

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.01.2020

Date of decision: 20.05.2020

+ **W.P.(C) 9193/2019**

TRIPTA KAUSHIK

..... Petitioner

Through Mr.Setu Niket, Adv.

versus

SUB REGISTRAR VI-A, DELHI & ANR Respondents

Through Mr.Ramesh Singh, Adv. with
Mr.Chirayu Jain, Adv.

+ **W.P.(C) 3560/2018**

RAMESH SHARMA

..... Petitioner

Through Mr.Attin S. Rastogi, Adv.
with Mr.Archit Chauhan,
Adv., Mr.Prateek Yadav,
Adv. & Mr.Shivkant Arora,
Adv.

versus

GOVERNEMENT OF N.C.T OF DELHI AND ORS.

.....Respondents

Through Mr.Ramesh Singh, Adv.
with Mr.Chirayu Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. **WP (C) 9193/2019** has been filed by the petitioner challenging the order dated 05.03.2019 passed by the respondent no. 1 impounding the Relinquishment Deed dated 01.03.2019 executed by the son of the

petitioner, Mr. Kapil Kaushik, in favour of the petitioner, with respect to the property bearing No. B-123, Ashok Vihar, Phase-I, Delhi.

2. The said property was acquired by late Shri. Brijesh Kumar Kaushik, and upon his death, the Delhi Development Authority executed a Conveyance Deed dated 07.04.2000 with respect to the said property in favour of the petitioner and her son.

3. By the Relinquishment Deed dated 01.03.2019, son of the petitioner sought to release/relinquish his rights in the said property in favour of the petitioner.

4. By the Impugned Order dated 05.03.2019, the respondent no. 1, however, impounded the said document treating the same to be as a Gift under Article 33 of Schedule IA of the Indian Stamp Act, 1899 as applicable to the Union Territory of Delhi (hereinafter referred to as 'Act') and thereafter held the Release Deed to be deficiently stamped and impounded the same. Aggrieved of the said order the present petition has been filed.

5. **WP (C) 3560/2018** has been filed by the petitioner challenging the order dated 01.03.2013 passed by the respondent no. 3 impounding the Relinquishment Deed(s) executed by the sisters of the petitioner in favour of the petitioner with respect to their share in the property bearing No. E-67, Greater Kailash, Part-II, New Delhi, holding that the said Relinquishment Deeds (five in number; three dated 06.07.2012 and two dated 17.07.2012) are liable to be stamped under Article 33 of the Act.

6. The petition further challenges the order dated 15.05.2013 passed by the respondent no. 2 assessing the Stamp Duty payable on the said Relinquishment Deeds at Rs. 6,60,257/- and further imposing a penalty of Rs. 1,00,000/- on the petitioner.

7. The property was purchased by the parents of the petitioner, late Shri Jagdish Prashad Sharma and Smt Shanti Devi, vide a registered Sale Deed dated 10.07.1972.

8. The petitioner claims that late Shri Jagdish Prashad Sharma bequeathed his half share in the property in favour of the petitioner by way of a Will registered on 24.09.2001.

9. Late Shri Jagdish Prashad Sharma expired on 31.10.2003, leaving behind his wife, the petitioner and his five daughters as the only Class I heirs.

10. The three sisters of the petitioner executed three separate Relinquishment Deeds in favour of the petitioner on 03.07.2012 relinquishing their share in the property in favour of the petitioner. The remaining two sisters relinquished their share in the property in favour of the petitioner by way of two separate Relinquishment Deeds both dated 17.07.2012. It is claimed that these two sisters could not execute the Relinquishment Deeds on 03.07.2012 as they were not in Delhi at that time.

11. As noted hereinabove, on presentation of the Deeds for registration, they were first impounded by the respondent no. 3 vide order dated 01.03.2013 and later the respondent no. 2, vide the Impugned Order

dated 15.05.2013, assessed deficient Stamp Duty as Rs. 6,60,257/- and levied a penalty of Rs. 1 lakh.

12. The petitioner feeling aggrieved of the above orders, has filed the present petition.

13. As common question of law arises in the above two petitions, they are being taken up for consideration together.

14. Article 55 of the Act is reproduced hereinunder:-

<i>Description of Instrument</i>	<i>Proper Stamp-duty</i>
<i>“55. RELEASE, that is to say, any instrument [not being such a release as is provided for by section 23(a)] whereby a person renounces a claim upon another person or against any specified property-</i>	
<i>(a) if the amount or value of the claim does not exceed Rs. 1,000;</i>	<i>same duty as Bond (No.15) for such amount or value as set forth in the Release.</i>
<i>(b) in any other case.</i>	<i>One hundred rupees.</i>

15. Article 33 of the Act deals with the instruments of Gift, and is reproduced hereinbelow:

<i>Description of Instrument</i>	<i>Proper Stamp-duty</i>
“33. GIFT, Instrument of, not being a Settlement (No.58), or Will or Transfer (No. 62).” HIRING AGREEMENT or agreement for service- See Agreement (No.5)	<i>The same duty as Conveyance (No.23) on the value of the property.</i>

16. As observed hereinabove, in both the petitions the Relinquishment Deed(s) executed in favour of the petitioner(s) have been treated as an instrument of Gift.

17. In ***Ranganayakamma and Anr. v. K.S.Prakash (Dead) by Lrs. And Ors.***, (2008) 15 SCC 673, the Supreme Court observed that renunciation in the Indian context may be for consideration or may not be for consideration. Whether the instrument amounts to a release document or not is not a pure question of law.

18. In ***The Board of Revenue, the Chief Controlling Revenue Authority v. V.M.Murugesu Mudaliar of Gudiyatham***, 1955 SCC OnLine Mad 83, the Full Bench of the Madras High Court was considering a document whereby three persons renounced all their interest in the property of the partnership firm in favour of the two remaining partners for some consideration. The Full Bench has held as under:

“It only remains to consider whether the instrument falls within the definition of conveyance under Art. 19 of

Schedule I-A of the Stamp Act. We are of opinion that it does not. The document proceeds on the footing that the five persons, namely, the three executants and the two persons in whose favour the instrument was executed, who were carrying on business of that firm owned the property as co-owners, the executants being entitled to a three-fifths share and the other two being entitled to the remaining two-fifths share. It is not the case of any one that there was a division of the property by metes and bounds and in accordance with the said shares. In such circumstances the document in and by which the co-owner purports to abandon or relinquish his claim to the share to which he would be entitled would be in the nature of a release within Article 44.

In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be the enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner.

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The learned Government Pleader was prepared to concede that a document under which, one Hindu coparcener purported to give up his rights to the family property in favour of the remaining coparceners would not be a deed of conveyance, but a deed of release. He did this apparently because of a decision of a Full Bench of this court in 'Reference under Stamp Act, Section 46(2). In that case the document was one under which a Hindu son executed in favour of his father, as representing the interest of the other members of the

family an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. It was held that the instrument was a release, which should be stamped, as such. The learned Judges observed that it was a deed by which one co-owner renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of certain lands over which he has no power of alienation. We can see no difference in principle between such a document as between members of a coparcenary and the document in question, which is a document between co-owners. With respect, we follow the principle of this Full Bench decision and apply it to the present case. We hold that the document in question is only a release within the meaning of Article 44 of Schedule I-A of the Stamp Act and was properly stamped as such. It was not liable to be charged either as a deed of dissolution of partnership or as a conveyance.”

19. In **Chief Controlling Revenue Authority, Referring Officer v. Rustorn Nusserwanji Patel**, MANU/TN/0223/1968, the Full Bench of the Madras High Court held that the nomenclature given to the instrument is not decisive nor is the language which the parties may choose to employ in framing the document. What is decisive is the actual character of the transaction and the precise nature of the rights created by means of the instrument. It further held that where two parties are co-owners, with a title which cannot be demarcated or fixed and there is joint possession and commonality of title, the documents transferring/releasing the title by one of the co-owners to the other would be a document of release. It further rejected the argument that a releaser

cannot validly state in the instrument that he is effacing his rights in the property in favour of another named individual.

20. The Full Bench of the Allahabad High Court in ***Balwant Kaur and Ors. v. State of U.P.***, MANU/UP/0168/1984, was considering a document whereby two daughters of the deceased owner of the property sought to release their share in the property in favour of the wife and son of the deceased, who were the only other legal heirs of the deceased. Relying upon the judgment of the Madras High Court in ***V.M.Murugesu Mudaliar of Gudiyatham*** (supra), the Court rejected the argument that under the law it was not open to a co-owner to renounce his right in favour of another co-owner. The Court further held as under:

“16. It is thus clear that under the law it is open to a person holding property as a tenant-in-common to execute a release deed in favour of the other co-owner renouncing his claim to interest in the unpartitioned property and for this purpose it is not necessary for him to execute a deed of conveyance. Accordingly, where in fact such a deed is executed whereby the person in whose favour the property has been released is given a right to enjoy the property without any let or hindrance or claim to be made by the persons so releasing the property, there will be no justification in reading or construing the said document as a deed of conveyance.

17. So far as the instant case is concerned, the recitals made by the two sisters in the document dated 9th March, 1970, clearly amount to renunciation of their interest in the properties left by their deceased father. They do not contain any stipulation where-under they seek to convey their title to their mother and brother. The two sisters were fully competent to release their

undivided interest in the property in favour of their mother and brother. When their objective could be achieved merely by executing a release deed, there is no reason to think that they in fact were executing a deed of conveyance misdescribing it as a release deed. Question No. 2, therefore, has to be answered by saying that on plain interpretation, the document dated 9th March, 1970 was a deed of release and not a conveyance deed within the meaning of the Indian Stamp Act.”

21. In **Raghvendra Jeet Singh v. Board of Revenue And Ors**, 2015 SCC OnLine All 5678, a learned Single Judge of the Allahabad High Court reiterated as under:

“21. Formal renunciation of a claim which the party relinquishing is entitled to put forward is a release chargeable under Article 55, whether the claim is legally correct or not is not relevant. Where by a document a person voluntarily renounces for consideration coparcenary rights of succession to impartible estate it is a release. There can be no release by one person in favour of another, who is not already entitled to the property as co-owner. Thus, by release, there is no transfer of interest or title to another person, who has no preexisting right to such property. A release can, therefore, be made in favour of a person who has a pre-existing right and interest in the property. It would make no difference even where the release is without consideration.

22. Where the property is owned by two co-owners each having undivided equal share therein and one of them by a deed claims title while the other possession, the document would be a release and not a conveyance. Even where one of the co-sharers of the joint agricultural land had simply renounced his claim in favour of another co-sharer in respect of the same agricultural land, the document in

question would be release deed and not a gift deed. (Vide State of Rajasthan Versus Alokik Jain).

23. To distinguish between a release deed, or a gift deed or a sale deed, the decisive factor is the actual character of the transaction and precise nature of the rights created by the instrument. In the case of co-owners each co-owner is in theory entitled to enjoy the entire property in part or in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he released his interest. The result of such a release would be the enlargement of the share of the other co-owner. The result of such a release should be the enlargement of the share of the other co-owner. A release can only feed title and cannot transfer title. (Vide Kuppuswami Versus Arumugam, and Kuppuswami Chettiar v. S.P.A. Arumugam Chettiar).

24. A document under which a Hindu coparcener purports to give up his right to the family property in favour of the remaining coparcener would not be a deed of conveyance but a deed of release. There is no difference in principle between such a document as between members of a coparcenary and as between co-owners. In order to class as a release, the executant of the instrument having common or joint interest along with other should relinquish his interest which automatically results in the enlargement of the interest and others. But where he executes the document in respect of his share in favour of a particular co-owner, it cannot be treated as a release and must come within the definition of conveyance. (Vide Kothuri Venkata Subba Rao Versus Deputy Registrar Gudur).

25. A transaction to assume a character of conveyance, what is necessary is, transfer of interest from one co-owner to another co-owner. As against this, the provision of Article 55 of Schedule 1B of the Act stipulates that the release is that whereby a person renounces a claim upon another person or against any specified property.”

22. The Full Bench of the Andhra Pradesh High Court in ***The Board of Revenue, Hyderabad v. Validity Ram Krishnaiah***, MANU/AP/0082/1973, was considering the case where one of the co-owner executed a Release Deed in favour of the others. The Court held as under:

“The word 'release' is not defined in the Stamp Act. There is already a legal right in the property in Ramakrishnayya who is a co-owner. The incidents of the co-ownership are well established. Each co-owner in theory is entitled to enjoy the joint property either in part or in its entirety and when one co-owner releases his interest or walks out, it cannot be said that there is any conveyance of his interest to the other co-owner. No doubt in the document, the language is employed which if not properly understood in the context of the document and the character of the ownership of the property, may lead to an argument that the transaction evidenced by the document was a conveyance. In fact stress was laid by the Government Pleader on the sentence in the document. "Hence I agree to transfer to you my joint right in the Schedule Property receiving Rs. 9,475 /-..... I received the entire consideration of Rs. 9,475 /-. I hereby transfer to you my joint interest. Hence you shall from now onwards enjoy the schedule property with absolute rights." The word 'transfer' employed in the document cannot be understood to mean a conveyance or sale. There is no warrant for the view that it is only in a case where the release deed is gratuitous it operates as a valid release deed. A document of release may be validly executed even if it recites some benefit to the executant simultaneously with the act of release. In our view, the fact that the document contained words like 'consideration' and 'transfer' do not affect the substantial or true character of the transaction. The designation given to the document is that it is a release deed, though by itself is not decisive of the character of the transaction. The contents of the document, the intendment of

the parties as can be seen from the document and the joint nature of acquisition by both the parties and the mode of enjoyment are all decisive of the fact that the document in question evidences a transaction by way of release of the interest of the executant in favour of the release, the parties to the transaction being co-owners.”

23. The Full Bench of the Andhra Pradesh High Court in ***Kothuri Venkata Subba Rao and Ors. v. District Registrar of Assurances, Guntur***, AIR 1986 Andhra Pradesh 42, while considering the case whereby four of the ten persons who had jointly purchased two plots of land for constructing a cinema theatre, executed four separate Relinquishment Deeds in favour of the remaining six members, reiterated that the description given to the instrument is not decisive in determining the nature of the document and it is, therefore, of no consequence. A Deed of Release need not be gratuitous only. Even if it is supported by consideration, still it can be treated as a Deed of Release if the intendment of the parties and the purpose of the transaction satisfies the requirements of a Deed of Release in a case of the property owned by the co-owners. The Court further held as under:

“27. We do not think that the rulings in Chief Controlling Revenue Authority v. Patel and Balwant Kaur v. State are in conflict with the proposition of law pronounced by Rajamannar, C.J., in Board of Revenue v. Murugesu. The reasons are obvious. If there are two co-owners as in the case of Chief Controlling Revenue Authority v. Patel and one of the co-owners relinquishes his share in the property owned by them in favour of the other the result of the relinquishment is the enlargement of the share of the other co-owner (releasee). If one of the co-owners who is the releasor

merely mentions in the document that he relinquishes his right of or interest in the property owned by them as co-owners instead of using the expression "in favour of the other co-owner", the result is the same, namely, the enlargement of the share of the other co-owner. Rajamannar, C.J., never intended to prohibit such a conveyance in favour of the other co-owner, the effect of which is the enlargement of the share of the releasee.

What his Lordship really meant by stating that it is sufficient if one of the co-owners releases his interest and it is not necessary for one of the co-owners to convey his interest to the other co-owners and in such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owner, is that a co-owner cannot and should not convey his share or interest in the property (owned by the co-owners) in favour of one or a few named co-owners/out of the several co-owners, as such a conveyance would defeat the principle that the relinquishment would result in the enlargement of the share of the remaining co-owner or co-owners. In other words, the well settled principle of relinquishment is the enlargement of the share or shares of the co-owners and that principle will be defeated if the relinquishment is made in favour of one or a few named co-owners from out of the several co-owners.

28. Judged from this view, the rulings in Chief Controlling Revenue Authority v. Patel for the ruling in Balwant Kaur v. State are not in conflict with the decision of Rajamannar, C.J., in Board of Revenue v. Murugesu, as in both the cases, there is enlargement of the shares of the co-owners and a particular co-owner from out of the several co-owners is not preferred, while making relinquishments.

29. Even the Full Bench of this Court in R.C. No. 83/70 dt. 18-1-1974 also took the view that inasmuch as the

release was only in favour of the son of the deceased but not in favour of all the co-owners having rights and interests in the property, the deed was not found to be a deed of release but it is only a deed of conveyance as it was supported by consideration also. That ruling of this Court is again consistent with the proposition laid down by Rajamanner, C.J., in Board of Revenue v. Murugesu (FB) that it is sufficient if one of the co-owners releases his interest and it is not necessary for one of the co-owners to convey his interest to the other co-owner since the result of such release would be the enlargement of share and in such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owner.

30. In the case on hand, from out of ten co-owners, four co-owners executed separate four deeds each relinquishing his 1/10th share in the property in favour of the remaining six co-owners. If the four co-owners out of the ten co-owners would have executed one relinquishment deed, relinquishing their rights and interests in the property owned by all of them as in the case of Board of Revenue v. Murugesu such a document could have been construed to be a deed of release. In the case of Balwant Kaur v. State, two daughters, who are co-owners, relinquished their rights and interest in favour of the remaining co-owners, namely, mother and brother. But in the case on hand, each has executed separate deed though of course in favour of the remaining co-owners. The execution of separate relinquishment deed by individual co-owner relinquishing his share is not contemplated by the decision of the Full Bench of the Madras High Court in Board of Revenue v. Murugesu.

31. The ruling in Board of Revenue v. Murugesu requires the release by one co-owner or by two or few co-owners in favour of all the co-owners. If each co-owner's document in the case on hand is taken

into consideration, it reveals that the release is not in favour of all the co-owners. Thus the relinquishment is not in accordance with the law propounded by the Full Bench in Board of Revenue v. Murugesu. The document, therefore, cannot be construed to be deeds of release.

32. Sri Ramarao, of course, argues that, by executing such a deed, the result is the enlargement of the shares of the remaining co-owners. We cannot accept this contention, as the execution of such a deed by each individual out of several co-owners in favour of the few co-owners is not contemplated by law of release under Art. 46. The law relating to release permits one co-owner or a few co-owners jointly, where there are more number of co-owners, to execute a deed of release relinquishing his interest or their interests in the property in favour of the remaining co-owners as in the case of the decisions of the Madras High Court cited above or in the case of the decision of the Allahabad High Court cited above.

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34. These recitals besides the fact that each of the co-owners executed separate deed conveying 1/10th share in favour of a few but not in favour of all will clearly establish that the instruments are not the deeds of release but they are deeds of conveyance.”

24. In **Maddula Girish Kumar and Anr. v. The Commissioner of Survey, Settlements and Land Records and Anr.**, 1993 (1) APLJ 79, another Full Bench of the Andhra Pradesh High Court, while considering a case where two identical documents were executed by the mother on behalf of two minor sons relinquishing the share in the property in favour of the father, held as under:

“12. In the case on hand, the question is whether the two documents executed by the two coparceners in favour of the remaining coparcener are release deeds or deeds of conveyance. The preponderance of judicial opinion, which we have referred to above, is that it only comes under release, but not a conveyance. Therefore, we agree with the contention of the learned counsel for the petitioners that the documents dated 12th October, 1974 executed by the petitioners in favour of their father are only documents of release.”

25. In **G.Subbalakshmi Visweswara Rao v. Secretary to Government, Revenue Department & Ors.**, 2011 SCC OnLine AP 1093, a learned Single Judge of Andhra Pradesh High Court has reiterated as under:

“10. Therefore, the principle that emerges is that by executing a release deed, one of the coparceners is merely separating himself from the joint family, while the others continue as members of the same undivided family. The estate of the coparceners, in law, is liable to be treated as held in entirety without recognition of identifiable shares. By executing a release deed, one or more coparceners are merely renouncing or extinguishing his or their interests in the estate without, in any manner, affecting the status of the remaining members of the joint family. Therefore, a release deed is not required to be executed by all the coparceners joining the same deed or the release deed is required to be executed in favour of the remaining coparceners either. The principle is, to the extent the coparceners have relinquished their respective rights, the release of the document derives a corresponding benefit of increased proportion in the estate. Therefore, I have no hesitation to hold that the view taken by the Collector as well as the Chief Controlling Revenue Authority in the instant case, is unsustainable in law and the two documents bearing Nos. 80/2002 and 713/2002, are rightly treated by the Sub Registrar concerned as release deeds and they have not suffered any deficit stamp duty.”

26. This Court in *Narinder Kaur v. Amarjeet Singh Sethi*, 2000 (54) DRJ 53, held that a Relinquishment performace, cannot be in favour of any particular co-sharer; if it is to operate in favour of a particular party, it amounts to a transfer and must be effected either by a Sale Deed or by a Gift Deed, depending entirely on whether there was any consideration for such a transfer.

27. In *Srichand Badlani v. Govt. of NCT of Delhi and Ors.*, MANU/DE/4731/2013, the Court while considering a Relinquishment Deed by which the legal heirs of one of the co-owner had sought to relinquish their share in the property in favour of one of the co-owner has held as under:

“4. It is a settled legal proposition that one of the co-owners can relinquish his share in a co-owned property in favour of one or more of the co-owners. The document executed by him in this regard would continue to be a Relinquishment Deed irrespective of whether the relinquishment is in favour of one or all the remaining co-owners of the property. There is no basis in law for the proposition that if the Relinquishment Deed is executed in favour of one of the co-owners, it would be treated as a Gift Deed. The law of stamp duty as applicable in Delhi treats Relinquishment Deed and Gift Deed as separate documents, chargeable with different stamp duties. It is not necessary that in order to qualify as a Relinquishment Deed the document must purport to relinquish the share of the relinquisher in favour of all the remaining coowners of the property. Even if the relinquishment is in favour of one of the co-owners it would qualify as a Relinquishment Deed.”

28. It is important to note that in the said judgment, this Court did not consider the earlier judgments, including the ones referred hereinabove, in reaching the above conclusion.

29. In *Hari Kapoor v. South Delhi Municipal Corporation*, MANU/DE/3800/2019, the Court was considering a Deed of Release executed by one of the co-owner in favour of the other. This Court reiterated that the Deed of Release is an instrument by which one co-owner releases his interest in a specified property as a result of which there would be an enlargement of the share of the other co-owners. The releasee should also have a legal right in the property and the release deed would operate to enlarge that right. This Court held that the share cannot be released in favour of one who has no rights in the property as a co-owner. It rejected the submission that a Deed which operates to release the property of the co-owner who have inherited the property, can be termed as a Release Deed, and not a Deed which is executed between the co-owners who bought the property jointly for valuable consideration.

30. From a reading of the above judgments, the test to determine whether an instrument can be considered as a Release/Relinquishment Deed can be summarized as under:-

- a. In determining whether the document is a release or Gift/Conveyance, the nomenclature used to describe the document or the language which the party may choose to employ in framing the document, is not a decisive factor. What is decisive is the actual character of the transaction intended by the executants;

- b. Determination of the nature of the document is not a pure question of law;
- c. Where a co-owner renounced his right in a property in favour of the other co-owner, mere use of word like ‘consideration’ and ‘transfer’ would not affect the true character of the transaction;
- d. What is intended by a Release Deed is the relinquishment of the right of the co-owner;
- e. Co-ownership need not be only through inheritance, but can also be through purchase;
- f. Where the relinquishment of the right by the co-owner is only in favour of one of the co-owner and not against all, the document would be one of Gift/Conveyance and not of “release”.

WP(C) 9193/2019

31. Applying the above test to the facts of the present petitions, as far as WP(C) 9193/2019 is concerned, the Relinquishment Deed dated 01.03.2019 has been executed by a co-owner in favour of the only other co-owner. This would truly be a Release Deed and falls within the ambit of Article 55 of the Act. The Impugned Order dated 05.03.2019, therefore, cannot be sustained and is accordingly set aside. The petition succeeds.

32. The respondents shall forthwith proceed to register the Relinquishment Deed in favour of the petitioner. The respondents shall also pay a cost of Rs.15,000/- to the petitioner for the present petition.

WP(C) 3560/2018

33. As far as the WP(C) 3560/2018 is concerned, though placing reliance on the judgment of the Full Bench of the Andhra Pradesh High Court in ***Kothuri Venkata Subba Rao*** (supra), the learned counsel for the respondents submits that as five distinct Relinquishment Deeds were signed; three on 06.07.2012 and two on 17.07.2012, the same have to be treated as Gift Deeds, I cannot agree with the said submission. In the present case, the five documents, in fact, form part of one single transaction whereby the sisters have relinquished their shares in the property in favour of the brother. Merely because these documents are executed on different dates, cannot by itself be a determinative factor. It would always depend on facts of each case as to whether merely because the documents are executed separately, they have to be treated as separate transactions or part of one whole. In ***Kothuri Venkata Subba Rao*** (supra), the Andhra Pradesh High Court no doubt put emphasis on the separate execution of the Relinquishment Deeds by four of the co-owners, it also placed reliance on the recital of the documents to hold that the same were executed for giving warranty of title by the executants and were, therefore, not Release Deeds.

34. Having held the above, the documents in question still do not satisfy the test of “Release” as can be gathered from the above referred judgments. In the present case, the property was owned by the mother

and the father of the petitioner in equal share. On the death of the father, his share devolved upon the mother of the petitioner, the petitioner himself, and the sisters of the petitioner, in equal share. The sisters of the petitioner did not relinquish their shares in favour of the remaining co-owners, that is, the mother of the petitioner and the petitioner, however, sought to release the same in favour of the petitioner alone. The same therefore, amounts to a Gift and not a Release.

35. The submission of the learned counsel for the petitioner that the petitioner had inherited the half share in the property on death of his father under the Will left by his father and, therefore, the Relinquishment Deeds be considered as family settlements not chargeable to Stamp Duty, cannot be accepted. The Relinquishment Deeds do not make any reference to the Will of late Shri Jagdish Prashad Sharma, father of the petitioner, or to any purported family settlement. Some of the recitals and covenants, relevant for purposes of present adjudication are reproduced hereinbelow:-

“AND WHEREAS the said Mr. Jagdish Prashad Sharma did not leave behind his any other legal heirs except the seven mentioned above and consequently upon his death his entire ½ (one half) undivided share right, title and interest in the said property devolve upon them equally.

AND WHEREAS the RELEASOR voluntarily out of her natural love and affection for the RELEASEE being real brother has agreed to release and relinquish her entire undivided rights, title share and interest in the said property, i.e. Entire Freehold Built-up Property Bearing no. E-67 measuring 245 square yards, situated at Greater Kailash Part-II, New Delhi, (hereinafter referred to as “THE SAID SHARE OF THE SAID

PROPERTY”), in favour of the RELEASEE absolutely and forever

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2. *That the aforesaid RELEASOR doth hereby convey, transfer assign the said share of the said property, alongwith all the rights of ownership, title interest easement and privileges, whatsoever appurtenant to the said share of the said property TO HAVE AND TO HOLD the same by way of relinquish in favour of the RELEASEE, absolutely and forever.*

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4. *That the RELEASOR assures the RELEASEE, that the said share of the said property released by her is free from all sorts of encumbrances such as prior sale gift mortgage, litigation and disputes, stay order and attachment surety and security etc, etc and if this facts is found otherwise then the RELEASOR will be liable and responsible to indemnify the loss thus suffered by the RELEASEE.”*

36. A reading of above Recitals and Covenants/warranties would clearly show that the Relinquishment Deeds were indeed documents of conveyance and not Release simplicitor.

37. By the order dated 15.05.2013, the respondent no. 2, apart from claiming the deficient Stamp Duty, has imposed a penalty of Rs.1 lakh on the petitioner. The order does not give any reason for imposition of such penalty and its amount. It is noted that the deceased late Shri Jagdish Prashad Sharma is claimed to have left behind his Will bequeathing his share in the property to the petitioner. The Relinquishment Deeds have also been executed by the sisters in favour of the petitioner. Therefore, an intent to evade Stamp Duty on part of the petitioner is not evident.

38. In view of the above, the Impugned Order dated 01.03.2013 passed by the respondent no. 3 and the Impugned Order dated 15.05.2013, in so far as it demands deficient Stamp Duty of Rs. 6,60,257/- from the petitioner, are upheld. The Impugned Order dated 15.05.2013, in so far as it levies penalty of Rs.1 lakh on the petitioner, is set aside.

39. The petitioner claims to have deposited the penalty amount with the respondents. The same be refunded to the petitioner along with interest at the rate of 6% per annum from date of deposit till its refund. Such refund shall be made within four weeks.

40. The petition is partly allowed to the above extent. There shall be no order as to costs.

MAY 20, 2020
rv/Arya

NAVIN CHAWLA, J

नस्यमेव जयते