

(Public Office Building, Thiruvananthapuram 695 033)

(Present: Shri S. S. Sankaranarayanan, IAS)

No. DOIs 10701/04/LM(A3).

Dated 23.06.2004.

Sub: Kerala Stamp Act - Petition filed by Shri Kummali Aboobacker against the order of the District Registrar (General), Malappuram on an impounded document No. 79/90 of the Sub Registrar's office, Kondotty - Revised orders issued.

- Read: 1) Order No. G-506/91 dated 13.05.1994 of the District Registrar (General), Malappuram.
- 2) Revision petition filed by Shri Aboobacker dated 11.11.99.
- 3) No. DOI 36048/94/LM(A3) dated 11.11.99 of the Land Revenue Commissioner.
- 4) G.O letter No. RA-2466/95 dated 20.02.04 of the Inspector General of Registration, Trivandrum.

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The Revision petition put in by Shri Kummali Aboobacker, Kondotty against the order No. G-506/91 dated 13.05.1994 of the District Registrar (General), Malappuram was disposed of by the Commissioner of Land Revenue, Thiruvananthapuram as per order No. DOI 36048/94/LM(A3) dated 11.11.1999, treating the impounded document as sale deed for Rs. 2,52,000/- falling under article 21 of the schedule to the Kerala Stamp Act. The Revision petition was also dismissed.

The Inspector General of Registration, Kerala by his G.O letter No. RA-2466/95 dated 20.02.2004 has informed that some discrepancy occurred in the body of the order and hence it may be corrected. As it was found that the request of the I.G of Registration is genuine, it was decided to hear the matter again. The case was posted

for hearing on 16.04.2004. Notice was served on the appellant Shri Kummali Aboobacker. But he was neither appeared nor was represented. Hence the former order is modified as stated below.

The impounded document No.P9/90 of the Sub Registrar's Office, Kondotty has been styled as a partition deed for Rs.3,00,000/- with separated share worth Rs.30,000/-. An amount of Rs.1,500/- has been paid as stamp duty.

The Sub Registrar, Kondotty impounded and forwarded the document to the District Registrar (General), Malappuram on the ground that it is a partition deed for Rs.3,00,000/- and a release deed for Rs.2,52,000/-. The District Registrar(General), Malappuram in his proceedings No. G-506/91 dated 13.05.94 ordered that the impounded document is a release deed which falls under article 48(b) of the schedule to the Kerala Stamp Act, and therefore the executants to pay the deficits stamp duty of Rs.22,680/-. Against this order the appeal petition has been filed.

The main contention of the petitioner was that the co-executant Mr. Abdulkhader had only $\frac{1}{10}$ right in the property comprised in the impounded document having acquired it as per document No.2416/90 of the Sub Registrar's Office, Kondotty. The remaining $\frac{9}{10}$ th share belongs to the petitioner, that as per the impounded partition deed they had partitioned the property. The total value of the property was Rs.3,00,000/- and the value of the separated share was Rs.30,000/- for which they had paid proper stamp duty as per law, that the order of the District Registrar is illegal. The petitioner has prayed that the impounded document may be considered as a partition deed and the ~~impounded~~ impugned order of the District Registrar may be cancelled.

The case stood posted for hearing on 12.05.97 and heard the party on the same day. It was further posted for hearing on 16.04.04, the petitioner has not appeared. But he has filed a statement on 06.05.2004 on receiving notice for hearing.

The Inspector General of Registration is of the opinion that it is a sale deed which falls under article 21 of the schedule to the Kerala Stamp Act.

On perusal of the impounded document and connected records it is seen that the instrument was executed by Sri Aboobacker, s/o Kummali Meeran and Sri Abdulkhader, s/o Meeran Musaliar. The property was possessed by Sri Aboobacker as per document No. 2215/82, 1475/85, 1822/83, 3128/87. At a latter date the 1st party Sri Aboobacker gave 1/10th of the share to the 2nd party Sri Abdulkhader as per deed No. 2416/90 of the Sub Registrar's Office, Kondotty in order to establish the co-ownership over the scheduled properties. Thereafter the parties involved made partition as per the impounded document. As per the impounded document the total value of the property is Rs. 3,00,000/- and separated share worth Rs. 30,000/-. Hence an amount of Rs. 1,500/- was paid as stamp duty for the separated share value of Rs. 30,000/-.

As per section 2(K) of the Kerala Stamp Act, instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severality.

In a similar case the Government have clarified vide Lr. No. 11793/E3/88/TD dated 09.01.69 that 'A purchaser cannot be treated as a co-owner of the remaining property of the seller'. This is applicable in this case also.

The 2nd party got only $\frac{1}{10}$ share property from the 1st party, but he does not get any right over the remaining $\frac{9}{10}$ th share property of the 1st party, i.e. the 2nd party cannot be considered as a co-owner of the remaining property of the 1st party and hence the transaction is a sale.

In this case the co-ownership over the scheduled properties by giving $\frac{1}{10}$ th share of the 1st party's to the 2nd party was created on 10.08.90. The impounded document No.P9/90 was created on 25.12.90, i.e. after 4 months. So it is clear that the first document is executed to establish co-ownership and to get the benefit of reduced stamp duty for separated share only. As per the impounded document the total cost of the property will exist as Rs.3,00,000/-. The 2nd party gets the property for Rs.2,82,000/- including the property by giving a sum of Rs.2,52,000/-. But the 1st party already gave Rs.30,000/- share value ($\frac{1}{10}$ th share) of the property to the 2nd party as per previous deed No.2416/90. Therefore the impounded document is to be considered as a sale deed for Rs.2,52,000/- only which falls under article 21 of the schedule to the Kerala Stamp Act.

Hence it was held that the impounded document No.P9/90 of the Sub Registrar Office, Kondotty was a sale deed for Rs.2,52,000/- which falls under Article 21 of the schedule to the Kerala Stamp Act and orders issued accordingly as per the reference third cited. The word 'co-owners' in the order of the above cited is deleted and modified accordingly.

Sd/-
COMMISSIONER

To

1. Shri Kummali Aboobacker,
S/o Veeran, Kummali veedu,
Kondotty, Kolathur Post,
Malappuram district.