

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CWP. No. 5461 of 2008  
Date of Decision: 30.9.2010.

Iqbal Singh and others

--Petitioners

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE PERMOD KOHLI.

Present:- Mr. Vaibhav Sharma, Advocate with  
Ms. Munisha Gandhi, Advocate for the petitioner.

Mr. R.D. Sharma, D.A.G., Haryana.

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PERMOD KOHLI.J (ORAL)

This petition is directed against the order dated 28.2.2006 (Annexure P-3) passed by the Collector, Pehowa and the order dated 18.4.2007 (Annexure P-5) passed by the Commissioner, Ambala Division, Ambala.

Facts necessary for the purpose of this petition are noticed hereunder:-

One Ishar Singh was the grandfather of the petitioner. He had two sons namely Partap Singh and Dalip Singh. Petitioners are sons of Partap Singh, whereas Dalip Singh was survived by his daughters, one of them being Smt. Jagir Kaur. After the death of Ishar Singh his property devolved upon Partap Singh and Dalip Singh, his sons and after their death upon their respective Legal Heirs including petitioners (Legal Heirs of Partap Singh and Smt. Jagir Kaur daughter of Dalip Singh). It is not in dispute that no partition took place between the parties. Jagir Kaur daughter of Dalip Singh relinquished her share of land measuring 12 kanals 7 marlas

out of total land measuring 60 kanals and 15 marlas comprising khewat no.129, Kitta 19 and land measuring 4 marlas comprised in khewat no. 129 kitta 3, situated in village Kheri Shisgaran, Tehsil Pehowa, District Kurukshetra in favour of the petitioners vide registered documents titled as Dastbardarnama. Document was duly presented before the Sub Registrar, Pehowa, District Kurukshetra, who registered the same on 3.6.2002.

At the time of registration perhaps no stamp duty was paid on the instrument. The petitioners were served with a notice dated 10.2.2005 by the Collector, Pehowa asking the petitioners to appear before him in connection with the lesser valuation of the property registered on 3.6.2002 by the Sub Registrar, Pehowa. Petitioners appeared before the Collector and objected to the show cause notice. The Collector, however, passed the order dated 28.2.2006 determining the stamp duty payable on the relinquishment deed at the rate of conveyance treating the same to be a sale deed and demanded an amount of Rs. 54,0,10/- being stamp duty. This determination has been made on the basis of the objections of the audit party of Accountant General, Haryana for which an audit note for the year 2002-03 was made. Petitioners preferred an appeal before the Commissioner, Ambala Division, Ambala, who dismissed the same vide his order dated 18.4.2007. Both the authorities below have unanimously declared the document to be a sale deed and levied the stamp duty payable on the deed of conveyance. While determining the nature of the transaction as a sale deed, it has also been observed that Jagir Kaur being a female could not have relinquished the property in favour of her cousins i.e the petitioners herein.

In the reply filed by the respondent no.2, the stand raised in the impugned order is reiterated. It is revealed that audit party of Accountant General, Haryana raised objections regarding the stamp duty payable in respect of the deed in its audit note for the year 2002-03. On the basis of the audit note the Sub Registrar referred the case to the Collector, Pehowa, who had passed the order after hearing the parties and determined the stamp duty payable on the document as a sale deed. The respondents also justified the order of the Collector and that of the Commissioner, Ambala Division, Ambala.

The petitioners have raised following contentions:-

1. That the document i.e the relinquishment deed having been executed in respect to common ancestral property is valid.
2. There is no transaction of sale nor the document can be termed as a sale deed.
3. Sub Registrar has no jurisdiction to make a reference to the Collector after a period of almost 3 years from the date of registration of the document.
4. The reference is barred by time.
5. The Collector had no jurisdiction.

It is admitted case of the parties that the document i.e the relinquishment deed was executed in respect to a joint property. Jagir Kaur transferred her share in the joint holding in favour of the petitioners, who were also joint owners of the property, the same having not been partitioned till the date of execution of the relinquishment deed. Annexure P-1 depicts that no partition took place between the parties in respect to the land in question. It is also revealed that Jagir Kaur surrendered her right and claim in the property (land measuring 12 kanals 7 marlas) in favour of the petitioners, who are admittedly the co-owners and co-sharers in the

property. Relinquishment is defined as a release at Sr. No. 55 of Schedule 1 to the Indian Stamp Act, whereas the sale deed is part of the conveyance at Sr. No. 23 of the Indian Stamp Act. Section 2 (10) of the Indian Stamp Act further defines the conveyance which reads as under:-

“ 2 (10). Conveyance:- “Conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule-I-A or (by Schedule 1-B) as the case may be.”

From the conjoint reading of Section 2 (10) and article 23 of Schedule 1 it appears that the conveyance is a transfer inter-vivos and is for a consideration. “Sale” is also defined under Section 54 of the Transfer of Property Act, 1882 which reads as under:-

“ 54. “Sale” defined-”Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”

Thus, a conveyance to be a sale involves intention of the parties to transfer the property for a consideration. The stamp duty becomes payable on the value of the property subject matter of sale in the manner prescribed in Schedule 1 of the Indian Stamp Act, whereas the term “release” relates to renouncing one's interest, share or claim in favour of another particularly amongst the relations and co-parceners. Admittedly, in the present case Jagir Kaur renounced her share, right and claim over the property in favour of the petitioners, who are admittedly co-sharers of the property.

It is settled proposition of law that in case of ancestral property every co-parcener or the share holder has right and claim over every inch of

the property unless partitioned. Thus, the petitioners were having right and claim over the entire land including the share of Jagir Kaur jointly with her. She has only renounced/surrendered her right, claim and interest in the property in favour of the petitioners who too had existing interest therein. From the reading of the impugned orders and the document (Annexure P-1) it appears that no consideration ever passed for such relinquishment/release. It has also not been disclosed in the impugned order or in the reply as to what is the basis for treating the document as a sale deed. The objection that a female is not entitled to transfer or relinquish her share in the joint property is again without any factual and legal basis. Jagir Kaur's share in the property is not in dispute. Property being common is also admitted. No provision of law has been noticed in the impugned orders or even in the reply or brought to the notice of the Court during the course of arguments which inter alia imposes any restriction or embargo on the rights of Jagir Kaur to renounce her right in the property in favour of the petitioners, her first cousins and co-sharers. The very basis for passing the impugned order is not sustainable in law.

The Sub Registrar and the Collector both acted only on the report of the audit party. Audit party's opinion is not a final and sacrosanct word on the question of determination of the stamp duty payable under law. Under Section 47-A of the Indian Stamp Act, it is the duty of the Sub Registrar i.e the Registering Officer appointed under the Registration Act and the Collector to determine and assess the stamp duty payable under law. The audit party is not authorized under any of the provisions of the Indian Stamp Act to assess and determine either nature of any of the document or stamp duty payable therein.

There is another aspect of the matter. The document after registration was handed over to the petitioners. This document was never brought before any authority or officer by way of evidence, whereupon its admissibility in evidence could be called in question and consequently determination of the stamp duty in terms of Section 35 of the Indian Stamp Act. A document once registered, the Registering Authority, ceases to have any control over the document and it becomes a functus officio the moment he loses the control over the document. Stamp duty upon such a document/instrument becomes determinable either when the document is used by the parties by way of evidence before any authority or officer and he decides to proceed under Section 35 of the Indian Stamp Act or by the Collector or in accordance with sub section 3 of Section 47-A of the Indian Stamp Act. None of the situations have occurred. The Sub Registrar after a period of almost 3 years made a reference to the Collector for which he was not competent to do so. There was no action by the Collector on his own nor any reference was made to him by the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property, subject matter of the instrument is situated. The total exercise seems to have been made on the basis of an audit report for the period 2002-03. It is also pertinent to note that even the audit report has not been supplied to the petitioners to enable them to respond to the same on any valid legal grounds. Even though, a show cause notice was issued to the petitioners by the Collector, however, there has been a gross violation of principles of natural justice on account of non-furnishing of the audit report to the petitioners to enable them to effectively respond to the same.

As far the question of limitation is concerned, the issue has been considered by this Court in case of **Abhinav Kumar Vs. State of Haryana and others** reported as **2001 Vol. I PLR 598**, wherein following observations have been made:-

“ 7. Thus, the reading of the above provision would show that the Legislature has used the following words with some significance and importance.

**“ While registering any instrument”**

Meaning thereby the reference can only be made immediately after the registration of the document or in the course of the registration of the document but in the present case reference has been made after 8 days which is not in accordance with law. These provisions were also interpreted by the High Court in Civil Revision No.4412 of 1998 Diya Ram Vs. State of Haryana and others, where it was held as follows:-

“ It will thus appear that the consistent view of his Court is that there is no provision in the Indian Stamp Act wherein deficient stamp duty can be recovered by the registering authority either from the vendor or from the vendee subsequent to and after the registration of the sale deed.

No law contrary to it has been cited by the learned counsel for the respondents.”

This question also came to be considered by this Court in Civil Revision No. 3530 of 1995 and other connected matters. This Court considering the scope and mandate of Section 47-A of the Stamp Act has held as under:-

“ Sub Section (1) of Section 47-A of the Act clearly provides for reference to the Collector as soon as the Registering Officer registers the

document and is of the opinion that the value fixed for determining the stamp duty is less than the market value. The Collector on receipt of the reference is required to determine the market value, after affording reasonable opportunity of being heard in terms of Sub Section (2) of Section 47-A of the Act. In the present case, this procedure was not adopted. The Registering Officer, after registration of the documents handed over the same to the vendees and it is only thereafter that he made the reference to the Collector. Sub Section (3) of Section 47-A of the Act further empowers the Collector to initiate proceedings either on the receipt of the reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 in whose jurisdiction, the property is situated or on the receipt of the report of the audit by the Comptroller & Auditor General of India or by any other authority authorized by the State Govt. or suo moto, within a period of three years from the date of registration of the instruments. In the present case, the Collector initiated the proceedings on reference being made by the Registering Officer after he had handed over the document to the vendee. None of the situation contemplated under sub sections (1) or (3) of Section 47-A has been adopted.”

In view of the above legal position, this petition is allowed. Impugned orders dated 28.2.2006 (Annexure P-3) and 18.4.2007 (Annexure P-5) are hereby set aside.

**(PERMOD KOHLI)**  
**JUDGE**

**30.9.2010.**

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Whether to be Reported? Yes.