

MANU/BH/0011/1952

Equivalent Citation: AIR1952Pat32

**IN THE HIGH COURT OF PATNA
SPECIAL BENCH**

Civil Ref. Case No. 1 of 1950

Decided On: 17.09.1951

Appellants: **Vishun Shankar and Ors.**
Vs.

Respondent: **The State of Bihar**

Hon'ble Judges/Coram:

David Ezra Reuben, Vaidynathier Ramaswami and C.P. Sinha, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Standing Counsel

For Respondents/Defendant: B.B. Saran and J.N. Sahaj, Advs.

JUDGMENT

1. This is a reference under Section 57 Sub-section (1) of the Indian Stamp Act. The deed in question purports to be a deed of partition. The question which has been referred is whether it is a deed of gift as well and whether in consequence additional stamp duty under Article 33 of Schedule 1 to the Indian Stamp Act is payable.

2. The property covered by the deed formerly belonged to one Durga Prasad who died about 43 years ago leaving him surviving a widow Janak Dulari and a daughter Bachan Devi. The deed is a deed of partition executed by the five sons of Bachan Devi. The reason for making the reference is that Janak Dulari and Bachan Devi are attesting witnesses to the deed which contains the following passage among the recitations:

"Srimati Janak Dulari Kuar surrendered her limited interest she had in the property left by her husband in favour of Srimati Bachan Devi her daughter. Subsequently the said daughter having for sometime remained in possession and occupation of the property left by her father surrendered her rights in respect thereof in favour of us the executants, her sons, that is the grandsons of Babu Durga Prasad and put them into possession thereof."

It is pointed out that the attestation of these two ladies is not in the usual form but includes a statement that they got the contents of the deed read over to them and understood the contents, the obvious intention being to bind them with knowledge of the statement contained in the above cited passage that they have surrendered their interest in the property.

3. It appears to us clear that this reference must be answered, in the negative. The deed as it stands is a pure and simple partition deed. In the passage on which reliance has been placed on behalf of the State there is merely a statement in the past tense that the ladies "surrendered" their interest, that is to say, the deed does not purport to operate to terminate their interest. It may be that the intention is to

bind these ladies and to prevent them in future from asserting an interest in the property. If the question should arise in future, it will be for the Courts to consider whether the document has that effect but the question is not relevant at this stage. The executant of this document have executed the deed as a deed of partition and want to get it registered as such. If by reason of any omission it appears later that their title in the property is incomplete, that is their concern and they run the risk with open eyes. We do not see any reason why the registration authorities should compel them to treat this deed as a deed of gift and to stamp it and register it accordingly.

4. Reference has been made in the course of argument to the fact that there is no evidence of a previous surrender, and it is suggested that the registration authorities are entitled to make an investigation on the point. We do not think such an investigation is necessary or even within the power of the registration authorities. The transaction alleged is a surrender by a limited owner of her interest in the property. Such a surrender it has been held does not require a document 'Nirmal Chandra v. Mohitosh Das' MANU/WB/0161/1935, Having regard to the ordinary duties of the registration authorities, it is difficult to imagine that they can be required to enter upon an enquiry as to the existence or non-existence of a transaction which may be oral.

5. Our attention has been drawn to a decision of a Special Bench in 'In re. Khetramoni Debya', 17 Pat. 95 in which it was held that a document in which a Hindu widow in possession of property as a limited owner renounces her interest in the property in favour of the next reversioner requires to be stamped under Article 33 of Schedule 1 to the Indian Stamp Act. The facts of that case are distinguishable as the document there expressly operated to extinguish the interest of the widow. In passing we would observe with respect that the correctness of that decision may require re-examination on a proper occasion. The principle on which a surrender operates is that the limited owner by her act of surrender extinguishes her own existence and thus accelerates the succession 'Rangasami v. Nachiappa 46 Ind App 72 and 'Sitanna v. Viranna', 61 Ind App. - 200. The property would therefore appear to pass by succession, not by conveyance (vide 'Venkata-rayudu v. Narayana', I L R (1941) Mad 551.

6. We answer the reference in the negative. The deed is a partition deed and stamp duty is not realisable on it under Article 33 of Schedule 1 to the Indian Stamp Act.

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