

**The State Government by the Sub-registrar, Chickmagalur Vs. M.L. Manjunatha Shetty**

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**Court :** Karnataka

**Decided On :** Jan-21-1972

**Reported in :** AIR1972Kant263; AIR1972Mys263

**Judge :** V.S. Malimath, ;E.S. Venkataramiah and ;H.B. Datar, JJ.

**Acts :** Mysore Stamp Act, 1957 - Sections 2, 2(1), 6, 54 and 54(1); [Constitution of India](#) - Articles 20 and 45

**Appeal No. :** Civil Referred Case No. 9 of 1971

**Appellant :** The State Government by the Sub-registrar, Chickmagalur

**Respondent :** M.L. Manjunatha Shetty

**Advocate for Def. :** Gopalaiah, Adv.

**Advocate for Pet/Ap. :** Venkatachal, Addl. Govt. Adv.

**Judgement :**

V.S. Malimath, J.

1. This is a reference under Section 54 (1) of the Mysore Stamp Act. 1957 by the Chief Controlling Revenue Authority in Mysore. The opinion sought by the Chief Controlling Revenue Authority is as to whether the document in question dated 4th April. 1967 described as a release deed is a conveyance on sale chargeable to stamp duty under Article 20 of the Schedule to the Act, or as to whether the document is a release deed chargeable to stamp duty under Article 45 of the Schedule to the Act.

2. The document in question which is described as a release deed was executed by one Mr. J. N. A. Hobbs in his capacity as Attorney of one Mr. Robert Armsby Oliver Son of Godfrey Ryder Oliver in favour of the respondent Sri M.L. Manjanatha Setty. It is clear from the schedule to the said document that it relates to an estate known as 'Sambrcool Estate' in Attigere village in Chikmagalur District. The document is written on a stamp paper of the value of Rs. 22-50 np. The document was presented for registration before the Sub-Registrar of Chikmagalur on 21st July 1967. Sub-Registrar impounded the document on the ground that the document is not adequately stamped and forwarded the same to the District Registrar of Chikmagalur.

3. On 13th September 1967, the Head-quarters Assistant to the District Registrar held that the document in question is liable to stamp duty as conveyance under Article 20 of the Schedule to the Act and demanded a total amount of Rupees,4,952-50

which included the penalty of Rs. 100/- and also the surcharge due to the Taluk Board amounting to Rs. 1,500/-.

4. The said order of the Headquarters Assistant to the District Registrar was challenged in revision by the respondent before the Chief Controlling Revenue Authority in Mysore. The revision petition was dismissed confirming the view taken by the Headquarters Assistant to the District Registrar.

5. Thereafter, the respondent moved this court in Writ Petition No. 4199 of 1968 for a direction to the Chief Controlling Revenue Authority to make a reference under Section 54 of the Act, This Court made an order on the 25th November, 1969 directing the Chief Controlling Revenue Authority to make a reference under Section 54 of the Act.

6. It is in obedience to the direction of this Court in the above Writ Petition that the present reference has been made by the Chief Controlling Revenue Authority.

7. It is clear from the statement of the case that the contention of the respondent is that the document in question is not conveyance as defined under Section 2 (d) of the Act, but a release deed liable to stamp duty under item 45 of the Schedule to the Act.

8. The only question for consideration is. as to whether the document in question is in substance a conveyance on sale as defined under Section 2 (d) of the Act or a release deed.

9. It is necessary to extract the relevant portion of the document in order to examine the real character of the transaction, which reads as follows:--

'Whereas, as a result of the negotiations between the Second Party and the aforesaid Mr. J. N. A. Hobbs, as attorney of the First Party, the first party agreed to sell and the Second Party agreed to buy the said Sambercool Estate with the crop of the season 1948-49 for a price of Rs. 75,000/- (Seventy five thousand only) and the Second Party paid on the same day to the First Party's attorney, the said Mr. J. N. A. Hobbs. a sum of Rupees 8,000/- (Rs. Eight thousand only) as per receipt No. 1627 dated 29-12-1948 towards the price and whereas the balance of price was paid by the Second Party to the First Party's attorney the said Mr. J. N. A. Hobbs, on 3rd day of February 1949 by cheque No. OZ/51-50523 on Imperial Bank of India, favouring Messrs. Peirce Leslie & Co. Ltd., Whereas the First Party's attorney the said Mr. J. N. A. Hobbs. delivered quiet possession of the said Sambercool Estate with the crops and other produce thereon to the purchaser on the 14th day of February 1949 and the purchaser has been in possession and enjoyment of the said property in his own right as owner thereof continuously, openly and adversely to the said first party for over a continuous period of not less than 19 years.

Whereas the first party has acknowledged him as the owner and has not disturbed his possession and enjoyment of the property;

Whereas the first party has delivered already the documents of title to the Second Party and whereas the sale deed was not executed and completed because of the reported loss of the stamp paper purchased for the purpose and the first party has lost his title to the property by prescription and the second party who has acquired title thereto by adverse possession, now wants a reference deed for collateral

purposes;

Now this deed witnesseth, that the first party hereby relinquishes any right, title or interest whatsoever it has or it had over and in respect of the schedule property in favour of the Second Party and hereby acknowledges the second party as the true and lawful owner of the property and entitled to enjoy by himself, his heirs, successors and assigns in any manner he pleases.

The first party has no manner of objection to the Second party paying the taxes and charges on the said property and having the Khatas of the property transferred to his name and be registered as the occupant of the land for payment of land revenue or any purpose whatsoever .....

10. It is well settled that the description given to a document is not determinative of the true nature of the transaction. True nature of the transaction has to be ascertained on reading the recitals in the document as a whole. Merely because a document is described as a release deed, it does not follow that the transaction is of the nature of a release. The substance of the transaction can be gathered by ascertaining the intention of the parties. The intention of the parties has to be gathered by ascertaining the result sought to be achieved by the document in question. Whether the result sought to be achieved has in reality been achieved or not, is not relevant for the purpose of determining the real character of the transaction for the purpose of ascertaining the stamp duty payable under the Stamp Act.

11. If the document in question is a conveyance on sale as contended on behalf of the State, it would be unnecessary for us to consider as to whether the document also answers the description of the expression, 'release deed'.because Section 6 of the Stamp Act provides that where an instrument is so framed as to come within two or more of the descriptions in the schedule, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. As the stamp duty payable on the document as a conveyance under Article 20 is higher than the stamp duty payable on the document as release deed under Article 45, it would be unnecessary to consider as to whether the document also answers the description of a release deed, if on a true construction of the document it can be held that the document is a conveyance on sale as defined under Section 2 (d) of the Act.

12. Section 2 (d) of the Act which defines conveyance, reads as follows:--

'2 (d) 'Conveyance' includes a conveyance on sale and every instrument by which property, whether moveable, or immovable is transferred inter vivos and which is not otherwise specifically provided for by the Schedule;'

The expression 'sale' has not been defined under the Mysore Stamp Act. Therefore, we have to accept the ordinary meaning of the expression 'sale' for the purpose of construing the expression 'sale' given in Section 2 (d) of the Act. Sale is transfer of property or of right by one person in favour of another for cash consideration. In order to determine as to whether the transaction in question is a sale or not, we have to ascertain as to whether there has been a transfer of property for cash consideration by Mr. Robert Armsby Oliver in favour of the respondent M.L. Manjunatha Setty. The fact that the document is supported by cash consideration does not admit of any doubt as it is clearly stated in the first part of the document

itself that the first party agreed to sell Sambercool Estate for Rs. 75,000/- and in fact received the said amount of consideration in two instalments.

13. The real controversy between the parties is in regard to the question as to whether there has been a transfer of property or interest therein by the document in question in favour of the respondent. It is clear from the preamble to the document that the parties did not contemplate the execution of a sale deed. It is for that purpose that stamp paper was purchased. The reason for not executing the sale deed earlier has been explained in the preamble as being the loss of stamp paper that was purchased for the purpose. The preamble to the document therefore, indicates that what could not be achieved on account of the loss of the stamp paper is sought to be achieved by the execution of the document in question.

14. After the statement of preliminaries in the document, this is what is stated in the document:--

'Now this deed witnesseth, that the first party hereby relinquishes any right, title or interest whatsoever it has or it had over and in respect of the schedule property in favour of the Second Party and hereby acknowledges the second party as the true and lawful owner of the property and entitled to enjoy by himself, his heirs, successors and assigns in any manner he pleases'.

It is no doubt, true that the words 'sale' or 'purchase' have not been used in the document. But, it is clearly stated that whatever right, title or interest that the executant possessed in respect of Sambercool Estate is being relinquished under the document in favour of the respondent. The expression 'hereby relinquished' clearly indicates that it is by the document that the rights possessed by the executant are being transferred in favour of the respondent. It is also clearly stated that the relinquishment is in favour of the second party, viz.. the respondent. These recitals, in our opinion, clearly indicate that there is a transfer of the Sambercool Estate by the executant in favour of the respondent.

15. It is, no doubt, true, as contended by Shri B. Gopalaiah, that in the preamble to the document, there is a statement to the effect that the executant has perfected his title by adverse possession in respect of Sambercool Estate and that the document is being executed only for reference and for collateral purposes. If the intention of the parties was only to acknowledge the fact that the executant has already perfected his title by adverse possession, it would not at all have been necessary to make a further statement to the effect that by the document, the executant relinquishes his interest in the Estate in favour of the respondent. The recitals relied upon by Shri Gopalaiah are only a part of the preamble and do not form the core of the document.

16. It was submitted by Sri Gopalaiah that as the executant had perfected his title by adverse possession, there was no property with the executant which could be conveyed by a sale deed. As already mentioned, the question as to whether title in fact passes to the respondent under the document is not relevant for ascertaining the true nature of the transaction for the purpose of the Stamp Act. Therefore, it is unnecessary to examine whether the executant did or did not possess title to the estate on the date of execution of the document. As the executant purports to transfer the Sambercool Estate in favour of the respondent for cash consideration, the transaction is a conveyance on sale.

17. Sri Gopalaiah invited our attention to a decision of the Lahore High Court reported in the case of Muhammad Hasham v. The Crown, AIR 1932 Lah 535 (SB). After considering the recitals in the document before them, their Lordships of the Lahore High Court came to the conclusion that the primary object of the execution of the document was to record the fact that out of the total purchase price, a portion had been received by the vendor from the vendee and to safeguard the latter against a fresh demand for that sum, rather than to create title in the vendee as owner of the land. It is clear from the recitals in the document considered by their Lordships of the Lahore High Court that there were no words at all in the said document indicating disposition of property by one person in favour of another. Therefore, the decision relied upon by Sri Gopalaiah does not assist him.

18. Sri Gopalaiah next invited our attention to the decision in I. J. J. Rebello v. Chief Controlling Revenue Authority, AIR 1971 Mys 318 (SB). The principle laid down in the said decision is that where a document contains no words whatever of a dispositive character, the document cannot be characterised as a conveyance on sale. The decision, therefore, far from assisting Sri Gopalaiah, supports the contention of the Revenue, inasmuch as the document in question does contain words of dispositive character.

19. For the reasons, stated above, we are of the opinion that the document in question is a conveyance on sale as defined in Section 2 (d) of the Act, chargeable to stamp duty under Article 20 of the Schedule to the said Act. The reference is answered accordingly.

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