifically provides for the stamp duty for a cancellation deed, the petitioners are liable to pay only that stamp duty and no other stamp duty. The petitioners seek the following reliefs;

"i) To issue a writ of certiorari or any other appropriate writ, order or direction quashing Exts.P3, P4 and P6.

ii) To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents 1 and 2 to return the original of the Ext.P2 document to the first petitioner after completing the formalities of registration."

2. A counter affidavit has been filed by the 2nd respondent, wherein the stand taken is that insofar as Ext.P2 document has the effect of the 2nd petitioner conveying the property obtained by her by Ext.P1 document back to the 1st petitioner, the same is essentially a conveyance as defined under Section 2(d) and, therefore, the petitioners are liable to pay stamp duty as applicable to a conveyance provided for in Article 22 of the Schedule to the Stamp Act.

3. I have considered the rival contentions in detail.

4. Article 15 of the Schedule to the Stamp Act reads thus;

15. Cancellation - Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for	Two hundred and fifty rupees."

It is not disputed before me that Ext.P2 is a cancellation deed cancelling a previously executed instrument. Therefore, Ext.P2 comes within the purview of Article 15 without any doubt. Then, the only question which remains to be considered is whether the same is liable to be treated as a conveyance as defined under Section 2(d) of the Stamp Act and whether the petitioners are liable to pay stamp duty under Article 22 of the Schedule. Section 2(d) of the Act reads thus:
"2. Definitions.- .....

xxx xxx xxx

(d) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable, or immovable is transferred inter vivos and which is not otherwise specifically provided for by the Schedule." (underlining supplied)

Therefore, even if Ext.P2 document is treated as an instrument, by which the immovable property is transferred inter vivos, insofar as Article 15 specifically provides for a cancellation deed, which is Ext.P2, what the petitioners are liable to pay is the stamp duty in accordance with Article 15 and not as per Article 22 as contended by the respondents. As such, I do not find any merit in the contention of the respondents. It is, therefore, declared that the petitioners are liable to pay stamp duty on Ext.P2 cancellation deed only in accordance with Article 15 of the Schedule to the Kerala Stamp Act and not under Article 22 thereof. Consequently, there would be a direction to the respondents to complete the registration of Ext.P2 after accepting stamp duty as payable under Article 15 and the registered document shall be returned to the petitioners, as expeditiously as possible, at any rate, within one month from the date of receipt of a certified copy of this judgment.

The writ petition is allowed as above.