

(1957) 11 MAD CK 0022
In the Madras High Court

Board of Revenue

APPELLANT

Vs

T.M. Madalai Nadar and Co.

RESPONDENT

Date of Decision : 18-11-1957

Acts Referred:

Stamp Act, 1899 — Article 39(b)

Citation : AIR 1958 Mad 254 : (1958) ILR (Mad) 230 : (1958) 71 LW 40 :
(1958) 1 MLJ 88

Hon'ble Judges : P. Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

P. Rajagopala Ayyangar, J.—The question which has been referred to this Court for decision is:

Whether the document dated 12th May, 1953, is correctly classified as dissolution of partnership and conveyance, chargeable with stamp duty

under Articles 39(b) and 19 of Schedule I-A ;of the Stamp Act, respectively.

2. Two persons Rajakanni Nadar and Mathalai Nadar were carrying on business in partnership under the name of T.M.M. Mathalai Nadar and

Company. The partnership was started under a deed, dated 16th of August, 1944. The document, the stamp in regard to which is now in question,

purports to be a deed of dissolution, dated 12th May, 1953. It recites the fact that these two partners, Mathalai Nadar and Rajakanni Nadar,

were carrying on business in partnership that there had been a partition in the family of Rajakanni Nadar, that is between himself and his sons", on

the 8th of April 1953, that they were entering into this dissolution, and that he was consequently dissolving the partnership between himself and

Mathalai Nadar. It also recited that in the place of Rajakanni Nadar, Mathalai Nadar had agreed to admit to the partnership or to the benefits

thereof the sons of Rajakanni Nadar. The usual clauses of dissolution namely that Rajakanni Nadar shall have no interest in the properties and

goodwill, etc of Mathalai Nadar and Company are to be found in the deed. The clause relevant to the present context is Clause (3) which recites

that Rajakanni Nadar shall have no interest whatsoever in any of the properties-goodwill, stock and outstandings of the firm, subsequent to the

30th of Panguni, Nandana (12th April, 1953). Clause (4) provides for the ascertainment of the profits payable to Rajakanni Nadar for a period of

eight months ending with 12th of April, 1953. Clause (5) concludes by saying

Except the proportionate share of profit abovementioned and except the amount to which T.M.M. Rijakaani Naiar of us is entitled as per the

recitals made in the family partition deed, Rajakanni Nadar of us shall have no right whatever in the outstandings due to the aforesaid Mathalai

Nadar and Company, the amounts payable by the same and stock, etc. We have agreed unanimously as regard the aforesaid terms and for the

purpose of carrying on as from 1st Chitrai of the current Vijaya year, we have affixed our signature with our consent.

This deed was stamped as a deed of dissolution pure and simple. When it was presented for registration the sufficiency of the stamp was

questioned the case raised against the respondent being that the deed comprised not merely a deed of dissolution but it was also one of

conveyance. The statement of Rajakanni Nadar in regard to the circumstance in which the document came into existence as well as the

transactions which preceded it was recorded by the Sub-Registrar. In the course of this evidence, Rajakanni Nadar stated that the total capital of

the partnership was Rs. 76,000 out of which Rs. 44,000 had been contributed by Mathalai Nadar and Rs. 32,000 by himself, and that long before

the dissolution, on the 31st of Adi, corresponding to the middle of August, 1952, he had received this Rs. 32,000 his capital contribution, and that,

therefore, he entered into the deed of dissolution by which the partnership relation between himself and Mathalai Nadar was severed. He also

stated that this receipt of Rs. 32,000 had nothing to do with the deed of dissolution, dated 12th May, 1953.

3. The question we have now to consider is whether on these facts there is any conveyance involved in this transaction. If one went by the recitals

in the document it included no conveyance, because the conveyance is now said to be constituted by the receipt of Rs. 32,000 by Rajakanni

Nadar, which is stated to be as consideration, for his relinquishing his interest in the partnership. Those are not the terms of the deed of dissolution

which is before us. If the evidence or the statement of Rajakanni Nadar before the registering officer were the test by which the nature of the

transaction is to be ascertained, it cannot lead to the conclusion that any conveyance was involved in the document. The statement as we have

mentioned earlier is that Rajakanni Nadar had even while the partnership was still in existence withdrawn his capital contribution of Rs. 32,000

from the firm. That cannot amount to any conveyance, nor can it be said that this document which is before us constituted a conveyance for that

figure.

4. Learned Government Pleader invited our attention to the decision of a Special Bench of the Bombay High Court reported in Hiralal Nayalram,

In the matter of ILR(1908)Bom 505. That was a case where there was a specific conveyance of the share of a partner to the other partners who

continued the business. We had occasion to refer to this decision and the exact point which it decided in Board of Revenue v. Murugesu Mudallur

(1955) 2 M.L.J. 166. No such transaction is involved in the present case and the decision in Hiralal Nayalram, In the matter of ILR(1908)Bom

505 has no relevance to the facts here.

5. We asked the learned Counsel for the State as to whether, if a deed of dissolution provided for accounts being taken as between the partners,

he would contend that the sum which was ultimately payable or paid by one to the other could be treated to be a conveyance for that sum, in

addition to the deed being a deed of dissolution. The learned Government Pleader stated that that would not be his contention. We consider the

present case a fortiori. Here the payment of Rs. 32,000 was made not under the deed but during the time when the partnership was in esse. There

were, therefore, no elements to render this deed one of conveyance.

6. We, therefore, answer the question by saying that the document, dated 12th of May, 1953, was properly stamped as a deed of dissolution

chargeable under Article 39(b) of Schedule I-A of the Stamp Act. There will be no order as to costs.