(1926) 02 MAD CK 0009

In the Madras High Court

Chitturi Venkataratnam and Others — APPELLANT

Vs

Siram Subba Rao — RESPONDENT

Date of Decision : 26-02-1926

Acts Referred:
Registration Act, 1908 — Section 17

Citation : AIR 1926 Mad 1040 : (1926) ILR (Mad) 738 : (1926) 51 MLJ 410

Hon'ble Judges : Phillips, J;Madhavan Nair, J

Bench : Full Bench

Judgement

Phillips, J.—L.P. Appeal No. 42 of 1925:--The only question for consideration in this appeal is, whether the document, Ex. III, is admissible

in evidence. It purports to be a kararnamah or release of partnership share and it recites that in consideration of a sum of Rs. 2,100 settled by the

mediators, the executant relinquishes his share, title and interest in the partnership business. Admittedly the partnership was possessed of

Immovable property and the learned Judge in second appeal has held that as the document is one creating or extinguishing an interest in Immovable

property within the meaning of Section 17 of the Registration Act, it requires registration and is therefore inadmissible in evidence as not having

been registered. The learned Judge finds that this document is a relinquishment of the executant''s share in the partnership and that

instead of Subba Rao being paid his share of the assets of the partnership, the partners entered into an arrangement by which he purported to

release his right in the partnership.

2. Inasmuch as he received a consideration of Rs. 2,100 for this release that amount is clearly the amount settled by the mediators as being the

share in the assets of the partnership to which he was at that time entitled. The real question at issue is whether this is a document surrendering an

interest in Immovable property. u/s 253 of the Contract Act all partners are joint owners of the partnership property, but the share of each partner

in the partnership property is the value of his original contribution increased or diminished by his share of profit or loss, i. e., he can only claim to

receive his share of the assets of the partnership after all accounts have been taken. This is clearly shown in a case reported in Sudarsanam Maistri

v. Narasimhulu Maistri ILR (1901) M 149 . In that case the plaintiff sued for a share in the partnership which admittedly was possessed of

Immovable property and it was held that his suit was barred by limitation. It was argued that in respect of the Immovable property the suit would

be in time, although as a suit for dissolution of partnership it was barred by limitation. It was, however, held that the only suit which he could bring

would be for winding up the business of the partnership and for distribution of the surplus and not a suit for partition of the partnership properties.

Similarly in Gopala Chetty v. Vijayaraghava Chariar 43 M L J 305 (P C) it was held by the Judicial Committee that a suit to recover a share in

property which fell in after the dissolution of the partnership could not be maintained when the right to sue for an account was barred by limitation.

These two cases are certainly authority for holding that a partner as such cannot sue for a specific share in the partnership property, but his only

remedy is to sue for taking accounts and ascertainment of his share. A question similar to the present one arose in Jaharmal v. Tejram Jagrup

I.L.R.(1893) B 235, where it was held by Jardine, J., that a certain document transferring a share in the assets of a firm which was possessed of

Immovable property did not require registration. Telang,J.,however, held the contrary view;Jardine,J.''s judgment is based on the English Law

which he discussed at great length. Under the English law the share of a partner in the assets of the partnership is undoubtedly personalty and not

realty, but it is contended here that that does not conclude the case and that where a document relinquishing a share is executed that document

must be registered. The question is not free from doubt in England. There is a case reported in Gray v. Smith (1890) 43 Ch Dn 208 where an

agreement to withdraw from a firm was under consideration and it was held by Kekewich, J., that such an agreement required a document u/s 4 of the Statute of Frauds inasmuch as it conveyed an interest in land. In appeal the point was not determined, but Cotton, L.J., expressed his

concurrence with Kekewich, J.''s view. On the other hand in Forster v. Hale (1798) 3 Ves 696 it was held that the lease of a colliery was a mere

incident in the partnership and no signed writing was necessary. The same principle was adopted in Dale v. Hamilton (1846) 5 Hare 369. In

Watson v. Spratley (1854) 10 Ex 222 it was held that a contract to sell a share in a joint-stock company did not come within the Statute of

Frauds. At page 236 Martin, J. observed:

Indeed land or real property is the main substratum of their joint-stock or partnership property, and their profits are directly obtained from its use.

It is true, the legal ""interest in such real property is generally vested in the corporation and not in the individual partner or partners as in the cost

book mine; but the interest of the shareholder in the great incorporated joint-stock companies and in the smallest mine conducted upon the cost

book principle is, in its essential nature and quality, identical. In both, the shareholder has only the light to receive the dividends payable on his

share, that is, a right to his just proportion of the profits arising from the employment of the joint-stock, consisting indeed partly of land, but whilst

he holds his share he has no interest or separate right to the land or any part of it. He is, indeed, interested in the employment of it, but he cannot

proceed against it directly for anything which is due to him, or make any part of it his own, far the purpose of satisfying any demand which he may

have as shareholder. He is not in the situation of a mortgagee who has a direct interest in the land or of a joint-tenant, or tenant-in-common, who

may make a part of it his own in severalty.

3. Again in In re De Nicols: De Nicols v. Curlier (8) Kekewich, J. observed:

It is settled that there may be an agreement of partnership by parol, notwithstanding that the partnership is intended to deal with land, and that to an

action to enforce such agreement the plea of the statute of frauds will not avail.

4. He quotes for his authority Forster v, Hale (1798) 3 Ves 696 and Dale v. Hamilton (1846) 5 Hare 369 but he still adheres to the view

expressed by him in Gray v. Smith (1890) 43 Ch Dn 208. There seems to be some conflict therefore between the decisions of English Courts, and

1 think the question must be examined to see whether this deed of release is

really a document which extinguishes an interest in Immovable

property.

5. It is well-settled law that a contract for the sale of shares in companies owning Immovable property is not affected by the Statute of Frauds, and

it is somewhat difficult to see what distinction can be drawn between the interest of a shareholder in Immovable property belonging to the company

and that of a partner in Immovable property belonging to the partnership business. A shareholder, although he may not have any power to dispose

of the property of the company, yet has an interest in it as it is out of such property that he derives his share in the profits of the company. Similarly

in a partnership business a partner may be a co-owner in the property, but he has no right to ask for a share in that property but only that the

partnership business should be wound up, including therein the sale of the Immovable property, and to ask for his share in the resulting assets.

Before a partner releases his right in the partnership property that property belongs to the partnership and incidentally to him as a member of the

partnership but not in his individual capacity. When, therefore, he retires from the partnership by releasing his rights therein, the property still

remains the property of the partnership and the action in releasing his rights does not actually extinguish his right in the Immovable property, for he

receives his share of the assets on going out of the partnership, and the Immovable property still remains the property of the partnership as it was

before. 1 would therefore hold that Ex. III does not require registration. Even if this view is not correct, I think there is another ground for holding

that Ex. III is admissible in evidence based on Section 49 of the Registration Act, which says that no document required by Section 17 to be

registered shall be received as evidence of any transaction affecting such property. Although, therefore, this release deed may require registration

u/s 17, yet it may be received as evidence if it is not received as evidence of any transaction affecting such property. Here the transaction has the

effect of leaving the Immovable property in the same state as it was before, namely, as property belonging to the partnership. The fact that that

partnership consists of one partner less than before does not affect the Immovable property. This seems to me to be clear from the decisions

regarding shares in joint-stock companies, whether incorporated or unincorporated. The property remains the partnership property and is not

affected by the change in the body of persons owning it. In this view then Ex. III is admissible in evidence, even if it requires registration as a

document extinguishing an interest in Immovable property. I must, therefore, come to the conclusion that the judgment of the learned Judge is

wrong and that the decree of the Subordinate Judge must be restored with costs both here and in second appeal.

6. Appeal No. 43 of 1925 follows this and there will be a similar order in that appeal.

Madhavan Nair J.

7. I agree and have nothing to add.