IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.4211 of 2010 (O&M)
Date of decision: 29.4.2015

Dharamwati

... Appellant

Versus

Bharti @ Bharat Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sudhir Aggarwal, Advocate, for the appellant.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This appeal has been filed by an assignee to claim property released vide two separate release deeds dated 4.4.2006 and 7.2.2007 in favour of his vendor, a family member of the person who executed the release deed. In Haryana transfer of property by release deeds are governed by notification No.16/2000 dated 19.4.2000 amending the Indian Stamp Act by State amendment. The relevant extract of the notification reads as follows : -

> "1. This Act may be called the Indian Stamp (Haryana Amendment) Act, 2000.
>
> 2. In Schedule 1-A of the Indian Stamp Act, 1899, for the existing article 55, the following article shall be substitute,

namely : -

	(1)	(2)
"55.	Release, that is to say any instrument (not being such a release as is provided for by Section 23-A) whereby any person renounces his interest, share, part or claim: -	
(a)	If the release is made of ancestral property in favour of brother or sister (Children of renounces's parents) or son or daughter or father or mother or spouse or grand children or nephew or niece or co-parcener of the renouncer.	Fifteen rupees
(b)	In any other case.	The same duty as a Conveyance No.23(a) relating to sale of Immovable property for the amount equal to the market value of the share, interest, part of claim renounced."

In para. 17, the learned first Appellate Court has held that "a perusal of above said amendment makes it clear that release deed can be made only qua ancestral property."

This is apparently a misreading of the notification. Where the property is ancestral, the release deed would involve payment of only ₹ 15/- as stamp duty. However, if the property is non-ancestral, then the release deed will stand converted automatically and read in law as nothing but a sale deed and chargeable to stamp duty as per law but that would not mean that the release deed deserves to be nullified and declared void and inoperative as a deed of conveyance. It is trite law that it is not the form but the substance which matters.

The learned counsel for the appellant does not dispute the finding of the Courts below that the property was non-ancestral in nature and he being an outsider non-family member vendee should be declared a bonafide purchaser for valuable consideration from the person in whose favour the suit property was released by Hari Singh. Therefore, the view expressed by the learned first Appellate court that a release deed can be only made qua ancestral property [inference being that if that is so therefore the release deed is a nullity and property did not change hands], is not correct on the facts of this case read with the affirmative and negative parts of the Government notification. The Court should have instead held that the stamp duty on such a transaction would have to be paid on the release deed by treating it as a sale deed of immovable property equal to the market value of the share, interest, part of claim renounced in favour of the person in whose favour transfer of property was intended by the rightful owner. However, the transaction does not become a sham one a priori where property is non-ancestral and self acquired when vendor can be pinned down to his ostensible intention to transfer immovable property and avoid payment of stamp duty. For intents and purposes the release deed though in sheep's clothing shall suffer the wolf at the door of the State Treasury and deposit of appropriate Stamp Duty. Thus a misreading of the notification gives rise to a substantial question of law which is framed as follows, however, after putting the horse behind the cart : -

> "Whether a release deed executed by the owner of non-ancestral property would be treated as a sale deed with right to State to recover or impose stamp duty payable on the property at Collector's/Circle's rates or as adjudicated under the Indian

Stamp Act by the competent authority."

Subject to payment of stamp duty as per law, the appeal succeeds for the reasons given above in answer to the substantial question of law framed by the Court.

Interference is warranted due to mis-interpretation of law. The appeal succeeds to the extent indicated above.

(RAJIV NARAIN RAINA)
JUDGE

April 29, 2015
Paritosh Kumar