



2025:DHC:7314-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 12.08.2025

Judgment pronounced on: 26.08.2025

+ FAO(OS) 130/2024 & CM APPL. 53492/2024

ANITA KUMAR

.....Appellant

Through: Ms. Hetu Arora Sethi, Mr.
Siddarth Agarwal and Mr.
Nirmal Prasad, Advs.

versus

AJAY KUMAR SINCE DECEASED THROUGH LRS &
ORS.

.....Respondents

Through: Mr. Ankur Mahindro, Mr.
Adhirath Singh, Ms. Raymon
Singh, Mr. Aditya Varun Bhatt,
Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal has been filed, assailing the correctness of an interlocutory order passed on 01.04.2024 [hereinafter referred to as 'Impugned Order'], whereby the learned Single Judge has ordered impounding of the relinquishment deed, executed by a mother in favour of her son, on account of deficient stamp duty by treating it as a gift deed.



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2. The present dispute arises from the property bearing No. E9/10, Vasant Vihar, New Delhi – 110057 [hereinafter referred to as ‘suit property’]. A perpetual Sub-lease Deed, dated 02.01.1970, of the suit property, was executed in favour of Late Sh. V.K. Gupta and Late Smt. Saroj K. Gupta. Thereafter, on the unfortunate demise of Late Sh. V.K. Gupta, his share in the suit property was mutated in favour of Late Smt. Saroj K. Gupta (Respondent/Defendant No. 3 therein), Sh. Uday K. Gupta (Respondent/Defendant No. 2 therein), Late Sh. Sanjay Kumar (Plaintiff’s late husband) and Late Sh. Ajay Kumar (Respondent/Defendant No. 1 therein).

3. Late Smt. Saroj K. Gupta, vide the registered Relinquishment Deed, relinquished her 12.5% share in the suit property in favour of her son, Late Sh. Sanjay Kumar. Following the execution of this Relinquishment Deed, Late Sh. Sanjay Kumar held a 25% share in the suit property. Thereafter, Late Sh. Sanjay Kumar, before his unfortunate demise on 25.08.2013, executed a registered will dated 23.08.2013, in favour of his wife, Smt. Anita Kumar (Appellant/Plaintiff therein).

4. It is alleged that after the death of the husband of the Plaintiff, the Defendant Nos. 1 & 2, along with the other relatives of the Defendants, repeatedly tried to dispossess the Plaintiff and her children from their lawful possession of the ground floor in the suit property. Consequently, the Appellant/Plaintiff therein filed a civil suit, i.e., CS(OS) No. 2104/2013, seeking partition and injunctions related to the suit property. This Court *vide* its order dated 06.11.2013



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restrained the Respondents/Defendants from disturbing the possession of the Appellant/Plaintiff on the ground floor of the suit property.

5. After a period of nearly 10 years from the date of the institution of suit, Respondents/Defendants therein filed an application, I.A. No. 21245/2023, under Sections 33, 35, and 38 of the Indian Stamp Act, 1899, read with Section 151 of the Code of Civil Procedure, 1908¹, seeking examination and impounding of the Relinquishment Deed on the account of same being in the nature of a gift and being an insufficiently stamped document.

6. It is the Defendants'/Applicants' case that the said Relinquishment Deed is in the nature of a gift deed couched as a relinquishment deed in order to avoid payment of appropriate stamp duty as a gift.

7. It is Plaintiff's case that the Defendants objected to the Relinquishment Deed on the alleged ground of the same being in nature of a gift deed and that it was insufficiently stamped, about 10 years after the Relinquishment Deed had been admitted into evidence; and that after admission/denial of the Relinquishment Deed had been concluded, the Defendants could not renege on their position.

8. Learned Single Judge has allowed the application, directing the impounding of the document, on the following grounds:

- i. The evidence in the present case has not yet been recorded. Therefore, merely admitting the execution of the

¹CPC



document at the stage of admission and denial cannot prevent the defendants from raising the issue of admissibility at this stage.

ii. If a co-owner releases his or her share in favour of one of the co-owners, in the eventuality where there is more than one co-owner, then such a release can only be done through a gift deed.

9. Learned counsel representing the Appellant contends that the document has already been admitted in evidence and marked as Ex.P-3 and, hence, in view of Section 36 of the Stamp Act, 1899², the admission of the document cannot be questioned. She further submits that the Relinquishment Deed cannot be treated as a gift deed in view of the judgment passed in *Hari Kapoor v. South Delhi Municipal Corporation*³; and, *Srichand Badlani vs. Govt. of NCT of Delhi & Ors*⁴.

10. *Per contra*, learned counsel representing the Respondents submits that unless the Court applies its mind to the admission of the document at the time of admission and denial, it does not attract the bar under Section 36, particularly when the Plaintiff is yet to lead evidence. He further submits that the Supreme Court in *G.M. Shahul Hameed v. Jayanthi R. Hegde*⁵, observed that marking of the document as 'Exhibit' is not its admission and hence, the bar under Section 36 is not attracted.

²Section 36

³ 2019 SCC OnLine Delhi 11153

⁴ 2013 SCC OnLine Del 5128.

⁵ (2024) 7 SCC 719



11. Learned counsel representing the Respondents has also relied upon the judgments passed in *Javer Chand and Ors. vs. Pukhraj Surana*⁶; *Avinash Kumar Chauhan vs. Vijay Krishna Mishra*⁷; *The Board of Revenue (The Chief Controlling Revenue Authority) vs. V.M. Murugesu Mudaliar of Gudiyatham*⁸. Further reliance is placed on the judgments passed in *Tripta Kaushik vs. Sub Registrar VI-A and Anr.*⁹; *Neeraj Arya vs. Rakesh Arya & Anr.*¹⁰; and *Narinder Kaur & Anr. vs. AmarJeet Singh Sethi & Anr*¹¹.

12. Learned counsel for the parties have not made any other submissions.

13. After having analysed the arguments of learned counsel representing the parties, the following two issues require adjudication:

- i. Whether a relinquishment/release deed executed by a mother, relinquishing some part of her share in favour of one of her sons, amounts to a gift deed attracting corresponding stamp duty as prescribed in the Indian Stamp Act, 1899?
- ii. If the answer to the aforementioned issue is positive, then whether such a relinquishment deed is liable to be impounded under Section 35 of the Stamp Act, 1899¹², by treating it as a gift deed?

⁶ AIR 1961 SCC 1655

⁷ (2009) 2 SCC 532

⁸ AIR 1955 Mad 641

⁹ 2020 SCC OnLine Del 2748

¹⁰ 2023 SCC OnLine Delhi 7816

¹¹ (2000) 54 DRJ 53

¹²Section 35



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14. Here, the issues in question arise in the context of enabling power of the Court under Section 35, wherein it has been provided that if instruments, not duly stamped are produced for admitting in evidence, the competent Public Officer or the Court shall impound the same by calling upon the party for making good the deficiency in stamp duty, together with penalty which can extend to 10 times of the amount of stamp duty for the deficient portion thereof.

15. It is to be noted that the purpose of Section 33 of the Stamp Act, 1899, is to ensure payment of stamp duty for collecting revenue for the State. It is a curable defect, subject to making good the deficient stamp duty along with a penalty. In the present case, the suit property was jointly purchased by the Late Sh. V. K. Gupta and Late Smt. Saroj Gupta. On the death of the Late Sh. V. K. Gupta, his 50% share was inherited by his four Class I heirs, including his widow and three sons. Late Smt. Saroj Gupta became the owner of 62.5% share as she was already a co-owner to the extent of 50% whereas each son acquired a share of 12.5% in the suit property. Late Smt. Saroj Gupta relinquished 12.5% share in favour of Late Sanjay Kumar, one of her sons, *vide* Relinquishment Deed dated 07.10.2009. After the unfortunate demise of Late Sanjay Kumar, his widow, Smt. Anita Kumar filed a suit for partition apart from other reliefs in the year 2013. The Defendant, in the year 2023, filed an application for impounding the Relinquishment Deed by treating it as a gift deed. The learned Single Judge accepted the prayer and directed the plaintiff to produce the original Relinquishment Deed, which has been impounded during the pendency of the present Appeal.



16. Though the Relinquishment Deed has not been referred to in Schedule 1-A (for Delhi) of the Stamp Act, 1899¹³, however, Article 55 of the Stamp Act, 1899¹⁴, prescribes stamp duty payable on the release deed, which reads as under:

"55.	RELEASE , that is to say, any instrument (not being such a release as is provided for by section 23(a) whereby a person renounces a claim upon another person or against any specified property--	
	(a) if the amount or value of the claim does not exceed Rs. 1,000	The same duty as Bond (No. 15) for such amount or value as set forth in the Release
	(b) in any other case	One hundred rupees"

17. The release does not include such a release as is provided for by Article 23A of the Stamp Act, 1899¹⁵, which reads as under:

"23A.	CONVEYANCE IN THE NATURE OF PART PERFORMANCE Contracts for the transfer of immovable property in the nature of part performance in any union territory under section 53A of the Transfer of property Act, 1882 (4 of 1882)	Ninety per cent of the duty as a Conveyance (No. 23)"
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18. On a plain reading of the Relinquishment Deed, it becomes evident that the mother executed the Relinquishment Deed to release

¹³Schedule 1-A

¹⁴Article 55

¹⁵Article 23A



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1/8 share in favour of her son, Late Sh. Sanjay Kumar, and there was no economic consideration/transaction exchanged at the time of execution. Thus, Late Smt. Saroj Gupta has, out of love and affection, relinquished her 1/8th share in the suit property in favour of Late Sh. Sanjay Kumar.

19. In the present case, the transaction in question does not fall within the definition of Article 23A. If a person renounces a claim upon another person or against any specified property, the stamp duty of Rs. 100/- is payable, if the amount exceeds Rs. 1,000/-. The release deed has been executed on a non-judicial stamp paper of Rs. 100/-, which was registered on 07.10.2009 without any objection as a Relinquishment Deed by the Registering Authority.

20. For impounding the document, the learned Single Judge has relied upon *Tripta Kaushik (supra)*. In this case, a writ petition was filed under Article 226 of the Constitution of India, challenging the order passed by the Registering Authority on 05.03.2019, while impounding the relinquishment deed executed on 01.03.2019 by the son of the Petitioner, Sh. Kapil Kaushik, in her favour. After discussing various judgments passed, the Court came to the conclusion that where the relinquishment of right by the co-owner is only in favour of one or more co-owners and not in favour of all, then the document would be one of the gift/conveyance and not of release. The learned Single Judge has further relied on *Narinder Kaur (supra)*, wherein the Court held that unless the relinquishment deed is properly stamped as a gift deed, it cannot be read in evidence.



21. Further, the learned counsel representing the Appellant has relied upon a celebrated judgment passed by a four-Judge Bench in ***Javer Chand (supra)***. In this judgment, the Supreme Court decided as to whether or not two hundies sued upon were admissible in evidence. Since this judgment is not with regard to a relinquishment deed or a release deed, the ratio of the same does not apply to the present case.

22. The learned counsel has further relied upon the judgment in ***Avinash Kumar Chauhan (supra)***, wherein a sum of Rs.2,70,000/- fixed by way of consideration towards the aforesaid transfer was paid by the Appellant to the Respondent. In a suit for recovery, the agreement, which was sought to be registered as a sale deed, was relied upon. In that context, the Supreme Court held that such an instrument is chargeable to stamp duty, and thus, the learned counsel representing the Respondents is correct in contending that the order passed admitting the documents in evidence and exhibiting them at the time of admission and denial of the documents would not attract the bar under Section 36 of the Stamp Act.

23. Further, in ***Narinder Kaur (supra)***, which appears to be the first judgment from this Court, the release deed was executed by the son in favour of his father, who had no subsisting share in the property. The Court was examining an application filed under Order XXXIX, Rules 1 and 2 of the CPC, to grant an injunction or not. Multiple relinquishment deeds were executed between the family members. In para 3, the Court has observed as under:

“Para 3....At this stage I would only mention the basic legal fallacy in the document is that a Relinquishment performe cannot



be in favour of any particular cosharer; if it is to operate in favour of a particular party it amounts to a transfer and must be effected either by Sale Deed or by a Gift Deed, depending entirely on whether there was any consideration for such a transfer.”

24. The source of such observations appears to be the full bench judgment of the Andhra Pradesh High Court in ***The Board of Revenue (The Chief Controlling Revenue Authority)*** (*supra*). In this case, the document styled as a release deed was referred by the Board of Revenue for decision. It was found that the release deed has been executed by the partners of the firm upon receiving the proportionate value of their shares in cash. In that context, the Court held that the document would amount to a release deed within the meaning of Article 44(B) of Schedule 1-A (for Andhra Pradesh) of the Stamp Act, 1899. However, by passing reference, it was observed as under:

“In the case of co-owners, there need be no conveyance as such by one of the co-owners in favour of the other co-owners as each co-owner in theory is entitled to enjoy the entire property in part and in whole and it is not necessary for one of them to convey his interest to another. It is sufficient if he releases his interest, the result of which would be the enlargement of the share of another. There can however, be no release by one person in favour of another, who is not already entitled to the property as a co-owner.”

25. It is noted that the purpose of the Stamp Act is to collect revenue. The nomenclature of a document is not decisive for the purpose of adjudicating the liability to pay stamp. This Bench has made a sincere attempt to trace the source of the extracted observations, however failed to find one. In any case, the ratio of the judgment passed by the Court is binding. However, before the Full Bench of the Andhra Pradesh High Court, a different question was



referred for decision, and hence, the aforementioned observations are not the ratio of the judgment.

26. Therefore, laying down, as an abstract proposition of law, all the relinquishment deeds executed by a particular co-sharer(s) in favour of another co-sharer or some of the co-sharers, while excluding the remaining co-sharers are not relinquishment deeds, but gift deeds, would not be appropriate.

27. In *Hari Kapoor (supra)*, another learned Single Judge of this Court, while relying upon *Kuppuswami Chettiar vs. A.S.P.A. Arumugam Chettiar & Anr.*¹⁶, observed that:

“A release deed can only feed title but cannot transfer title. Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in person a title where it did not exist. Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainder man to a tenant for life, and the release then operates as an enlargement of the limited estate.”

28. From the abovementioned discussion, it is observed that the release deed can only feed title but cannot transfer title. In this Case, Late Sh. Sanjay Kumar became a co-sharer in the property on the death of his father, Late Sh. V.K. Gupta in the year 2001. Hence, he had a title in the property. Similarly, his mother, Late Smt. Saroj Gupta was also a co-owner. The transaction was between mother and son. Since it was between the family members, the chances of economic consideration are remote. Hence, in this case, the Relinquishment Deed has only added a title to the already existing

¹⁶ AIR 1967 SCC 1395



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title of Late Sanjay Kumar. Therefore, an error was committed in the impugned order by treating the Relinquishment Deed to be a deed of gift and directing it to be impounded.

29. In any event, in the peculiar facts of the case, the Court upon appreciation of evidence, as and when led, may come to the conclusion that relinquishment of 12.5% share by Late Smt. Saroj Gupta, in favour of her son was a Memorandum of Family Settlement.

30. Further, declaring Relinquishment Deed as a Gift Deed for the purposes of payment of stamp duty without permitting the parties to lead evidence would not be appropriate.

31. The Appeal is accordingly allowed by setting aside the order of the learned Single Judge.

32. In the meantime, the Registry is directed to release the document, which is stated to have been impounded.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 26, 2025/sp/sh