448.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.327 of 2005 (O&M)
Date of decision:13.01.2016

Sanjeev Kumar and another ... Petitioners

versus

Commissioner, Gurgaon Division, Gurgaon, and others.
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Amrita Nagpal, Advocate,
for Mr. Lokesh Sinhal, Advocate,
for the petitioners.

Mr. Sidharth Sanwaria, DAG, Haryana.
----

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The revision is against an order of the Sub Divisional Officer, Rewari, dated 31.03.2003 holding that the release executed in favour of two persons Sanjeev Kumar and Rajiv Kumar had been wrongly assessed as release *per se* but it should have been treated as conveyance and the stamp duty collected under Article 23 of the Stamp Act. The contention was that the recitals of the releasers clearly showed that the release was in respect of ancestral property

and the persons in whose favour the release was made were having pre-existing interest in the property.

2. The SDO has held that there was no proof that it was a coparcenary or ancestral property. The adjudication was, therefore, on an issue that the property was not ancestral property.

3. The Registering Officer cannot usurp the power of a civil court and make an adjudication of whether the property was ancestral or not. The Registering Officer is only required to take the recitals in the document as they exist and examine whether the document was correctly stamped or not. In this case, the executants were Dhani Ram and his son and daughter viz., Sumer Singh and Banarsi Devi. The releasees were sons of Sumer Singh. If the document is therefore made by the grandfather along with the father and aunt with a recital that the properties were ancestral, it must be taken as conclusive as far as the Registering Officer was concerned. If only under the terms of the document, the person, who releases the right was literally transferring the right to a person who held no pre-existing interest but used a nomenclature that he was releasing the right, there is a scope for assessing the true character of the document and levying the stamps as if it were conveyance.

4. The learned counsel for the State urges that the right which the releasees were espousing actually came to them through a civil court decree and did not come by inheritance. Consequently, it

could not be treated as ancestral property.

5. The reference to civil court decree or the reference to whether it came by inheritance or not is wholly irrelevant in the light of the reasoning which I have adopted already that the Registering Officer will not traverse beyond the terms of the document and will not engage on an adjudication whether the property came ancestrally or not. The Registering Officer has no jurisdiction to decide on character of property at all, which is exclusive only to the civil court if there is a dispute by persons who can raise the dispute to the character. I should also point out to certain fallacy that an ancestral character could be inferred if there was inheritance. Joint family property is never inherited. It comes by devolution, for, inheritance could obtain after coming into force of the Hindu Succession Act in certain situations where Section 6 of the Hindu Succession Act operates and there is a presence of a female in the line of succession. In this case, Sumer Singh who gets property from Dhani Ram will take it as joint family property vis-a-vis the sons if the father is prepared to make such a declaration. There is no document necessary nor a decree essential to bring a joint family character property of a joint family amongst the members of joint family. The decree in this case must only be seen as corroborative for the affirmation made by the releasees that it was an ancestral property.

6. The order passed by the SDO as well as affirmed in appeal by the Commissioner cannot be legally supported and they are set aside. The registration of the document in the manner originally made treating it as a release and stamps collected on that basis would alone be required to be supported.

7. The revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

13.01.2016
sanjeev