

(2012) 03 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 536 of 2006

Balbir Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Stamp Act, 1899 — Section 10(2)(vii), 2(10), 48

Citation : (2012) 5 ADJ 468 : AIR 2012 All 113

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Nikhil Agrawal and Piyush Agrawal, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sunil Hali, J.—A partnership firm in the name and style of M/s Guru Govind Singh Rice Mills was constituted on 25.3.1975 consisting of petitioner and six others partners. The said partnership stood dissolved on 29.10.1984. Fresh partnership deed was executed by the petitioner with one of his ex-partner and three other partners of the dissolved firm in the name and style of M/s UP National & General Rice Mills. One of the partner died as a consequence of which the firm was dissolved. In this behalf a deed of dissolution was executed between the petitioner and four partners and legal heirs of the deceased person namely Sri Shyam Das. The deed of dissolution was executed on 20.9.2002 between four partners Sri Anokh Singh, Sri Darshan Singh, Sri Balveer Singh and Sri Rajesh Kumar and Sudesh Kumar and Ramesh Kumar, both sons of deceased Shyam Das. On account of dissolution of the firm Sri Anokh Singh and Sri Darshan Singh consequent upon the dissolution of firm received a sum of Rs. 1,80,308.91 and Rs. 1,55,25/- towards their share in the capital of the dissolved partnership firm M/s UP National & General Rice Mills, The other two partners namely Balbir Singh and Rajesh Kumar received their shares in the shape of assets i.e. land, building, plant, machinery. After dissolution of the firm, petitioners and other partners

Rajesh Kumar entered into a fresh partnership in the name and style of earlier dissolved firm namely UP National & General Rice Mills, which is in existence. Report was submitted by the Deputy Registrar of Stamps, District Rampur to the Collector, Stamps, Rampur in respect of receipt of assets by the petitioner consequent upon dissolution of the partnership firm. On the dissolution of firm, petitioner had received his share of capital in the form of land, plant, building and machinery. Report of the Deputy Registrar (Stamp) suggests that there was shortage of levy of stamp of 84,990/- and shortage in the registration fee amounting to Rs. 14,660/-. On receipt of the report, Addl. Collector (F & R) Rampur issued a show-cause notice to the petitioner as to why the levy of stamp duty and registration fee as suggested by the Deputy Registrar (Stamp) be not realised upon the receipt of the assets as a result of dissolution of the partnership firm. A detailed reply was filed by the petitioner indicating that there was no transfer of movable or immovable property while effecting the dissolution of the firm. It was purely a share received by the petitioner upon the dissolution of the partnership as such did not constitute "Conveyance" as defined u/s 2(10) of the Indian Stamp Act. It is also indicated in the reply that as a result of such dissolution there was no sale of assets by other partners to the petitioner as alleged in the report forwarded by the Deputy Registrar (Stamps). The plea of the petitioner was rejected by the Addl. Commissioner, Stamp as a consequence of which stamp duty of Rs. 84000/- and registration fee of Rs. 4800/- and penalty of 10,000/- amounting to Rs. 99,878/- was sought to be recovered from the petitioner holding the said receipt of assets by way of "Conveyance" as contemplated u/s 2(10) of the Stamp Act vide order dated 8.9.2004. Appeal against this order was preferred which stood dismissed vide order dated 24/25.9.2005 passed by the Commissioner, Moradabad Division, Moradabad. It is this order which is subject-matter of challenge before this Court. I have heard learned counsel for the parties and perused the material on record.

2. The impugned levy is sought to be recovered from the petitioner by invoking the explanation to Section 2(10) of the Indian Stamp Act by holding that the receipt of the assets from the partnership on its dissolution tantamount to sale of assets of the property. In order to understand the import of Section 2(10) of the Stamp Act is quoted herein below :

"Conveyance."

2 (10) "conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I 5 [or by Schedule I-A, as the case may be;]

Explanation: An instrument wherein a co-owner of a property having defined share therein, transfers such share or part thereof to another co-owner of the property, is for the purposes of this clause an instrument by which property is transferred.

3. The explanation to the aforesaid section provides that if co-owner of the property having defined share therein transfer such share or part thereof to another co-owner of the property the instrument by which the property is constituted would be construed as Conveyance as defined u/s 2(10) of the Indian Stamp Act. Plain reading of the section indicates that if co-owner having definite share in the property on transfer to another co-owner, shall be construed to be a sale and would be subject to levy of stamp duty as provided under the schedule.

4. Law is settled that partners of a partnership firm unless and until assets are distributed upon the dissolution of the firm, the character of the property which is brought in by the partners when the partnership is formed or such property which were acquired during the existence of the partnership it becomes property of the firm and the persons are entitled to only profits in consonance with their share in the partnership firm. There is no definite share of the partners during existence of the partnership. On dissolution of a firm the dissolution of assets and liability is done on the basis of assigned shares of the partners in the said firm. Partners have only interest in the property but not defined share which are assigned to them.

5. The essence of the partnership is that the partners will share the profit and loss in terms of money dependent upon their assigned share in the said partnership. No partners during existence of the partnership firm can transfer any movable or immovable property of the firm. The concept of partnership is to launch a joint venture and for that purpose every member of the partnership brings in capital money or even property including immovable property which becomes asset of the firm. Whatever is brought either in the shape of money or capital good it would cease to be exclusive property of a person who brought it. It would be asset of the partnership in which all partners would have interest in proportion to their shares in the joint business of the partnership. Both the respondents have erred in law in holding that the receipt of the assets of the firm and dissolution would be construed conveyance as contemplated u/s 2(10) of the Indian Stamp Act. Error in construing the same as conveyance/transfer is based upon the premise that by treating the status of member of the partnership firm with that of person holding joint property with definite shares. The finding of the respondents that on account of dissolution of firm the assets which are distributed by the partners amongst themselves or in favour of some person who have retired from the partnership would construe the transfer as defined in the Transfer of Property Act is wrong. This finding is legally misconceived.

6. In order to attract the provision of explanation to Section 2(10) of Indian Stamp Act, the essential feature is that a person who is transferring his right in the property should have a definite and assigned share in the property before its transfer to other partners. Firstly as stated herein above, there is no assigned or definite share of the partners in the movable or immovable assets and assigning of shares on dissolution is done on the basis of the shares which the partners hold in the firm. By no stretch of imagination, does it fall within the explanation

of Section 2(10) of the Indian Stamp Act. Reliance has been placed on the Apex Court Judgement in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , wherein in paragraph 3 (iv) the Hon"ble Apex Court has held as under:

"(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."

From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause (b) of Section 48."

7. Hon"ble Apex Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Juggilal Kamalapat, had approved the view taken by the Full Bench of Hon"ble Andhra Pradesh High Court in Addanki Narayanappa and another v. Bhaskara Krishtappa and others, ILR 1959 AP 387 and has held in para 9 as under :

"It seems to us that looking to the scheme of the Indian Act, no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

8. Again in another decision given by Hon''ble Apex Court in the case of the Commissioner of Income Tax, U.P. Vs. Sh. Bankey Lal Vaidya (Dead) by Lawyers, , in paragraph 4 has held under :

"In the case in hand there is no sale and payment of price, but payment of the value of share under an arrangement for dissolution of the partnership and distribution the assets. The rights of the parties were adjusted by handing over to one of the partners the entire assets and to the other partner the money value of his share. Such a transaction is not in our judgment a sale, exchange or transfer of assets of the firm.

.....this Court observed that the expression "sale" in its ordinary meaning is a transfer of property for a price, and adjustment of the rights of the partners in a dissolved firm by allotment of its assets is not a transfer for a price. In that case the assets were distributed among the partners and it was contended that the assets must in law be deemed to be sold by the partners to the individual partners in consideration of their respective shares, and the difference between the writ-en-down value and the price realised should be included in the total income of the partnership under the second proviso to Section 10(2) (vii). This Court observed that a partner may, it is true, in an action for dissolution insist that the assets of the partnership be realised by sale of its assets, but property allotted to a family in satisfaction of his claim to his share, cannot be deemed in law to be sold to him."

9. Import of the aforesaid judgements clearly explain the controversy involved in the present writ petition. It has clearly been stated that the on the dissolution of the firm there is no sale and payment of price but what is being paid is the value of shares under an arrangement for dissolution of the partnership and distribution of the assets.

10. Perusal of record also reveals that on execution of the deed of dissolution, the immovable properties have been allotted in the deed of dissolution to the releasees and therefore, the consequential deed of release is only based on the dissolution and in such circumstances, the document can never be treated as a conveyance. The immovable properties have been allotted in the deed of dissolution to the partners. The deed of release is only a sort of acknowledgement of the title of the partners to the immovable properties which was conferred on them by the deed of dissolution. It cannot by any stretch of imagination be treated as a conveyance of the properties because the releasors had no right to the properties at the time of the release. In that view, the document cannot be treated as a conveyance and stamp duty cannot be demanded on that basis. The view taken by the authorities that the document in question is a document of conveyance is not correct. Hence, the contention of the petitioners is correct.

11. In view of the legal position as extracted above, applying the same to the factual situation in this case there is no difficulty to come to the conclusion that

the deed which have been presented before the respondents is not having character of a conveyance and it has to be treated as a deed of release. In view of the same, the writ petition stands allowed. The impugned orders dated 8.9.2004 and 24/25.9.2005 are hereby quashed.