

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE ACTING CHIEF JUSTICE MR.HRISHIKESH ROY
&
THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 21ST DAY OF JUNE 2018 / 31ST JYAISHTA, 1940

WA.No. 1062 of 2018 IN WPC. 12487/2018

AGAINST THE ORDER/JUDGMENT IN WP(C) 12487/2018 of HIGH COURT OF KERALA DATED
13-04-2018

APPELLANT(S)/PETITIONER

C.K.VASUDEVAN VADHYAN NAMBOOTHIRI,
AGED 75, S/O. LATE KESAVAN VADHYAN NAMBOODIRI,
19/157-VADHYAN MANA, POOTHOLE, THRISSUR - 680 004.

BY ADVS.SRI.N.M.MADHU
SMT.C.S.RAJANI

RESPONDENT(S)/RESPONDENTS:

1. THE DISTRICT REGISTRAR (GENERAL),
THRISSUR DISTRICT, THRISSUR - 680 020.
2. THE SUB REGISTRAR,
THRISSUR SUB REGISTRAR OFFICE,
THRISSUR - 680 020.

BY SR. GOVERNMENT PLEADER SRI. ARAVINDAKUMAR BABU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-06-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sou.

WA.No. 1062 of 2018

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1 TRANSLATION OF EXT.P1 DOCUMENT FILED WITH WRIT PETITION

ANNEXURE A2 TRANSLATION OF EXT.P2 DOCUMENT FILED WITH WRIT PETITION

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

sou.

Hrishikesh Roy, Ag. CJ
&
C.K. Abdul Rehim, J

W.A. No. 1062 of 2018

Dated this the 21st day of June, 2018

J U D G M E N T

Hrishikesh Roy, Ag. CJ

The appellant was the petitioner in W.P(C). No.12487 of 2018 and challenge here is to the judgment dated 13.4.2018, whereby, the learned Judge declared that the four persons in the Ext.P1 partition deed, cannot claim the benefit of lesser stamp duty, as is contemplated in Article 42 (1) of the *Stamp Act, 1959 (Kerala)*. The learned Judge referred to the expression, '*family*', given in the *explanation to Article 42(1)* and declared that the four persons involved in the partition deed (Annexure A1), are disentitled to be treated as '*family*' for the purpose of the said provision.

2. The partition deed was amongst the appellant *Vasudevan Vadhyan Namboothiri*, his wife *Vilasini*, their son *Dileep* and the 4th person in the partition deed is the brother of the appellant, *Parameswaran Namboothiri*. But the learned Judge erroneously stated that brother and brother's wife are parties and therefore they cannot come under the category of '*family*' to be entitled to lesser stamp duty on the deed.

3. The benefit of paying lower stamp duty would be available to persons, who come within the enumerated category and it would be appropriate to extract the relevant provision for further consideration:

"42. Partition-Instrument of [as defined by Section 2(k)]:

(a) Where the partition is among all or some of the family members -

(1) the extent of land involved in the property divided by the instrument is five acres or less

One rupee for every rupees the 100 or part thereof of the fair value of the separated share or shares of the property 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 the separated share or shares as set forth in the instrument, whichever is higher, subject to the maximum of rupees 1000.

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."

4. As can be seen from the above explanation of *family*, the father, wife, son as also the brothers are included in the definition of '*family*' and it cannot be overlooked that the four persons involved in the partition are all members of one *family*.

5. In the above context, a Full Bench of this Court in *Abdul Muneer and Another v. Sub Registrar, Tirur and Others* reported in *2018 (1) KHC 207 (FB)* while interpreting *Article 42(1)* of the *Stamp Duty Act*, declared as follows :

"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-owners 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."

6. When we consider the circumstances here, with reference to definition of *family*, it is clear that the partition deed executed by the four parties connected with the deed would surely be entitled to the benefit of lower stamp duty as provided under *sub-clause (1) of Article 42* and it is declared so accordingly.

7. Having concluded thus, we feel that the learned Judge committed error in dismissing the writ petition. Accordingly, we interfere with the same and allow this writ appeal as also the writ petition. It is ordered accordingly.

Sd/-
Hrishikesh Roy,
Acting Chief Justice

Sd/-
C.K. Abdul Rehim,
Judge

sou.