

Development Agreement లో చెల్లించబడ్డ డిపాజిట్‌పై 1శాతం స్టాంపు సుంకం చెల్లించాలి

**GOVERNMENT OF ANDHRA PRADESH
REGISTRATION AND STAMPS DEPARTMENT**

From
Smt. VASUDHA MISHRA, I.A.S.
Commissioner & Inspector General of
Registration and Stamps, (FAC)
A.P. Hyderabad.

To
The Accountant General (C&RA)
Andhra Pradesh,
Hyderabad.

Letter No. LAR-1/2164/2011. Dt. 17 09-2011.

Sir,

Sub: Factual note proposed for inclusion in the report of C&A.G. of India for the year 2010-11 - Short levy of stamp duty on documents involving distinct matters - Doct. Nos. 5740/2009 and 6966/2009 of **RO. Rangareddy** district - Explanatory Note submitted Reg.

Ref: 1. AG(C&RA) DO. Lr.No.SRA/DPcell/Regn/PDP/2010-11/376, dt.31-1-2011. 2. A.G. AP Hyd. D.O. Lr. No. SRA/RC/DP No.6-15, 17,18 & 24-26,68/AR 2010-11/IV-14-29, 32-34 & 44-46, 161./92, dt. 31-5-2011.

With reference to the subject and references cited, it is informed that in this case, two documents (**No. 5740/2009 and 6966/2009**) were registered in the R.O. Rangareddy. It is informed that as seen from the recitals of the documents an amount of Rs. 25,00,00,000 and 5,00,00,000 respectively totalling to Rs. 30 crores was paid in the name of 'Goodwill,' which shall also be taken as consideration for the Development Agreement and the same also shall be charged with stamp duty @ 1% under Article 6-B of Schedule I-A to Indian Stamp Act, 1899 read with Notification issued by the Government reducing the stamp duty payable to 1% on the condition that the amount so paid is not adjustable at the time of registration of final sale deeds.
Rs. 25,00,000 Rs. 5,00,000 Rs.30,00,000

Therefore the Accountant General's remark is accepted to the above extent (but not as conveyance chargeable with stamp duty @ 5%, as there is no transfer of property through this agreement) and the deficit comes to Rs. 30,00,000, in two documents (Rs. 30 crores X 1% = Rs. 30,00,000) as shown below:

1.	Doct.No. 5740/2009 - 25,00,00,000X 1%	= Rs.25,00,000
2.	Doct.No. 6966/2009 - 5,00,00,000 X 1%	= Rs. 5,00,000
	Total	Rs. 30,00,000

The District Registrar, Rangareddy was directed to colieci: the deficit amount u/s 41-A of Indian Stamp Act.

In view of the above the Accountant General is requested that the para may kindly be dropped.

Yours faithfully,

Sd/- VASUDHA MISHRA
Commissioner & Inspector General of Registration and Stamps, A.P., Hyderabad.

స్వాంఘ చట్టము అనుమతించిన ప్రకారం రిజిస్టరుకాని దస్తావేజులను క్రమబద్ధీకరించాలి

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P.No.11921 of 2010

Date : 25-11-2010

Between :

T. Purushotham Rao

..Petitioner

And

State of Andhra Pradesh,
represented by its Principal Secretary,
Revenue Department,
Secretariat Buildings, Hyderabad
and others

..Respondents

Counsel for petitioner : Sri Hari Sreedhar for Sri G.Satish Reddy

Counsel for respondent Nos. 1 to 3 : A.G.P. for Revenue

Counsel for respondent Nos.4 to 10 : None

The Court made the following:

ORDER:

This Writ Petition is filed for a mandamus to set-aside proceedings dated 22-4-2010 of respondent No.3.

On 5-10-2010 and also today, there has been no representation for respondent Nos. 4 to 10 who have been impleaded in the Writ Petition. No counter affidavit has been filed on their behalf.

A counter affidavit is filed on behalf of respondent Nos.1 to 3.

The short issue that arises for consideration in this Writ Petition is whether respondent No.3 is justified in rejecting the petitioner's application for impounding and receiving of deficit stamp duty on a purported partition deed on the ground that the genuineness of the non-judicial stamp paper could not be verified in view of destruction of records and also on the ground that objections to the genuineness of execution of the document were filed by respondent Nos. 4 to 10.

The facts giving rise to the filing of the Writ Petition can be summarized in a nutshell: There is a suit for partition pending between the petitioner on the one side and respondent Nos.4 to 10 on the other. The petitioner approached respondent No.3 with an application to impound [validate] an earlier partition deed purported to have been executed on 18-5-1978 between the parties thereto and receive necessary fee therefor. Respondent Nos.4 to 10 paper to have submitted their objections to the said application on the ground that the said partition deed is fabricated. Respondent No.3 has therefore passed the impugned order.

At the hearing, Sri Hari Sreedhar, learned counsel for the petitioner has submitted that neither of the two reasons assigned by respondent No.3 are germane as they fall completely outside the scope of the provisions of the Indian Stamp Act, 1899. (for short, "the Act"). Section 33 r/w. Section 40 of the Act, contends the learned counsel, leaves no discretion with the Collector [respondent No.3 is vested with the powers of the Collector] except to impound the document and collect deficit stamp duty if he is of the opinion that such instrument is not duly stamped.

Opposing this contention, learned Assistant Government Pleader for Revenue submitted that in view of the objections raised by respondent Nos.4 to 10, respondent No.3 has refused to impound

the document and collect deficit stamp duty. She further stated that a civil suit is already pending and therefore the parties need to establish the genuineness of the document before the civil court before seeking impounding of the document and get it validated.

Sections 33, 38 and 40 of the Act which are relevant for the present purpose read as under

“Section 33. Examination and impounding of instruments:

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge or a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed;

Provided that-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898) [Now Chapters IX and X (1) of Cr.P.C. 1973]

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public officers.

Section 38. Instruments impounded, how dealt with:

(1) When the person impounding an instrument under Section 33 has, by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by section 37, he shall send to the Collector, an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

Section 40. Collector's power to stamp instruments impounded:

(1) When the Collector's impounds any instrument under Section 33, or receives any instrument, sent to him under Section 38, sub-section (2), not being an instrument chargeable with a duty or twenty paise only or a mortgage of a crop (Article 36 (a) of Schedule I-A) chargeable under clause (aa) or (bb) of Section 3 with a duty of forty paise or a bill of exchange or promissory note; he shall adopt the following procedure:-

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

On a careful analysis of the above reproduced provisions, I am of the opinion that the scheme underlying these provisions would only provide for ensuring payment of proper stamp duty on every instrument executed between the parties. These provisions do not, in any manner, lay down that collection of additional stamp duty in accordance with the rate prescribed thereunder would in a way establish the genuineness of the document impounded and in respect of which deficit stamp duty is collected. No mechanism is laid down under the scheme of the Act to hold an enquiry into the genuineness or otherwise of the documents nor any such requirement is laid down for competent authority to get satisfied about such genuineness before collecting the deficit stamp duty. My view of this stands fortified by the Judgements of this court in Sai Motors Vs. K.Raja Reddy [1] and Burra Yadagiri and another Vs. Razia Begum and others [2]. Though the counter affidavit has placed reliance on Circular dated 21-3-2009 of the Commissioner & Inspector General of Registration and Stamps, Andhra Pradesh, the law is well settled that the Circular cannot override the specific statutory provisions.

In the premises as above, the Writ Petition is allowed. Respondent No.3 is directed to receive deficit stamp duty from the petitioners and release the document to them. It is however made clear that collection of deficit stamp duty by respondent No.3 does not amount to his accepting the genuineness or otherwise of the document which issue requires to be adjudicated by the Court before which the civil suit between the parties is pending if such an issue is raised by the respondent Nos.4 to 10 or any other party to the suit.

C.V.Nagarjuna Reddy J.

Date : 25-11-2010

AM

[1] 2004(4) ALD (NOC) 297

[2] 2010(3) ALD 265

**PROCEEDINGS OF THE COMMISSIONER AND INSPECTOR GENERAL OF
REGISTRATION AND STAMPS, ANDHRA PRADESH, HYDERABAD.**

PRESENT : SRI K. MADHUSUDHANA RAO, I.A.S.,

Draft Procs No. S2/5968/2010

Dated : 16.04.2012

Sub : Suits - Pending Doct. No. P.101/2008 of SRO, Qutbullapur - Appeal against the orders of the Commissioner and Inspector General in S2/5968/2010 dated 02.06.2010 - Reg.

- Ref : 1. Letter No. 5955/G1/2008, dated 16.04.2010 of the DR. Ranga Reddy.
2. This Office Memo. No. S2/5968/2010, dated 02.06.2010.
3. Orders dated 12.01.2012 of the Hon'ble High Court of A.P. in WP No. 33577 of 2010.
4. Representation dated 08.02.2012 of Sri Dhanraj Soni, Hyderabad.
5. This office Notice No. S1/5968/2010 dated 18.02.2012.
6. Representation dated 05.03.2012 of Sri Dhanraj Soni, Hyderabad.

ORDER:

Through the reference 1st cited, while submitting a copy of the Pending Document bearing no. P.101/2008 of Sub Registrar Office, Qutbullapur, the District Registrar, Rana Reddy sought clarification on the nature of the Document.

As seen from the document in question, it was styled ad Deed of Partition executed among Co-owners. The property under partition was purchased Jointly by (1) Smt Geeta Bai Soni, W/o Srikishan Soni, (2) Smt Bidami Bai, W/o Sri Shankarlal, (3) Smt Champa Bai, W/o Sri Ratanlal, (4) Sri Shivaraj Soni, S/o Sri Giridharlal, (5) Sri Goverdhanlal, S/o Sri Giridharlal and (6) Sri Dhanraj Soni, S/o Sri Kishan Soni from Sri N.V. Marraju and 2 others vide Sale Deed bearing No. 5315 / 1988 of Sub Registrar Office, Medchal and in the said document no mention has been made regarding the contributions made by the purchasers and also there is no mention regarding the source of funds. Therefore, by means of the above sale deed all the six members ae Co-owners having equal shares i.e., 1/6th share each. As the matter stood as above, Smt Bidami Bai Soni who is having 1/6th share in the above said sale deed wrote a Will Deed on 10.04.1992 bequeathing her 1/6th share to Sri Dhanraj Soni and as such Sri Dhanraj Soni became 2/6th share holder in the aforesaid property and the others 4 members @ 1/6th each.

Now, in the present partition deed Smt Geeta Bai Soni and Sri Dhanraj Soni are constituted as one part and the remaining 3 members namely Smt Champa Bai, Sri Shivaraj Soni, Sri Goverdhanlal ae constituted as the 2nd part and the property is divided into shares namely Ac. 9.09 Gts to 1st Party and Ac 0.01 Gts to the 2nd Party. But as originally all the persons are equal share holders, it is apparent that Smt Geetha Bai Soni in the 1st part is having 1/6th share and Sri Dhanraj Soni in the 1st part is having 2/6th share totaling to 3/6th share for the 1st part i.e., 1/2 share in the total property and the remaining 3 members i.e., the members of the 2nd part are having 1/6th share each totaling to 3/6th i.e., 1/2 share in the total property. But in the said partition deed the properties are shown as Ac. 9.09 Gts to the 1st part and Ac. 0.01 Gts to the 2nd part.

In view of the above, the then C & IG issued clarification the District Registrar, Ranga Reddy vide reference 2nd cited that the two parties are having 1/2 share each in the property and

stamp duty may be levied on the separated share as per Article 40 of Schedule - IA to the Indian Stamp Act, 1899.

Aggrieved by the orders of the Commissioner and Inspector General of Registration and Stamps, Sri Dhanraj Soni filed a Writ Petition in the Hon'ble High Court of Andhra Pradesh vide WP No. 33577 of 2010 requesting to declare the orders of the Commissioner and Inspector General of Registration and Stamps as null and void.

The Hon'ble High Court of Andhra Pradesh on 13.01.2012 issued orders setting aside the orders of the Commissioner and Inspector General of Registration and Stamps issued vide reference 2nd cited with a direction to decide the matter afresh after issuing notice to the petitioner within a period of six weeks from the date of receipt of the Court Order.

Basing on the Orders of the Hon'ble High Court, Sri Dhanraj Soni submitted a representation vide reference 4th cited requesting to release the pending document of the Sub Registrar Office, Qutbullapur by levying duty on the Value of the Separated Share i.e., the smallest share in the partition deed as per the provisions laid down in the Stamp Act. Further, he has also stated that the entire property is valued at Commercial property even though the property comprises of several distinct survey numbers and do not form contiguous property and even if the property abuts the main road, the abutting portion of the property and tail end property measuring about 1400 feet in length cannot be equated for valuation purpose and requested to consider the market value also to arrive at the stamp duty and fee.

In view of the orders of the Hon'ble High Court of Andhra Pradesh and the representation of Sri Dhanraj Soni, Notice was issued to Sri Dhanraj Soni vide reference 5th cited to be present before the Commissioner and Inspector General of Registration and Stamps on 25.02.2012 at 11 am, giving the petitioner an opportunity for hearing.

In pursuance of the Notice vide reference 5th cited, Sri Dhanraj Soni along with Sri Omprakash Tibrewala appeared in the case on 25.02.2012 and reiterated the arguments presented in the written representation vide reference 4th cited. Further, in the hearing they did not mention the shares of Smt Geetha Bai and Sri Dhanraj Soni in the partition.

Later after the hearing, Sri Dhanraj Soni submitted a written representation vide reference 6th cited, stating that Smt Geetha Bai is his mother and he is the only Son of her and it has been decided by his parents that out of Ac. 9.09 Gts and his mothers Share would be Ac. 1.00 Gts. But the extent of the share bequeathed on him from Smt Bidami Bai through will deed has not been mentioned in Ac 8.09 Gts which is being fallen to the share of Sri Dhanraj Soni.

The matter has been carefully examined and all the contentions raised by them are verified and it is observed that-

- (i) The property mentioned in the said partition deed was purchased through a sale deed bearing No. 5315/1988 of Sub Registrar Office, Medchal by 6 members namely 1) Smt Geeta Bai Soni, (2) Smt Bidami Bai, (3) Smt Champa Bai, (4) Sri Shivaraj Soni, (5) Sri Goverdhanlal, and (6) Sri Dhanraj Soni and in the said document there is no mention that they belong to Hindu Undivided Family.
- (ii) It is evident from the recitals of the well deed executed by Smt Bidami Bai, as per which she bequeathed her share (1/6th) to Sri Dhanraj Soni (that Smt Bidami Bai was holding only 1/6th share of the property as Co-owner). In the absence of any agreement regarding shares (evidence for contrary), it has to be logically concluded that all the other co-owners also are holding 1/6th share of total property.
- (iii) The share of Smt Bidami Bai i.e., 1/6th has been bequeathed on Sri Dhanraj Soni by

virtue of Will deed and as such Sri Dhanraj Soni became 2/6th share holder.

- (iv) As per the recitals of the partition deed, there are two shares in the document in which Smt Geetha Bai and Sri Dhanraj Soni are on the 1st part and Smt Champa Bai, Sri Shivaraj Soni and Sri Goverdhan Lal are in the 2nd part.
- (v) The careful examination of the facts mentioned above indicates that out of six original co-owners, the five persons entered into partition deed dated 5th day of September, 2008, as per which Smt Geeta Bai Soni and Sri Dhanraj Soni will get 9.09 Guntas and the other three i.e., (1) Smt Champa Bai W/o Sri Ratan Lal, (2) Sri Shivaraj Soni S/o Sri Giridhar Lal & (3) Sri Goverdhan Lal S/o Sri Giridhar Lal put together will get only 0.01 Guntas. From the will deed it can be concluded that all the original owners holds 1/6th share each and as such 3/6th of the property held by the other three consequent on a partition, is transferred to Smt Geeta Bai and Sri Dhanraj Soni.

So it is concluded that both the parties are having 1/2 share each in the property and Stamp duty shall be levied on the Value of the Separated Share equal to 50% of the total property as per Article 40 of Schedule - IA to the Indian Stamp Act, 1899 and 2nd share equal to 50% of the property is exempted from the payment of duty.

Sd/-K. Madhusudhana Rao
Commissioner and Inspector General,
Registration and Stamps, A.P., Hyderabad.

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABD.
(Special Original Jurisdiction)**

**WEDNESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND ELEVEN
PRESENT**

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
WRIT PETITION NO : 19981 of 2010**

Between:

Smt. G.Subbalakshmi w/o Late Visweswara Rao, Hyderabad.

..... PETITIONER

AND

1. The Secretary to Government, Revenue Department, Government of A.P., Hyderabad.
2. The Chief Controller of and Revenue Authority, Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad.
3. The District Registrar, Hyderabad South, 6th Floor, Chandra Vihar, M.J. Road, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed. herein the High Court will be pleased to issue an appropriate order, direction or writ more particularly in the nature of mandamus and declare the action of 2nd and 3rd Respondents herein taking a stand that the said two documents Nos. Viz,80/2002 and 713/2002 as conveyance on sale chargeable under Article 47A of Schedule IA of India Stamp Act, 1899 by the Respondents 2 and 3 herein, as arbitrary, discriminatory illegal and in violation of the provisions of the Act, as well as the rights of the Petitioner and issue consequential direction to the Respondents herein to treat the said registered documents Viz., Nos.80/2002, 713/2002/DR/LAR, Dt. 21.7.2009 as release deeds.

Counsel for the Petitioner : **SRI. J.V. RAO**

Counsel for the Respondents : **GP FOR REVENUE**

The Court made the following : Order

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
(W.P. NO : 19981 of 2010)**

ORDER:

This writ petition is directed against the order passed on 21-07-2009 by the Collector under. Section 41-A of the Indian Stamp Act, 1899 and District Registrar, Hyderabad (South), directing the writ petitioner to pay a sum of Rs.95,545/-, towards the deficit stamp duty in respect of two documents bearing No. 80/2002 and 713/2002, and also the orders passed by the

Chief Controlling Revenue Authority and Commissioner & Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, through his proceeding dated 20-07-2010, rejecting the Appeal preferred by the petitioner against the aforementioned orders passed by the Collector.

One Sri G. Visweswara Rao, the husband of the petitioner, acquired house property bearing municipal No.8-3-315/C/5, admeasuring 253 square yards or 211.54 square meters, situate at Maruthinagar, Yousufguda, Hyderabad, under a registered sale deed bearing document Sri G.V.S. Sai Kumar, Smt. N.P. Padmaja and Sri G. Subba Rao, Thus, the petitioner herein and her four children, referred to supra, succeeded to the estate of Sri Visweswara Rao. On 07-01-2002, G.V.S. Sai Kumar, Smt. N.P. Padmaja and Sri G. Subba Rao, joined together and executed a release deed bearing No.80/2002 in favour of the writ petitioner herein releasing and relinquishing their 3/5th undivided share in house property bearing municipal No.8-3-315/C/5, Maruthinagar, Yousufguda, Hyderabad, for a total consideration of Rs. 1,50,000/-. The said release deed is appropriately stamped and it was also registered by the Sub Registrar concerned. Subsequently, Smt. G.S.R. Lakshmi, executed another release deed on 31-01-2002 in favour of the petitioner herein releasing and relinquishing her 1/5th undivided share in the same property referred to supra for a total consideration of Rs.50,000/-. The said document bearing No.713/2002 was also registered by the Sub Registrar concerned. Both these documents have been released to the petitioner.

Long thereafter, on 28-02-2007, the Collector, exercising the power available under Section 41-A of the Indian Stamp Act, 1899, has issued a notice on the ground that during the audit undertaken by the Accountant General, while checking the documents registered in the Sub Registrar Office, Banjara Hills, it is realized that in respect of both the documents Nos. 80/2002 and 713/2002, to which the petitioner herein is a party, stamp duty of Rs. 21,500/- and Rs. 7,155/- respectively is only paid, whereas both these documents are liable to be treated as conveyance deeds on sale and consequently, a deficit stamp duty of Rs. 95,545/- is payable and hence, called upon the petitioner to show cause why the said amount should not be recovered from her. On the plea that the writ petitioner has not shown any cause, the Collector passed final orders on 21-07-2009, confirming his provisional conclusion about the deficit stamp duty on the aforementioned two documents and thus, demanded payment of Rs. 95,545/- within a period of 30 days from the date of receipt of the said order. The petitioner carried the matter in Appeal before the Chief Controlling Revenue Authority & Commissioner and Inspector General of Registration and Stamps, who rejected the said Appeal, based upon the ratio laid down by this Court in *K.V.SUBBA RAO v. DISTRICT REGISTRAR OF ASSURANCE, GUNTUR and MADDULA GIRISH KUMAR AND ANOTHER v. THE COMMISSIONER OF SURVEY, SETTLEMENTS AND LAND RECORDS AND ANOTHER*². Hence, this writ petition.

Heard Sri J.V.Rao, the learned counsel for the petitioner as well as the learned Government Pleader for Revenue.

It is contended by Sri J.V.Rao that the Collector as well as Chief Controlling Revenue Authority have misconstrued completely the ratio laid down by the Special Bench of this Court in *MADDULA GIRISH KUMAR*'s case (cited 2 supra). It is contended that the respondents have failed to distinguish a release deed from that of a conveyance deed on sale of immovable property. In the result of this confusion, they have held the petitioner liable to pay deficit stamp

duty. It is further contended that if the two documents are to be properly construed by the very nature of their contents and scope, they are liable to be treated as release deeds and hence, they are appropriately stamped. Hence, the question of such instrument receiving deficit stamp duty, would not arise.

Per contra, the learned Government Pleader would contend that since all the coparceners have not joined at one time, but executed separate deeds and relinquished their rights in immovable property, the documents in question are only liable to be understood as conveyance deeds on sale, but not as mere release deeds. When so construed, the inevitable finding is that both the deeds have suffered deficit stamp duty and hence, the levy and demand are correct in law.

The question raised in the instant case, in my opinion, is completely covered by the answer furnished by the special Bench (comprising of three Judges) of this Court in **MADDULA GIRISH KUMAR'S** case (cited 2 supra). In the said case, a reference was made under Section 57 of the Indian Stamp Act, by the Chief Controlling Revenue Authority and Commissioner of Survey, Settlements and Land Records, Hyderabad, regarding stamp duty payable on the two documents executed on 12-10-1974 by Smt. Maddula Pramila, on behalf of her two minor sons, namely, Jaya Veera Venkata Durga Prakash and Girish Kumar, relinquishing their respective shares in the joint family movable and immovable properties in favour of their father Sri Maddula Panduranga Rao. The Joint Registrar of Machilipatnam impounded those two documents treating them as documents of conveyance on sale. In those set of circumstances, a reference was made to the High Court as to whether the documents styled as release deeds were sale deeds or not.

The Special Bench has considered the Judgment **SUBBANA v. BALASUBBA REDDI**³, where the question arose whether one member of a Hindu joint family consisting of several members, can, irrespective of a partition of a family estate, give his own interest therein to one of the other coparceners. While deciding the above case, the Madras High Court has considered two of its earlier decisions in **PEDDAYYA v. RAMALINGAM**⁴ and **THANGAVELU PILLAI v DORAISWAMI PILLAI**⁵. It has also considered the decision of the Privy Council in **VENKATAPATHI RAJU v. VENKATANARASIMHA RAJU**⁶ and observed as follows:

"The relinquishment by one co-parcener of his interest in the family estate in favour of the members of the co-parcenary does not amount to an alienation; it merely amounts to an extinction of his right in favour of the others."

The Special Bench of our Court has also considered an earlier Full Bench Judgement of our High Court rendered in **ANJANEYULU v. RAMAIAH**⁷, wherein the Full Bench has held as under:

"The relinquishment of a share by one of the coparceners in favour of the other members does not alter the status of the joint family. The releaser alone separates himself from the family while others continue as members of an undivided family. Mitakshara treated the estate of coparceners as held in entirety without recognition of shares and defined partition as the adjustment of diverse rights regarding the whole by distributing them in particular portions of the aggregate. The relinquishment by a coparcener does not require either the adjustment of diverse rights or the only results in the extinction of his rights in the family properties and his

separation from the family. That being so, it cannot be predicated that a relinquishment of his interest by one of the coparceners in the family estate is tantamount to a partition of the joint family wealth. To put it differently a partition of the family properties involves definement of shares, whereas a release by a member of an undivided family does not require the ascertainment of shares of each of the members though the releaser separates himself. The separation of one member, who renounced his share, does not necessitate a distribution of the joint family property in definite partitions. His renunciation merely extinguishes his interest in the estate but does not in any way effect the status of the remaining members of the family property."

The Special Bench has also considered another Judgement of the Madras High Court in **BOARD OF REVENUE v. MURUGESA**⁸ and an earlier Judgement of this Court in **BOARD OF REVENUE v. V.R. KRISHNAIAH**⁹. Thereafter, the Special Bench dealing with **MADDULA GIRISH KUMAR**'s case (cited 2 supra) had considered the earlier Judgement in **K.V.SUBBA RAO**'s case (cited 1 supra).

The reference has been ultimately answered in para 12 as under:

"12. In the case of hand, the question is whether the two documents executed by the two co-parceners in favour of the remaining co-parcener 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 petitioner that the documents dated 12th October, 1974, executed by the petitioners in favour of their father are only documents of release."

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.

The orders passed by the Collector on 21-07-2009 and the Chief Controlling Revenue Authority on 20-07-2010 are quashed and the writ petitioner is held as not liable to pay a sum of Rs.95,545/-, as levied and demanded by the respondents towards deficit stamp duty.

With this, the writ petition stands allowed. No. costs.

Sd/- Y.GOPALAKRISHNA RAO
ASSISTANT REGISTRAR

సెక్షను 73 క్రింద ఆడిట్ నిర్వహణపై ఆదేశాలు

**O/o the Commissioner & Inspector General of
Registration and Stamps, A.P., Hyderabad.**

Circular Memo. No.S5/11266/11

Date : 11.04.2012

Sub : Registration & Stamps Department - India Stamp ACT, 1899 - Stamp Audit U/s
73. of I.S Act, 1899 - Certain instructions issued - Reg.

Ref : 1) Hon'ble High Court Judgment dt. 27.09.1996 in Batch WPs No. 10300/ and
others.

2) Hon'ble Supreme. Court of India Judgment dt. 1.11.2004 in batch C.As 6350/
1997 and others.

The immediate personal attention of all the officers in the Registration Stamps Department is invited to the reference 2nd cited, where in the Hon'ble Supreme Court of India upheld the judgment delivered by the High Court of A.P. declaring that the Sec.73 as amended in A.P. through Act 17 of 1986 ultra vires the Constitution of India.

In the light of the above judgment all the officers in the Department are hereby directed to follow pre-amended sec.73 of India Stamp Act, 1899 only and conduct audit of State/Central Government offices only, as was done prior to the amendment of Sec. 73 in the year 1986 which runs as follows.

Pre-amended Sec.73 of Indian Stamp Act, 1899

"Sec. 73 Books etc. to be open to inspection:-

Every Public officer having, in his custody any registers, books, records papers, documents or proceedings, the inspection where of may tend to secure any duty or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person, authorized in writing, by the Collector, to inspect for such purpose, the registers, books, papers, documents and proceedings, and to take such notes and extracts, as he may deem necessary without fee or charge".

Therefore all the Deputy Inspectors General, District Registrars and superintendents of Deputy Inspector General office are instructed to conduct audit of at-least 5 public offices every month(with prior intimation to the Head of the Office one week in advance) and they shall take effective steps to collect the amounts determined by them during the audit as per the pre-amended provisions sec.73of I.S. Act, 1899. This aspect of work shall be monitored by the DIG concerned in their monthly review meeting and inspections of the offices and any poor performance shall be recorded with details of work done against the target (5 offices per month & 5% of the old arrears collectable) in the annual confidential reports of the respective officers.

The receipt of this circular memo should be acknowledged by next post.

Sd/- K. Madhusudhana Rao

Commissioner and Inspector General of
Registration and Stamps, A.P., Hyderabad.