

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU  
&  
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**

**MONDAY, THE 16TH DAY OF OCTOBER 2017/24TH ASWINA, 1939**

**WP(C).No. 16099 of 2017 (J)**  
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**PETITIONER(S) :**  
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**ABDUL MUNEER, S/O. HYDRU,  
AGED 39 YEARS, PUTHUPARAMBIL HOUSE,  
VALAVANNUR AMSOM, CHERAVANNUR DESOM,  
TIRUR TALUK, MALAPPURAM DISTRICT- 676 551.**

**BY ADV. SMT.N.DEEPA**

**RESPONDENT(S) :**  
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- 1. SUB REGISTRAR,  
OFFICE OF THE SUB REGISTRAR, TIRUR- 676 101.**
- 2. DISTRICT REGISTRAR (GENERAL),  
MALAPPURAM DISTRICT, MALAPPURAM, PIN- 676 505.**
- 3. INSPECTOR GENERAL OF REGISTRATION,  
THIRUVANANTHAPURAM, PIN- 695 001.**
- 4. LAND REVENUE COMMISSIONER,  
PUBLIC OFFICE BUILDINGS, MUSEUM JUNCTION,  
THIRUVANANTHAPURAM- 695 001.**

**BY GOVERNMENT PLEADER SRI. V.MANU**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 21-08-2017, ALONG WITH W.P(C).NO. 18982 OF 2017, THE COURT  
ON 16-10-2017 DELIVERED THE FOLLOWING:**

**Msd.**

**APPENDIX**

**PETITIONER(S)' EXHIBITS :**

**EXHIBIT P1: A TRUE COPY OF THE GENEALOGY OF FAMILY OF  
LATE. PUTHUPARAMBIL MOIDEENKUTTY HAJI.**

**EXHIBIT P2: A TRUE COPY OF THE ORDER NO. G1.6851/2012 DATED 25.10.2012.**

**EXHIBIT P3: A TRUE COPY OF THE ORDER NO. L.R(A)3-41406/2013  
DATED 29.10.2015 OF THE 4TH RESPONDENT TO THE PETITIONER.**

**EXHIBIT P4: A TRUE COPY OF THE ORDER NO. L.R(A)3-36725/2012  
DATED 09.10.2013 OF THE 4TH RESPONDENT IN AN APPEAL FILED  
BY ONE KUNHAMMED KUTTY.**

**RESPONDENT(S)' EXHIBITS :**

**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

**Msd.**

Antony Dominic, Dama Seshadri Naidu &  
Devan Ramachandran, JJ.

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W.P.(C)Nos.16099 & 18982 of 2017  
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Dated this the 16<sup>th</sup> day of October, 2017

### **JUDGMENT**

**Devan Ramachandran, J.**

This matter has been placed for our consideration resultant to a reference made by a learned Single Judge quad hoc certain issues relating to the quantification of stamp duty payable in certain cases of partition deeds and release deeds between relatives and other close members of a family under the provisions of the Kerala Stamp Act, 1959 ('the Act' for brevity). This reference has been necessitated because of an apparent conflict being noticed between the judgments delivered by two different Division Benches of this Court, namely **State of Kerala v. Jose** (2013 (3) KLT 412) (hereinafter referred to as 'Jose' for convenience) and **State of Kerala v. Shibu** (2015 (4) KLT 131) (hereinafter referred to as 'Shibu' for ease).

2. The apparent dissonance in the above two judgments, as felt by the learned Single Judge, is available in

the Order of Reference and we deem it idoneous that it be read in the same manner as is recorded by the learned Judge and for such purpose we extract the relevant paragraphs of the same as under:

### **REFERENCE ORDER**

(Paragraphs 2 to 5 are omitted being statement of facts)

“6. In **Jose** (supra), the document involved was a partition deed between a person and the legatee of his deceased brother who is none other than the heir of the deceased brother. As in W.P.(C)No.18982 of 2017, the Sub Registry took the view in the said case also that a partition deed between a person and the legatee of his/her deceased sibling would not fall under Serial No.42(a)(i) of the Schedule. This Court took the view that the purpose of the provision contained in Serial No.42(a)(i) of the Schedule being to extend the benefit of lesser stamp duty for partition deeds executed between close relatives, the provision has to be interpreted liberally to include documents in the nature of one involved in the said case also within its fold. In other words, the view taken by this Court was that the benefit of lesser stamp duty provided for under Sl.No.42(a)(i) of the Schedule shall not be denied merely for the reason that one or more of the parties to the partition deed would not fall within the definition of “family” contained therein and if person/persons who would not come within the definition of “family” are either heirs or legal representatives of person/persons who would fall under the definition of “family”, the benefit of the provision shall be extended to them. If the said view is accepted, the petitioners in these cases have to succeed, as the partition deed involved in W.P. (C)No.18982 of 2017 would fall under Serial No.42(a)(i) of the Schedule had Karunakaran been a party to the document and the release deed involved in W.P.(C)No. 16099 of 2017 would fall under Serial No.48(a)(i) of the Schedule had the release deed been in favour of the deceased father of the petitioner.

7. But, it is seen that the Division Bench in **State of Kerala v. Shibu** (supra) took the view that the benefit of the lesser stamp duty provided for in Serial No.48(a)(i) of the Schedule can be extended only if the person in whose favour the release deed is executed is one among the relatives of the executants as mentioned therein. In that case, the document involved was substantially one executed by the siblings in favour of the son of one of their deceased siblings. This Court held that the said document would not fall under Serial No.48(a)(i) of the Schedule. In so far as the person in whose favour the release deed involved in the said case was executed was the son of the deceased sibling of the executants, the document would certainly fall under Serial No.48(a)(i) of the Schedule had the liberal view taken by this Court in **State of Kerala and another v. Jose** (supra) been adopted in that case. In the said view of the matter, according to me, there is conflict between the views taken by the Division Benches of this Court in **State of Kerala v. Shibu** (supra) and in **State of Kerala and another v. Jose** (supra). The issues, therefore, are to be resolved by a Larger Bench of this Court. The matters are, therefore, adjourned. The registry is directed to place these matters before the Honourable the Chief Justice for appropriate orders.”

3. We have heard Smt.N.Deepa and Sri.C.M.Mohammed Iquabal, learned counsel for the petitioners and the learned Government Pleader for the respondents.

4. We have, with great care, examined the two judgments mentioned in the Order of Reference and we have heard in detail the submissions of the learned counsel on either side. However, we are afraid, we find no latent or patent conflict in the views taken by the learned Division Benches in the said judgments. In fact, our considered opinion

is that there can be no such conflict at all since the two judgments operate completely in different and distinct jural scenario, which have nothing in common to each other, save that both relate to the computation of stamp duty under the Act.

5. The facts noticed by the learned Division Bench, while dealing with **Jose** (supra), relate exclusively to a partition deed executed between relatives, whereas the facts placed before the other Division Bench, while considering **Shibu** (supra), relates to a release deed executed by one in favour of a certain relative of his. A conflict in the views of the Division Benches in these two judgments is not conceivably possible since the provisions relating to computation of stamp duty in the case of partition deeds are distinct and unconnected to those relating to release deeds under the Act.

6. Our view as above will become perspicuous and inevitable if one examines the provisions of the Act, qua the two types of conveyances.

7. The computation of stamp duty qua partition deeds is as prescribed under Article 42 of the Schedule to the Act, which reads as under:

**“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 fair value of the separated share or shares of land and the value of other properties in such separated share or shares set forth in the instrument or of the value of all the properties of those separated share or shares as set forth in the instrument, whichever is higher, subject to a maximum of rupees 1000.]

(ii) in any other case

[Six rupees 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.]

**[Explanation** - Family means father, mother, grandfather, grandmother, husband, wife, son, daughter, grandchildren, brother, sister and legal heirs of the deceased children, if any, as the case may be.]]”

8. When it comes to stamp duty payable with regard to release deeds, it is governed by Article 48 of the Schedule to the Act, which is as below:

**“48.** Release, that is to say, any instrument ( not being such a release as is provided for by section 24), whereby a person renounces a claim upon another person or against any specified property-

[(a) When such release operates in favour of father, mother , grandfather, grandmother, husband, wife, son, daughter, brother, sister, grandchildren or legal heirs of the deceased children of a person.

One rupee for every rupees 100 or part thereof of the amount of the fair value of the land and the value of other properties or claims of which the right is relinquished in

proportion to the right relinquished or the value of all the properties or claims of which the right is relinquished in proportion to the right relinquished or consideration for the release, whichever is higher, subject to a maximum of rupees 1000.]

(b) In any other case

The same duty as conveyance (No.21 or 22, as the case may be ) for such amount or value of the property or claim or fair value of the land of which the right is relinquished in proportion to the right relinquished of consideration for the release, whichever is higher.]”

9. The above two provisions are explicitly distinct in their area of operation and not even remotely connected or related to each other. It is hence indubitable that there can be no conflict between the two judgments in question as one of them, namely **Jose** (supra), confines itself to a partition deed, while **Shibu** (supra) is a judgment confining exclusively to release deed. From the Order of reference of the learned Single Judge, it appears that he has been guided, perhaps on reading the judgments in question together, to think that the definition of 'family' with regard to partition deeds in Article 42 would also apply to release deeds in Article 48 and, therefore that, **Shibu** (supra), which held that the ratio in **Jose** (supra) to be not applicable in the case of release deeds was in conflict with the latter.



10. As we have already indicated above, there cannot be a conflict between the two judgments because they operate in areas of two different, unconnected, unrelated and independent situations. However, since the learned Single Judge has indicated such a suspicion leading to the reference, we deem it appropriate, in order to clear it, to delve into the judgments in question and demonstrate that, in fact, there is no conflict between them.

11. In **Jose** (supra), the Division Bench was dealing with a question as to the correct stamp duty to be determined for a partition deed between a person and his deceased brother's son. The question there was whether such deed would obtain the benefit of lower stamp duty because the parties to the said deed are part of a 'family' as defined in the Explanation to Article 42 of the Schedule to the Act. The facts which weighed with the Bench is available in paragraph 2 of the said judgment and it reads as under:

“The brief facts to be noticed in the present case is that one Thomas and Varkey were the joint owners of a property having an extent of 2.27 acres comprised in Survey No. 810/3 of Kaduthuruthy village in Kottayam District. It was purchased in their names by their father by virtue of Exhibit P1 sale deed dated 25.3.1964 and since then, they had been

jointly enjoying the property. Thomas died, leaving his share of the property to his only son by a bequest. Varkey and the respondent/writ petitioner, being the legal heir of the deceased Thomas, decided to partition then property by metes and bounds and Exhibit P4 document was executed on 9.11.2012.”

On these facts, the Bench took the view, relying on an earlier judgment of the same Bench in **State of Kerala and Others v. Manuel** (2013 (1) KLT 825) ('Manuel' for convenience), that when one brother dies and his legal heir stands in the shoes of the deceased, it cannot be said that a partition effected between a legal heir of a brother and his uncle would take it out of the definition of a 'family' partition under Article 42 of the Schedule to the Act.

12. Subsequently, in **Shibu** (supra), another Bench was considering the case of proper charge of stamp duty for a release deed executed by the Uncles, Aunts, and Cousins in favour of the writ petitioner therein and a question was raised whether the ratio in **Jose** (supra) would apply in such cases. The Bench after specific advertence to **Jose** (supra) held as under:

“The context in which the definition of family was interpreted by the Division Bench was entirely different. Present is the case where the issue is not as to whether

petitioner belongs to the “family” or not. The relevant factor in the present case is the relationship between the executants of the release deed and the person in whose favour the release deed is executed. The judgment in Manuel ( supra) thus, is clearly not applicable in the present case and no help can be sought by the learned counsel for the petitioner from the said judgment.”

13. It is, therefore, irrefragible that the Division Bench while dealing with **Shibu** (supra), has examined and evaluated the ratio of **Jose** (supra), vis-a-vis the facts before it and found that the issues in **Shibu** (supra) are entirely different. We are in confirmation of this view and we are also certain that Articles 42 and 48 of the Schedule to the Act are independent and unrelated provisions. They are a complete code in themselves and hence what is prescribed in one cannot be imported into other. Therefore, the view in **Jose** (supra) that the partition deed between a person and the son of his deceased brother would attract the lower stamp duty as per Article 41(2) because they are members of a 'family' would not be applicable or relevant to a release deed under the provisions of Article 48 of the Schedule to the Act (we must however pause herein to record that we have found ourselves against the view in **Manuel** (supra) and in **Jose** (supra) that a

partition deed between an Uncle and a Nephew would benefit a lower stamp duty since they are members of a 'family' because, as we will state in the latter paragraphs of this judgment, it goes contrary to the specific prescriptions contained in Article 42 while dealing with and defining family).

14. As far as release deeds are concerned, the provisions of Article 48 of the Schedule to the Act would concede to a lower stamp duty only if the beneficiary under the deed is the father, mother, grandfather, grandmother, husband, wife, son, daughter, brother, sister, grandchildren or the legal heirs of deceased children, vis-a-vis the executor of the release deed and in no other case. The concept and definition of a 'family' as provided in Article 42 would not be applicable at all since Article 48 contains no such mandate. What is relevant, as has been rightly held in **Shibu** (supra), is the relationship of the executor with the beneficiary of the release deed and if such relationship is one of the enumerated types specifically shown in Article 48, then alone the benefit of a lower stamp duty under Article 48(a) would be obtained and

in no other case. In other words, it does not matter, as regards Article 48, that the parties are members of a 'family' or that they are related to each other and comprising a 'family' as defined in Article 42. What is paramount to obtain the benefit under Article 48(a) is that the beneficiaries of the release deed is related to the executor of the said deed in one of the types of relationships enumerated therein, i.e., only if the beneficiary is the father, mother, grandfather, grandmother, husband, wife, son, daughter, brother, sister, grandchildren or the legal heirs of deceased children. It is, therefore, luculent that the concept of being part of a 'family' as visualised in Article 42 is of no consequence to release deeds.

15. It is in the above purlieu that we are certain in our opinion that there is no conflict between the judgments in **Jose** (supra) and **Shibu** (supra) as though by the learned Single Judge.

16. Once we have indited our view as above, normally, we would not be required to go any further in matters placed before a Full Bench consequent to a specific reference. However, we feel that if we should do that in this case, it

would amount to us being purblind to an obvious error that we have noticed, during hearing of this matter, with regard to the ratio settled by the Division Bench in **Manuel** (supra) and **Jose** (supra) and we are of the view that we are justified and within power to correct it once we have noticed such error. We, therefore, proceed to examine the correctness and validity of the view collected in the above mentioned two judgments.

17. As we have seen earlier in this judgment, Article 42 of the Schedule to the Act relates to stamp duty applicable to instrument of partition. Such instruments are defined under Section 2(k) of the Act, which reads as under:

“Instrument of partition” means any instrument whereby co-owners of any property divide or agree to divide such property in severality, and includes also a final order for effecting a partition passed by any Revenue Authority or any civil court and an award by an arbitrator directing a partition.”

18. It is, therefore, without requirement of any further explication that every instrument of partition can only be among co-owners.

19. That being said, Article 42(1) of the Act, extracted above, provides the benefit of a privilege of paying a lower

stamp duty 'where the partition is among all or some of the family members'.

20. An Explanation is thereafter provided in the Article, which defines 'family' as under:

“Family means father, mother, grandfather, grandmother, husband, wife, son, daughter, grandchildren, brother, sister and legal heirs of the deceased children, if any, as the case may be.”

It is perspicuous that this definition is specific to Article 42 of the Schedule to the Act and has no bearing or concept of family, either obtaining in the other Statutes or as understood in common usage. The intent of the Explanation is to strictly define the contours of 'family' for the purpose of the benefit of a lower stamp duty in the case of partition. The categories of relationships are clearly enumerated and when it is so specific, it is needless to say that only persons of the family who are in such enumerated relationships to one another would obtain this benefit. Since the stamp duty is a taxing statute, its provisions will have to be interpreted strictly. Hence, partition among persons who do not fall within the enumerated categories of relationship, as prescribed in the Explanation to Article 42, would not be entitled to a lower

stamp duty provided in sub-clause (1) of the said Article.

21. When one examines the facts of **Manuel** (supra) and **Jose** (supra), it would be seen that the relationship of the persons who had executed the partition deeds in those cases were not among the enumerated ones available in the Explanation to Article 42, but the Division Bench still proceeded to hold that the benefit of a lower stamp duty under Article 42(1) would be available to such deeds. This is where we find ourselves to be in disagreement with the conclusions in the said judgment.

22. The ratiocination of the Division Bench in these two judgments was that if a partition deed between the two members of a 'family' as defined in Explanation to article 42 could be registered, for a lower stamp duty as per sub-clause (1) of the said Article, a partition deed between one such member and the legal heirs of the other, who is since deceased, would also be eligible for the lower stamp duty under Article 42(1), because the legal heirs only step into the shoes of the predecessor-in-interest. The facts involved in **Manuel** (supra) and **Jose** (supra) are similar but not identical.



In **Manuel** (supra), the partition deed was executed between brother and sisters and the legal heirs of a deceased sibling, whereas, in **Jose** (supra), the partition was between a person and the legatee under a Will of his deceased brother (the legatee also happened to be the son of the deceased). The Division Bench considered both these cases and held in **Manuel** (supra) as under:

“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.”

23. This view was followed in **Jose** (supra). But the Division Bench travelled slightly further to hold that even the legatee of a deceased sibling would be part of 'family' as defined in the Explanation to Article 42 of the Schedule to the Act. This view of the court is available in paragraph 3 thereof. The relevant portion of which is extracted as under:

“Here two brothers were owing the property jointly. If both were alive and partition by metes and bounds were effected, then it would definitely be within serial No.42, ie., a

partition effected between a legal heir of a brother and his uncle would take it out of the definition of family partition? We are of the definite opinion that it will not. We noticed in Manuel's case (supra) that 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 referred to in the judgment of Manuel's case (supra) would take in a brother and a legal heir of a deceased brother. If a partition can be effected between a person and the legal heir of the deceased children of a deceased brother (brothers and legal heirs of children), then it would be absurd to say that it cannot be executed between a person and the legal heir of his deceased brother."

24. The conclusion of the Division Bench as above, we regrettably say, do not appear to be in proper perspective of the specific provisions of Article 42 and its Explanation. When the Explanation specifies a family for the purpose of Article 42 (1) to mean father, mother, grandfather, grandmother, husband, wife, son, daughter, grandchildren, brother, sister and the legal heirs of deceased children, then only those co-owners of a property who are related to one another in one of the specific and enumerated relationships, at the time of execution of the partition deed, would obtain the benefit of a lower stamp duty under Article 42(1) of the Schedule to the Act. To illustrate, take the case of two brothers. Since brothers fall into the categories of relationships in the Explanation, a

partition between them would attract a lower stamp duty under Article 42(1). However, this position will get altered when one of the brothers die and his son/daughter inherits the share. The son/daughter of the deceased brother stand in the relationship of nephew/niece with the surviving brother of their father. The relationship of uncle, nephew/niece are not included in the enumerated relationships in the Explanation. Hence a deed of partition between them would not obtain the benefit under Article 42(1). For further illustration, take the case of a father and two sons. A partition deed among them would certainly be eligible to the benefit of lower stamp duty under Article 42(1). Now, assume that one of the sons die and that his son inherits his share. When this happens, the family consists of a grandfather, son and a grandson. The relationship of a grandson with the son is that of the uncle and nephew and a partition solely between them would take the deed out of the reach of Article 42(1). However, since he is a grandchild in his relationship with the grandfather and since the other two are father and son in their relationship, a partition among three of them would be within the precincts

of Article 42(1) should the grandfather die leaving the other two, such benefit would again terminate, since the surviving members are positioned to each other as uncle and nephew.

25. Hence, to assess the eligibility for reduction of stamp duty in Article 42(1), what is to be seen is the relationship between the co-owners at the time of execution of the partition deed. If each of the co-owner is related to at least one of the other in the enumerated categories of relationships prescribed in the Explanation of Article 42, then the partition deed between them would become deserving of lower stamp duty under sub-clause (1) of the said Article. Considerations of common lineage, devolution of property etc., are all irrelevant for this purpose and all that becomes relevant for the purpose of Article 42(1) is the relationship of the co-owners at the time of execution and registration of the partition deed. If the co-owners are several in number, then the benefit under this Article would flow only if each of such co-owner is related at least to one other through the specified category of relationships as is prescribed in the Explanation to Article 42. This, in our opinion, is the only way the explanation to the Article can be

interpreted. Obviously therefore, the conclusions in **Manuel** (supra) and in **Jose** (supra) are not correct and we are, therefore, constrained to hold so. However, we do not propose to unsettle any rights that have been already created and vested prior to this judgment. We clarify that the findings in this judgment would only apply to partition deeds that are executed and presented for registration before the concerned Sub Registrars from this date onwards and that all such deeds registered prior to this date would not be affected by anything stated and found by us herein.

We thus answer the reference placed for our opinion by holding that there is no conflict in the views of the Division Benches in the judgments in **Jose** (supra) and **Shibu** (supra) and the latter is the correct and applicable law relating to release deeds under Article 48, while the former, though not laying the correct law, relates only to partition deeds under Article 42 of the Schedule to the Act.

We further declare that the conclusions in **State of Kerala and Others v. Manuel** (2013 (1) KLT 825) and **State of Kerala v. Jose** (2013 (3) KLT 412) of the Division Bench is

not the correct law and we, therefore, overrule the same and declare that the benefit under Article 42(1) of the Schedule to the Act would be attracted and available only to those partition deeds that are executed between its co-owners, if each of such co-owner is related to at least one other, in cases where there are more than two co-owners and in case there are only two co-owners, if they are related to each other, in the enumerated categories of relationships prescribed in the Explanation to Article 42 at the time of execution of the partition deed and not otherwise.

The reference is thus answered and the law relating to stamp duty payable under Article 42(1) of the schedule to the Act is thus declared.

Sd/-

Antony Dominic, Judge

sd/-

Dama Seshadri Naidu , Judge

Devan Ramachandran, Judge

tkv