
(1979) 07 AHC CK 0030

In the Allahabad High Court

Case No : Stamp Act Reference No. 157 of 1976

Board of Revenue U.P.

APPELLANT

Vs

Auto Sales, Allahabad

RESPONDENT

Date of Decision : 04-07-1979

Acts Referred:

Partnership Act, 1932 — Section 14, 15
Stamp Act, 1899 — Article 23, 2(10)

Citation : AIR 1979 All 312

Hon'ble Judges : Satish Chandra, C.J;R.R. Rastogi, J;K.C. Agrawal, J

Bench : Full Bench

Advocate : S.C. Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

K.C. Agrawal, J.—This is a reference u/s 57 of the Indian Stamp Act. The questions referred are:

1. Whether on the facts and circumstances stated above, the document Annexure "A" is a conveyance of property, as defined in Section 2(10) of the Stamp Act?

2. If the answer to the above question is in the affirmative then, whether stamp duty will be payable on the amount of Rs. 2,14,420/- or the market value whichever is higher in terms of provisions of Article 23 Schedule I-B of the Stamp Act, as amended in U.P.?

2. The relevant facts, which led to the making of the present reference by the Chief Controlling Revenue Authority to the High Court are these. M/s. Auto Sales was a partnership firm. It purchased certain lands in village Rangpura in 1964 under two separate sale deeds in the names of Chandra Mohan and Man Mohan. These were described as Be-nami transactions. The two ostensible owners relinquished their rights, title and interest in favour of M/s. Auto Sales. After relinquishment, M/s. Auto Sales made constructions. Gunjan Gupta, who was

also a partner of M/s. Auto Sales withdrew from the partnership in Nov., 1969. Thereupon, the firm was reconstituted. At the time of withdrawal of Gunjan Gupta, accounts were taken and his share was determined. Gunjan Gupta was given the properties in lieu of his share, to which he was found entitled. In pursuance of this agreement, a deed purporting to be "Deed of Release" dated 25-4-1971 was executed. It is stated in this document that Gunjan Gupta would be the sole and full owner of the properties described at its foot. This included agricultural plots as well as constructions made thereon.

3. Having felt doubtful that the aforesaid document could be a release deed, the Collector Allahabad, drew up a statement of the case and referred it for the decision of the Chief Controlling Revenue Authority, which is the Board of Revenue in the instant case. According to the view of the Collector, the document was a conveyance hence the duty paid thereon was not sufficient. Thereupon, the Board submitted the two questions, mentioned above, for decision of the High Court.

4. Before we proceed to consider the points urged, it would be relevant to note some of the clauses of the deed on which the interpretation of the document depends. These are;

1. That the first party do hereby release and relinquish in favour of the second party all their right, title and interest in ALL THAT premises, including the land, building fixtures and fittings etc., described in the schedule herein below, TO HAVE AND HOLD the same absolutely as Bhumidhar of the land and owners of all the buildings and fixtures and fittings standing thereon, and the FIRST PARTY do hereby declare that the said premises are and have been with effect from Nov. 28, 1968 the exclusive property of the SECOND PARTY who is since that date absolutely entitled thereto;

3. That the valuation of the property released was Rs. 2,14,420/- as per books of the FIRST PARTY firm which amount has been received from the SECOND PARTY by book adjustment in the accounts of the FIRST PARTY Firm.

5. The firm's argument was that since Gunjan Gupta was a co-owner in the properties of the partnership firm, therefore, the release of the properties made by the firm in his favour could not amount to a sale and hence the document was not a conveyance. The case of the Revenue, however, was that as the properties were transferred to Gun-Jan Gupta in lieu of Rs. 2,14,420/-, which was payable to him by the firm, the document was a conveyance of the properties by sale.

6. At this place, it would be appropriate to notice the law on the nature of the rights of a partner qua partnership property. A partner of a firm is in the same position as a co-owner of the joint property in relation to other co-owners. The concept of partnership is to embark upon a joint venture and for that purpose to bring in a capital money or even property, including immovable property. Once a partner brings his properties to the common hotch-potch of a partnership, whatever is brought in would cease to be the exclusive property of that partner.

It would be the trading asset of the partnership in which all the partners would have their shares. As a practical matter, now the partnership, rather the partners, owns the firm's property. A partner, subject to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes, but has no right to possess such property for any other purpose. Hence, in the absence of a special agreement, neither a partner separately owns or has the exclusive right of possession of, any particular article of partnership property, nor does either partner own any proportional part of any partnership property, but each has dominion over the whole article and over the entire partnership property.

7. Lindley on Partnership, Twelfth Edition, at p. 375 described the nature of the share of a partner in a partnership, as under:--

"What is meant by the share of a partner in his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is and this only, which on the death of a partner passes to his representatives, or to a legatee of his share; and which on his bankruptcy passes to his trustee."

8. The law in India is not different, Sections 14 and 15 of the Indian Partnership Act speak about what would constitute the property of a firm and lay down that such property shall be held for the purpose of the partnership, thereby indicating that so long as the partnership continues, no part of the assets of the partnership could be regarded as belonging to any individual partner. No individual partner can predicate his share in a particular property belonging to the firm. He can get his share in the properties of the partnership only after the assets have been converted into money, and that too after the debts and liabilities have been paid and discharged. It is after the discharge that the residue is liable to be partitioned. Sections 46, 48 and 49 of the Partnership Act enjoin this process being gone through before a partner can get his share in the assets of a partnership.

9. The Supreme Court had occasion to consider this question in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , and after referring to the relevant provisions of the Partnership Act, the Supreme Court laid down the law to the following effect:

"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."

10. Then again, at another place in the same judgment, the Supreme Court reiterated this position by saying in clear and specific terms:

"..... 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 deduction of liabilities and prior charges."

11. The law laid down above would show that the interest of a partner in the partnership is not an interest in a specific item of the partnership property. But, as pointed out above by the Supreme Court itself, a partner has a right only to get his share of profits during the period that a partnership subsists and on its dissolution to get the value of his share in the assets of the partnership firm. The law in regard to dissolution of partnership would equally apply in the case of retirement. There is no difference in principle on the basis of which the position of a partner may be different in case of his retirement. He stands in the same position qua the properties of partnership when he is retiring from the firm as his position becomes on dissolution.

12. In *Velo Industries Vs. Collector, Bhavnagar*, a Full Bench of the Gujarat High Court was called upon to consider this controversy. It held:--

"When, therefore a partner retires from the partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts on the footing of a notional sale of the partnership assets and given to him, what he receives is his share in the partnership and not any price for sale of his interest in the partnership. His share in the partnership is worked out by taking accounts in the manner prescribed by relevant provisions of the partnership law and it is this and this only, namely, his share in the partnership, which he receives in terms, of money. There is in this transaction no element of sale; the retiring partner does not sell his interest in the partnership to the continuing partners. He on the contrary, carves out his interest and takes it away by evaluating it. This is exactly what happened in the present case."

13. In this case, it would be noticed that the view taken by the Full Bench was that a retiring partner does not sell his interest in the partnership to the continuing partners. He only gets his interest carved out.

14. In *Addanki Narayanappa and Others Vs. Bhaskara Krishtappa and Others*, a

Full Bench of the aforesaid court was required to consider whether transfer of shares of partnership, which held immovable property among other assets, required registration. After considering the various provisions, the Full Bench held that a document evidencing relinquishment by a partner of his interest in partnership assets does not require registration, the reason being that the properties of partnership belong jointly to all the partners, and that no partner could predicate his definite share in the immovable property which he could transfer or give up.

15. Dealing with the settlement of accounts of a partnership firm on its dissolution, the Supreme Court in *Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation*, held :--

"The distribution of surplus is for the purpose of adjustment of the rights of the partners in the assets of the part-ship, it does not amount to transfer of assets."

16. In this case, two partners had brought a theatre each into the partnership. On dissolution, each theatre was returned to its original owner in satisfaction of his claim. The Supreme Court held:--

"But thereby the theatres were not in law sold by the partnership to the individual partners in consideration of respective shares in the residue "Sale," according to its ordinary meaning, is a transfer of property for a price For the purpose of dividing the residue among the partners, if properties are allotted to the partners in satisfaction of their claims, the transactions must be deemed in law to take the form of a notional sale of the property to the partner in consideration of the money value of his share."

16A. The Supreme Court observed:

"The property so allotted to him cannot be deemed in law to be sold to him,"

17. This view was reaffirmed in *Commissioner of Income Tax, U.P. Vs. Sh. Bankey Lal Vaidya (Dead) by Lawyers*, . While reaffirming the law laid down in *Commissioner of Income Tax M. P. v. Devas Cine Corporation (Supra)*, the Supreme Court held that where on dissolution of partnership the assets of the firm are valued and a partner is paid a certain amount in lieu of his share of the assets, the transaction is not sale, exchange or transfer, and the amount received by the partner cannot be taxed as capital gains.

18. It is true that the controversy involved in *Bankey Lal's* case was not in relation to the Stamp Act, but the law laid down therein decides the true nature of the share which a partner receives on dissolution. Since there is no difference between a case of retirement and that of dissolution, the law laid down in regard to dissolution will apply with equal force in the case of retirement.

19. For what has been said above, two things are clear. One is that a partner stands on the same footing in relation to partnership as a co-owner. Secondly, on retirement, there is no transfer of interest either from the side of the retiring

partnership in favour of the continuing partners or from the side of the continuing partners in favour of the retiring partners.

20. In *Govind Das v. Board of Revenue* 1971 All LJ 847 , a Special Bench of this Court was called upon to consider the question whether the deed of retirement, on account of the payment of Rs. 55,000/- from the firm to the retiring partner be termed as a conveyance, as defined in Section 2(10) of the Stamp Act so as to attract duty under Article 23 of Schedule I-B or a deed of release. The Bench held that the document was not a conveyance but a release. The reasons given for coming to the aforesaid conclusion appear to be the same which have led us to hold that the document in question did not amount to a conveyance. Similar view was taken by another Special Bench of this Court in *Narendra Bahadur Singh Vs. Chief Inspector of Stamps, U.P.,* .

21. Strong reliance was placed by the learned counsel appearing for the revenue on a Full Bench decision of the Mysore High Court in *Venkatachalapathi v. State* AIR 1966 Mys 323, in support of his argument that the present instrument was a conveyance of sale since the partnership transferred the properties detailed in the document in favour of the retiring partner for a sum of money which was payable to him. It is no doubt true that the aforesaid decision supports the contention of the Revenue, but, with respect, we find ourselves unable to share the view taken in the aforesaid case. It appears that the true nature of the transaction and the relationship amongst the partners had not been placed before the Bench deciding the aforesaid case. Moreover, as noted above, the Supreme Court's decision given in *Narayanappa's case* (supra) appears to be directly on the point. Thus, we do not feel persuaded to agree with the view taken by the Mysore High Court.

22. Reference may also be made to the essential difference between a conveyance and a release. In the case of a conveyance, there is a transfer, whereas in the case of a release there is no transfer of an interest or right to another. A release can be made only in favour of a person who has a pre-existing right or claim and by reason of the release the right is enlarged. In *Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another*, the Supreme Court accepted the proposition as correct, that a release can only feed title but cannot transfer title or that 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 a person a title where it did not exist.

23. In the present case, Gunjan Gupta was a partner of the firm and, therefore the document executed by the firm relinquishing the rights in favour of the former could only be a release. It was not a transfer, having not been made in favour of a partner who had no interest in the property. The document executed does not transfer property, hence it was not a conveyance.

24. We, accordingly, answer the first question in the negative by holding that the document Annexure "A" is not a conveyance, as defined in Section 2(10) of the

Stamp Act.

25. Since the above question has been answered in the negative, the second question does not arise for our decision.

26. The opposite party will be entitled to get costs from the Revenue, which we assess at Rs. 300/-.