IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2021

DELIVERED ON : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.10665 of 2021
and W.M.P.No.11276 of 2021

1. Varsha D.Bajaj
W/o Late L.Deepak Bajaj

2. Manesh D.Bajaj
S/o Late L.Deepak Bajaj

3. Priyanka D.Bajaj
D/o Late L.Deepak Bajaj .. Petitioners

Vs.

1. Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.

2. Assistant Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.

3. The Sub Registrar,
Periamet Registration Officer,
Egmore, Chennai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Declaration, declaring that the document (Release Deed) presented by the petitioners for registration treated as a release of right in favour of a co-owner who is a family member thus attracting the stamp duty of Rs.25,000/- under clause 58 of Schedule I of the Indian Stamp Act, 1899 and for a consequential direction to the third respondent to register and release the document pending (Release Deed), dated 27.11.2020 in Sr.No.81/2020 pending on the file of the third respondent.

For Petitioners : Ms.N.Kavitha Rameshwar

For Respondents : Mr.K.M.D.Muhilan, Government Advocate

O R D E R

(The case has been heard through video conference)

The writ petition has been filed seeking for a declaration to declare that the document presented by the petitioners for registration be treated as a Release Deed and thereby attract stamp duty of Rs.25,000/- under Article 58 of Schedule I of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act').

2. The brief facts leading to filing of the writ petition is as follows:

(i) The petitioners are wife, son and daughter of one L.Deepak Bajaj, since deceased. The properties now sought to be settled in their favour, by executing a release deed was originally purchased jointly by one Mr.R.Lachmandas Bajaj, his wife Mrs.L.Mayadevi, their son Mr.Deepak Bajaj and daughter-in-law Mrs.Varsha D.Bajaj, the first petitioner herein. Subsequent to the purchase, Mr.R.Lachmandas Bajaj and Mrs.L.Mayadevi died intestate in the year 2003 and 2018 respectively. Mr.Dillip Bajaj, Mr.Deepak Bajaj and Mrs.Neelam Bajaj are the legal heirs of Mr.R.Lachmandas Bajaj and Mrs.L.Mayadevi, and inherited the properties.

(ii) During the year 2017, Mrs.Neelam Bajaj released her share in the properties in favour of her brother Mr.Deepak Bajaj and the same was registered as Document No.3490 of 2017, dated 16.08.2017. Subsequently, on 19.01.2019, Deepak Bajaj, died due to cancer, leaving behind his wife Mrs.Varsha D.Bajaj, son Mr.Manesh D.Bajaj and daughter Ms.Priyanka D.Bajaj, the petitioners herein, as his legal heirs.

(iii) Now, Mr.Dillip Bajaj, who is one of the legal heirs of Mr.R.Lachmandas Bajaj and Mrs.L.Mayadevi, came forward to release his share in the properties by way of a release deed on 27.11.2020, in favour of his deceased brother's legal heirs, the petitioners herein. However, when the same was presented before the third respondent, Sub Registrar for registration, the third respondent refused to register the release deed, stating that, the document has to be treated as a deed of conveyance, which attract stamp duty at the rate of 8% of the market value of the property and kept the document pending in P.No.81 of 2020. Hence, the present writ petition has been filed with the above prayer.

3. According to the petitioners, one of the brothers is releasing his share to another brother, who is now survived by his wife and two children and they also come under the definition of “family”, and the stamp duty is payable only under Article 55-A of Schedule I of the Act, and the document cannot be treated as conveyance for the purpose of stamp duty. As all the parties have pre-existing right in the properties and by virtue of the release, the petitioners share get enlarged, so it can only be treated as release deed and stamp duty is payable under Article 55-A of Schedule I of the Act.

4. Ms.N.Kavitha Rameshwar, learned counsel appearing for the petitioners would contend that, all the properties originally belonged to Mr.Lachmandas Bajaj and Mrs.Mayadevi. They died intestate, after their demise, their legal heirs inherited the property, first petitioner's husband Mr.Deepak Bajaj is one of the legal heirs. Thus, Mr.Deepak Bajaj along with his brother Mr.Dillip Bajaj and sister Mrs.Neelam Bajaj have equal share in the property. Mrs.Neelam Bajaj, released her share in favour of Mr.Deepak Bajaj, in the year 2017, the remaining legal heir Mr.Dillip Bajaj now wants to release his share in favour of the petitioners, who are none other than his pre-deceased brother's legal heirs. The releasor, Mr.Dillip Bajaj, is one of the co-sharers in the property now relinquishing his right to another co-sharer. As the petitioners are already having pre-existing right in the property and by virtue of the release, the petitioners' share get enlarged, so it is only a release deed and it will fall under Article 55-A of the Schedule I, of the Act and not a settlement deed which falls under Article 58 of the Schedule I of the Act. Hence, the third respondent Sub Registrar cannot treat the document as deed of conveyance and demand more stamp duty. In support of her contention, the learned counsel relied upon number of judgments, which will be referred in the later paras of this order.

5. Per contra, Mr.K.M.D.Muhilan, learned Government Advocate, appearing for the respondents would contend that, factually out of five items of the properties only the first item was purchased by Mr.R.Lachmandas Bajaj, the second item of the property was purchased by Mr.R.Lachmandas Bajaj and the first petitioner Mrs.Varsha Bajaj, the third item of the property was purchased by Mr.Lachmandas Bajaj and Mrs.Mayadevi jointly and the 4th and 5th items were purchased by Mr.Lachmandas Bajaj, Mrs.Mayadevi, Mr.Deepak Bajaj and Mrs.Varsha D.Bajaj jointly and it is not as if the entire property has been purchased by the deceased Lachmandas Bajaj and Mayadevi.

6.Further according to the learned Government Advocate, the petitioners are the legal heirs of the deceased Deepak

Bajaj, who is one of the legal heirs of Lachmandas Bajaj and Mayadevi. Now, another son of Lachmandas Bajaj and Mayadevi namely, Mr.Dillip Bajaj wants to settle his share in favour of the petitioners. Even assuming that the deed is considered as a release deed, the petitioners will not fall under the category of "family" members of Mr.Dillip Bajaj, as the "family" as stated in the Explanation to Article 58 of Schedule I of the Act, only includes father, mother, husband, wife, son, daughter, grandchild, brother or sister and it cannot be expanded to the legal heirs of the predeceased brother. According to the learned Government Advocate, the petitioners cannot come under the coverage of "family" and the document will fall only under Article 55-C and not under Article 55-A, as claimed by the petitioners and they have to pay the necessary stamp duty under Article 55-C of Schedule I of the Act. That apart, the matter is now pending with the Sub Registrar, if at all the petitioners have any grievance, it is always open for them to approach the third respondent Sub Registrar and make their submissions, and it is for the Sub Registrar to consider the submission and pass orders determining stamp duty and the petitioners cannot rush to this Court seeking the above prayer. Hence, according to the learned Government Advocate, the writ petition is not maintainable.

7. In reply, Ms.N.Kavitha Rameshwar, learned counsel appearing for the petitioners submitted that, though Explanation to Article 58 of Schedule I of the Act, includes brother, now the brother has pre-deceased and the petitioners being the legal heirs of settlor, they steps into the shoes of the deceased brother. Hence, it is not right to say that they will not fall under the explanation "family" and it will only defeat the object of the Act and the provisions of the Act should be construed purposively.

8. I have considered the rival submissions.

9. The questions arise for consideration in the writ petition are:-

(a) Whether the document presented by the petitioners for registration is a release deed or a deed of conveyance; and

(b) Even if it is construed as a release deed, whether stamp duty is payable under Article 55-A or Article 55-C, of the Schedule I, of the Act ?

10. Article 55 of Schedule I of the Act, deals with release deed. Originally, it was divided into two parts 55-A and 55-B. Subsequently, the Act was amended and two more types of release deeds were introduced as Article 55-C and Article 55-D. For the

sake of convenience, Article 55 of the Act reproduced hereunder:

Article 55-A	Release, that is to say, any instrument (not being such a release as is provided for by section 23-A) or a release referred to in clauses B, C and D of this Article, whereby a person renounces a claim upon another person or against any specified property.	(One rupee for every Rs.100 or part thereof of the market value of the property which is under release) (Maximum stamp duty is reduced to Rs.25,000/- by G.O.Ms.No.125, C.T.&R (J1), dated the 30th September 2013)
Article 55-B	Release of Benami Right, in favour of real owner-- (a) of immovable property situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirapalli and the City of Tirunelveli; (b) of immovable property situated in any other area; (c) of immovable property situated in any other area;	Seven rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release. Seven rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release. Seven rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release.

Article 55-C	Release of right in favour of co-owner, that is to say, any instrument whereby a co-owner of a property renounces his claim in favour of another co-owner who is not a family member, on any specified property over which they have common right--	
	(i) if it relates to immovable property situated with the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirapalli and the City of Tirunelveli;	Seven rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release.
	(ii) if it relates to immovable property situated in any other area;	Seven rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release.
	(iii) if it relates to any other property.	Seven rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release.

Article 55-D	Release of right in favour of partner-.	
	(i) A release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property when the release is between family members who constitute the partnership or when the property is movable property;	Three rupees for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release.
	(ii) When such release is between partners who are not family members.	(a) Rupees seven for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release when such property is situated with the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirapalli and the City of Tirunelveli. (b) Seven rupees for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release, when such property is situated in other areas.

Explanation,-- For the purpose of this Article, the word "family" shall have the same meaning as defined in the Explanation to Article 58."

11. Article 55-A speaks about the release that, when any document, not being such a release as is provided for by Section 23-A or a release referred to in clauses B, C and D of this Article, whereby a person renounces a claim upon another person or against any specified property. Article 55-B, speaks release of Benami right in favour of real owner. Article 55-C, deals with release of right in favour of co-owner, whereby, a co-owner renounces his claim in favour of another co-owner, who is not a family member, on any specified property over which they have common right. Article 55-D, deals with release of right in

favour of other partners. Explanation to the said Article, says the word "family" shall have the same meaning as defined in the Explanation to Article 58 of the Act.

12. To answer the first issue viz., whether the document has to be treated as a release deed or a conveyance, it is settled law that, if one Hindu coparcener purported to give up his right in the family property in favour of the remaining coparceners, the deed should be treated as a release deed and each co-owner is entitled to enjoy the entire property in part or in full. In those circumstance, one co-owner need not convey his interest to another co-owner, and he can release his right in the property to other co-owners. While releasing his right in the property in favour of other co-owner, such release would enlarge the share of other co-owner. It is also settled that, there cannot be any release of any right by any person in favour of another who is not entitled to the property as a co-owner. In other words, the release only feed title to the other co-owner and not transfer the title. In a deed of conveyance, the transfer is of interest or right to another person who had no pre-existing right in the property. However, in a release deed, a person is releasing his share in favour of another person who has pre-existing right in the property.

13. A Full Bench of this Court in Board of Revenue and Ors Vs. V.M.Murugesa Mudaliar of Gudiyatham reported in (1955) ILR Madras 1133, has held that, when a co-owner release his right in favour of another co-owner, the release only enlarge the share of the other co-owner and it cannot be considered as a deed of conveyance, it can only be treated as a release deed. The relevant portion of the judgement reads as follows:

> "6. 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.
>
> ***
>
> 8. 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, 18 Mad 233 (B).
>
> 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."

14.In a similar circumstances as in the instant case, a Full Bench of this Court in Chief Controller Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel reported in (1968) ILR 1 Mad 651 has held that when two co-owners having title over the property, which cannot be demarcated and they are in joint possession and one co-owner releases his right in favour of another co-owner, it should be treated as release. The relevant portion of the judgment is as follows:

"10. We do not think that this distinction is really significant on the present facts, and it need not be pressed very far in the present case. To the extent of the present facts, these two parties are co-owners, with a title which cannot be demarcated or fixed, with reference to any particular part of the property. In other words, there is a joint possession that can only be severed by partition, and further commonalty of title, in the sense that the title of the releasor is derived from the father, who jointly held the property with the other son, the releasee. In that context, therefore, we do not think that the mere fact that these persons can be described in a certain sense as tenants in common would convert a document which purports to be a document of release into a conveyance.

11. On the contrary, we may emphasise that the essential ingredients of release are here present. There is already a legal right in the property vested in the release, and the release operates to enlarge that right into an absolute title for the entire property, as far as the parties are concerned."

15. In yet another Full Bench judgment of this Court in The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. Rm.L.Rm.L.Lakshmanan Chettiar reported in (1971) ILR 1 Mad 259 relying upon V.M.Murugesa Mudaliar case (cited supra) has held as follows:

"3. The essential difference between a conveyance and a release lies in the fact that, in the latter, there is no transfer of an interest or right to another, who had no pre-existing right in it to any extent A release of a right or of a claim can only be in favour of a person who had a preexisting right or claim and by reason of the release the latter's right or claim is enlarged or is made fuller in its content. Kuppuswarni v. Arurnugha, quoting from Hutchi Gowder v. Bheema Gowder, and S. P. Chinnathambiar v. Chinnatharnbiar, accepted the proposition as correct that a release can only feed title but cannot transfer title or that "renunciation must be in favour of a person, who had already title to estate, the effect of which is only to enlarge the right; renunciation does not vest in a person a title where it did not exist."

4. Board of Revenue v. Murugesa Mudaliar, (FB) was a case of one of the co-owners releasing his right in favour of the rest of the co-owners. This court held that the document relating to it was a release and not a conveyance. In expressing that view, Rajamannar, C. J.; who spoke for the court, observed :

> "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."

5. Chief Controlling Authority v. Patel, which, like Board of Revenue v. Murugesa Mudaliar, FB, was under the Stamp Act, took a similar view. Both these cases related to release of a co-owner's right in favour of the rest of the co-owners. We are here concerned with joint possession and one of the persons entitled to joint possession giving up her right to such possession. The release, as in the case of a release in co-ownership, goes to enhance the interest of the rest of the persons entitled to joint possession."

16. Keeping the above legal position in mind, if we examine

the instant case, after the demise of their parents, intestate, both Mr.Dillip Bajaj and Mr.Deepak Bajaj, along with their sister inherited the property, and after the demise of Mr.Deepak Bajaj, the petitioners being his legal heirs got right over the property. Now, Mr.Dillip Bajaj releasing his right in favour of the petitioners, who are already having pre-existing right in the estate, in effect, it is only enlarging the share of the petitioners, who are having existing right in the property. Hence, the document can only be considered as a release deed and it cannot be treated as conveyance.

17. The next issue, namely, if the document is treated as a release deed, whether it will fall under Article 55-A or Article 55-C of Schedule I of the Act. As stated earlier, Article 55-A deals with release, which is not provided under Section 23-A or a release referred to in Clauses (B), (C) and (D) in Article 55, whereby a person renounces a claim upon another person or against any specified property. Article 55-C deals with release of right in favour of co-owners, wherein, a co-owner of a property renounces his claim in favour of another co-owner, who is not a family member on any specified property over which they have common right. Different stamp duties are prescribed for the documents falls under Article 55-A and Article 55-C.

18. It is the contention of the learned counsel appearing for the respondents that, it is a release of right by one co-owner in favour of another co-owner and the petitioners being the legal heirs of the brother of the releasor, as such they will not fall under the definition of “family” as defined under Article 58 of Schedule I of the Act. The word “family” found in Article 55-C, has the same meaning as defined in the Explanation to Article 58 of Schedule I of the Act. The term “family” has been defined in the Explanation to Article 58 of Schedule I, of the Act, reads as follows:

> "Explanation,-- For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grandchild, brother or sister. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter."

19.According to the learned Government Advocate appearing for the respondents, as per the above Explanation, the family only includes brother and sister and it does not includes the legal heirs of the brother. Hence, the petitioners will not fall under the Explanation of 'family' as defined under Article 58. It can only be treated as release of right by one co-owner in favour of another co-owner, who will not come within the definition of family as defined under Explanation to Article 58, and hence the stamp duty is payable only under Article 55-C and not under Article 55-A of Schedule I, of the Act.

20. It is the contention of the learned counsel appearing for the petitioners that since the petitioners are none other than the legal heirs of the own brother of the releasor, they are also members of the family. In such circumstances, while interpreting a Statute, the Statute should be interpreted purposively and literal construction need not be applied. The petitioners are stepping into the shoes of the deceased brother of the releasor, the family defined in the Explanation to Article 58 of the Act, should be interpreted so as to include the legal heirs of the deceased brother, otherwise, very purpose and object of the Act will be defeated and the petitioners they are entitled to pay stamp duty only under Article 55-A of Schedule I of the Act.

21. The principle object of the Stamps Act is to secure revenue for the State. The law is very much settled that, while interpreting taxing Statutes, there cannot be any equitable consideration and the Court must give a literal interpretation to the words of the Statute, the Court cannot imply anything which is not expressed in the Act and it cannot import a new provision in the Statute so as to set right assumed deficiency, if any. The Hon'ble Supreme Court in A.V.Fernandez Vs. The State of Kerala reported in AIR 1957 SC 657 has held as follows:

> "29. It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. "

22. The above judgment has been subsequently followed in a plethora of judgments in the Hon'ble Supreme Court. In yet another judgment of the Hon'ble Supreme Court in State of Rajasthan Vs. Khandaka Jain Jewellers reported in 2008 (1) CTC

60 has held as follows:

> "10........A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words
>
> > "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.""

23. In view of the settled principle, this Court cannot supply any purposive interpretation to the Explanation appended to Article 58 of Schedule I of the Act, as the explanation is exhaustive, it apply only to such of those persons indicated therein and it cannot be extended to any other person, who do not form part of the definition of 'family' as Explained in Article 58 of Schedule I of the Act. A Division Bench of this Court in T.Muthu Balu Vs. The Inspector General of Registration, Chennai reported in 2014 - 4 - L.W. 33, while considering the word 'family' defined in Explanation to Article 58 of Schedule I of the Act, has held as follows:

> "19. We, therefore, hold that the word "family" defined in the Explanation to Article 58(a) of Schedule -I, appended to Indian Stamp Act, 1899, would mean only such of those persons mentioned in the Explanation. Further, the definition to the word "family" found in Article 58(a) of Schedule-I of the Indian Stamp Act, 1899, is exhaustive and not illustrative and it is applicable only to such of those persons indicated therein and it will not extend to other persons who do not form part of the definition "family". In the present case, since the settlement is in favour of great grandchild (great grand-daughter), the benefit of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act will not be applicable."

24. Considering these circumstance, this Court cannot countenance the submissions made by the learned counsel appearing for the petitioners as the petitioners cannot be included in 'family' as defined in the Explanation to Article 58 of Schedule I of the Act, and they will fall only under Article 55-C of Schedule I of the Act, and they have to pay the stamp duty as prescribed therein.

25. In the result, the writ petition is partly allowed and the third respondent Sub Registrar is directed to treat the document as release deed and collect the stamp duty payable under Article 55-C of Schedule I of the Indian Stamp Act, 1899. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kk

To
1. Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.

2. Assistant Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.

3. The Sub Registrar,
Periamet Registration Officer,
Egmore, Chennai.

+1cc to Mr.N.Kavitha Rameshkumar, Advocate SR.No.42713(25/11/21)

W.P.No.10665 of 2021 and
W.M.P.No.11276 of 2021

BR(CO)
CT(09/09/2021)