

(1969) 01 MAD CK 0007
In the Madras High Court
Case No : Refd. Case No. 4 of 1964

Chief Controlling Revenue Authority

APPELLANT

Vs

Chidambaram, Partner, Thachanallur Sugar Mills and
Distilleries and Others

RESPONDENT

Date of Decision : 27-01-1969

Acts Referred:

Partnership Act, 1932 — Section 14
Stamp Act, 1899 — Article 23, 46
Transfer of Property Act, 1882 — Section 10

Citation : AIR 1970 Mad 5 : (1969) 82 LW 321

Hon'ble Judges : M. Anantanarayanan, C.J; Ramakrishnan, J; Natesan, J

Bench : Full Bench

Advocate : Addl. Govt. Pleader, for the Appellant; V. Thyagarajan, for M.A. Sathar Sayeed and A. Ramanathan, for the Respondent

Judgement

M. Anantanarayanan, C. J.

1. The reference before us arises from the following situation and facts. There was a trading joint Hindu family, the assets of which were involved in certain protracted partition proceedings in A. S. No. 223 of 1959 in this Court from O. S. No. 97 of 1952 of the Court of the Subordinate Judge of Devakottai. By virtue of a decree of Court, Chidambaram Chettiar, one of the parties to that litigation and a member of the family, agreed to take certain mill properties and machinery relating thereto, for Rs. 3,30,000. An instrument was executed on 6-6-1962 as between the ten parties who are respondents, including this Chidambaram Chettiar, styled a partnership deed, under Clause (8) of which the aforesaid sugar mills, distilleries, rice mill and accretions, dealt with by the decree in A. S. 223 of 1959, were declared as properties of the partnership firm, including

Chidambaram Chettiar as a member thereof. The partnership was created under this document Clause (4) purporting to set forth the respective

shares or interests of partners, and Clause (21) et seq admittedly providing for dissolution, for accounting etc. The Chief Revenue Authority has

raised the point that this document is liable to be charged as a conveyance under Article 23 of Schedule I of the Indian Stamp (Madras

Amendment) Act, 19 of 1958, or that, even if it is construed as a document of partnership under Article 46 of the said Schedule, it is liable to be

considered as a composite document, and liable to be charged with the higher duty, u/s 5 or Section 6 of the Indian Stamp Act. This is only the

issue which is involved in the reference.

2. We have already referred, very briefly, to the situation in which the document came into existence. It may be here necessary to clarify the matter

a little further. We find from the record that these persons earlier agreed to form such a partnership, and that, even when Chidambaram Chettiar

made a deposit in accordance with orders of Court and took possession from the receiver of the Sugar Mills, Distilleries etc, viz. the deposit of Rs.

3,30,000, the other persons had already contributed their respective shares, so that the acquisition of the properties by Chidambaram Chettiar by

virtue of the decree of Court must be held to be essentially, a joint acquisition by these persons, with Chidambaram Chettiar (the 5th defendant) as

the ostensible acquiring party in the partition suit. Nevertheless the argument of the learned Additional Government Pleader (Sri Ramaswami) is

that the document before us, fairly considered, would also amount to a conveyance by the aforesaid Chidambaram Chettiar, of his interest in the

properties, to the partnership firm of himself and the other nine persons, retaining for himself the value or interest of five shares as set forth in

Clause (4).

3. The learned Additional Government Pleader contends that, even where such document has expressly created a partnership, and even though the

partnership firm is acquiring partnership assets, thereunder including the vendor as one of the partners, the document is liable to duty as a

conveyance, on the principle of the decision of the Full Bench in Sahayanidhi Virudhunagar Ltd. Vs. A.S.R. Subrahmanya Nadar and Others, .

Delivering the judgment on behalf of the Bench Viswanatha Sastri, J., observed

(at page 219 of Mad LJ) = (at pp. 211 & 212 of AIR) that the question was not whether the relevant arrangement could not be effected otherwise than by the execution of a document like the one concerned in that case, but, whether, when such a document was duly executed as a formal conveyance, it was not liable to stamp duty, though the properties could otherwise have been pooled by the partners or a partner as assets of the partnership, without any conveyance, on the principle of Section 14 of the Partnership Act. The short point therefore, is whether the document will bear the construction that it is a conveyance, and whether this argument of the learned Additional Government Pleader is well founded.

4. Upon this, we are of the view that this is not a conveyance and cannot be construed as such. It is only a deed of partnership, and, as such, it is dutiable under Article 46 of Schedule I of the Stamp Act. There are two related aspects of reasoning, upon which this matter must be held conclusively determined. First of all, as we earlier observed, u/s 14 of the Partnership Act, it is always possible for a partner to bring into the partnership, property belonging to him by the evidence of his intention to make it part of the assets of the partnership. There is a very early decision of the English Court, namely, *Robinson v. Ashton*, (1875) 20 Eq 25, which embodies this principle, where a man became a member of a partnership, and the agreement was that the business should be conducted at the mill belonging to him, and he was credited in the books of the partnership with the value of the Mills. Jessel M. R. said that it made no difference that his contribution was in the form of mill and machinery, and not in the form of money. The property, therefore, became the property of the partnership. On the same principle of Section 14, we have the decision of the Full Bench of the Calcutta High Court in *Premraj Brahmin v. Bhaniram Brahmin*, ILR 1946 Cal 191 and the learned Judges pointed out that, by virtue of Section 14, property could be thrown into the partnership stock without any formal document, and would, therefore, become the property of the firm.

5. This aspect of the probabilities is strengthened in the present case, by the fact that there was a preceding agreement, under which it is clear that the very funds which were deposited into Court, were funds to which the other partners had made proportionate contributions, We may also refer

to a very early decision of this Court in Chinnaiya Nattan v. Muttusami Pillai, (1862) 1 Mad HCR 226 in which an agreement between two

persons, by which the second person advanced a sum of Rs. 2000 for payment of a deposit in respect of Abkari farm rights held by the first

person, was construed as a document of partnership, and not as a conveyance.

6. We do not think it is necessary to add anything very much further on this particular aspect. The other aspect of the reasoning is this. Certainly, a

partner can sell his property, to a partnership firm which includes himself as a member. But the question whether there was such a sale, would

depend upon his intention and on the language of the document. In the present case, the very partnership firm formally comes into existence under

the document, and there are no words whatever of a dispositive character, which, expressly or by implication, amount to a transfer of interest as

between the fifth defendant and the other partners. Admittedly, Clause (8), which is the only clause relied on, can only be taken as a declaration of

the rights of the partnership in these aforesaid properties, consequent upon the fact that the properties were brought into the common stock.

7. Accordingly, we would answer the reference in the form that this document is a deed or agreement of partnership, pure and simple, chargeable

to duty only under Article 46 of Schedule I of the Stamp Act .