

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 14TH DAY OF JANUARY 2020 / 24TH POUSHA, 1941

WP(C).No.27788 OF 2019(W)

PETITIONER:

KUNJITHOMMAN E.T., AGED 65 YEARS, S/O. THARIAN,
ELENGICAL HOUSE, KOZHIPILLY P.O. KOTHAMANGALAM,
ERNAKULAM 686 691.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENTS:

- 1 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF
REGISTRATION, SECRETARIAT, THIRUVANANTHAPURAM 695
001.
- 2 THE DISTRICT REGISTRAR,
ERNAKULAM, PERUMPILLY BUILDINGS, 2ND FLOOR, M.G.
ROAD, ERNAKULAM 682 011.
- 3 THE SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR, POTHANIKKAD, ERNKULAM
DISTRICT, 686 671.
- 4 THE INSPECTOR GENEREL OF REGISTRATION, VANJIYOOR,
THIRUVANANTHAPURAM, 695 035.
- 5 THE LAND REVENUE COMMISSIONER,
PUBLIC OFFICE BUILDING, MUSEUM JUNCTION,
THIRUVANANTHAPURAM 695 001.

R2 BY GOVERNMENT PLEADER

A C VIDHYA GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Mary Georgeena is the widow of the petitioner's brother Jose. She intends to convey her individual property in favour of the petitioner by virtue of a settlement deed. The petitioner presented the instrument for registration charging stamp duty as applicable to family members. The Registering authority objected to registration, stating that Mary Georgeena is not a member of the family and demanded a higher stamp duty which is applicable to non-family members.

2. Family is defined under Sec.2(fb) of the Kerala Stamp Act, 1959 (for short the 'Act') as follows:

“family” means father, mother, grandfather, grandmother, husband, wife, son, adopted son, daughter, adopted daughter, grandchildren, brother, and sister;

3. Article 51 of the Act refers to stamp duty applicable to settlement. Prior to amendment w.e.f. 1.04.2018, Article 51 stood as follows:

..3..

“51. Settlement-

A. instrument of (including a deed of dower),

(a) where the settlement is in favour of father, mother, grandfather, grandmother, husband, wife son, daughter, brother, sister or grandchildren of a person and if -

(I) the extent of land involved in the property settled by the instrument is five acres or less”

4. After the amendment it stands as follows:

“51. Settlement-

A. instrument of (including a deed of dower),

(a) where the settlement is in favour of any of the members of family and/or legal heirs of the deceased family member.”

(emphasis supplied)

5. The distinction between the above two is that the legal heirs of the deceased family member is also into the scope of family members who are entitled to concessional stamp duty.

6. The learned Government Pleader Smt. A.C. Vidhya, submitted that, unless the executant stands as a legal heir in respect of the subject of the settlement deed, the stamp duty payable on such instrument as referred under 51A(b) is not as that of a member of family.

7. Per contra, Sri. George Sebastian, the learned counsel

for the petitioner, argued that the legal heirs have to be understood in the general sense and cannot be related to the subject of such settlement deed.

8. The dispute in this case has to be understood in the context of defining the legal heirs of the deceased members of the family.

9. The difference of the amended provision will make the legal position clear. The applicable concessional stamp duty was originally available to the family. The 'family' as defined in 2(4)(b) refers to the enumerated class of members of the family. By amendment, this was extended to the legal heirs of such class. That means, only when the legal heirs succeed as members of the class referred in 'family', would they be entitled for the concessional rate. In other words, the concessional stamp duty would be applicable to the legal heirs, who succeed any of the estate of the class referred to in 'family'. The legal heirs as referred in the amended provision has to be understood in relation to persons who are already referred as

members of the family in first part of Article 51 A.

10. A person may hold property either as a legal heir or as an individual. If the person is not holding the property as a legal heir, mere family relationship with the person to whom right is being conveyed will not qualify him to claim the concessional rate. The term 'legal heir' is an assigned norm under law with a qualification attributable in the context of the succession to an estate. A legal heir has a distinct character in his personality independent of being a legal heir in relation to a property. That independent property with a legal heir will not be related to others based on the rule of cognation under law of inheritance.

11. The legal heir is defined in Black's Law Dictionary as follows:

“Persons entitled under laws of descent and distribution.
Person to whom law would give decedent's property if
decedent died intestate.”

12. The dictionary meaning as above establishes the fact that 'legal heir' is an assigned norm under law in relation to an estate

and therefore, estate of the deceased must be the subject matter of such instrument.

13. The learned counsel for the petitioner submits that if a restricted meaning is assigned to legal heirs succeeding to an estate of any of the family members, the very purpose of the concession as per the amended provision would be defeated, and the provision would become otiose or redundant. This is mainly pointing out to the fact that such legal heir in relation to the succeeded estate would be in a position to convey such right by executing a release deed on a concessional stamp duty. Therefore, it would make the amended provision redundant.

14. The amended provision, essentially, is an extension of what is already provided as a benefit to the class of persons, who are enumerated as family. The addition is made for the legal heirs referred to the class defined as family. The law envisages only such legal heirs to succeed to the estate of persons, who are enumerated in the class of family.

15. The learned counsel for the petitioner also placed reliance on the Full Bench judgment in *Abdul Muneer V. Sub Registrar [2018 (1) KLT 238 (F.B)]*. He particularly has drawn my attention to Para 24 of the aforesaid judgment and argued that relationship alone needs to be reckoned for concessional stamp duty and it should not be based on succession to the estate. The learned counsel for the petitioner also refers to Apex Court judgment in *Commissioner of Central Excise, New Delhi V. Connaught Plaza Restaurant Private Limited, New Delhi in [(2012) 13 SCC 639]* and argued that the Court while interpreting statutory provisions, should make sense to the terms of statute in the popular meaning and general understanding.

16. The amendment in Article 51A(a) was after the Full Bench judgment. As already adverted, the amendment only extends the benefits to the legal heirs of the class of persons enumerated as family and not by creating a fresh right based on relationship. It is only when the persons succeed as legal heir, who are otherwise

included in the definition of the 'family', the benefit of the amended provision will be available.

In this case, the property conveyed being an individual property and not being held by Mary Georgeena in the capacity of legal heir, the benefit of concessional stamp duty is not applicable. Therefore, I uphold the impugned order and dismiss the writ petition.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

PR/14.01.2020

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE DRAFT SETTLEMENT DEED DATED 30.08.2019 IN FAVOUR OF THE PETITIONER.
- EXHIBIT P2 A TRUE COPY OF THE REQUEST DATED 30.8.2019 MADE BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 4.9.2019 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE RELEVANT EXTRACT OF THE KERALA FINANCE ACT 2018 WHICH CAME INTO OPERATION ON 1.4.2018.
- EXHIBIT P5 A TRUE COPY OF THE NOTIFICATION ISSUED BY THE 1ST RESPONDENT IN RESPECT OF RATES OF STAMP DUTY AS PER THE KERALA FINANCE ACT 2019.