(2008) 03 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 11338 of 1999 and W.M.P. 15997 of 1999

Economist Communications Ltd. APPELLANT

Vs

The Chief Controlling Revenue Authority/Inspector General of Registrar and The Sub-Registrar/District Registrar RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:
Stamp Act, 1899 — Section 2, 2(10), 56(1)

Citation : (2008) 03 MAD CK 0039

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : T. Karthick Srinath, for the Appellant; N. Senthil Kumar, A.G.P. for RR 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—This writ petition is filed against the impugned order of the first respondent dated 13-11-1998 by which the first

respondent has confirmed the order of the second respondent dated 16-07-1997 stating that the valuation of the document produced by the

petitioner for registration before the second respondent should be on the basis that it is a conveyance and not a release deed.

2. The brief facts of the case is as follows:

An industrial shed S-15 was purchased by the petitioner which was a partnership firm under a sale deed dated 15-02-1990. The petitioner was

inducted as the 8th partner in the Economist Press. The partnership firm - Economist Press was dissolved on 01-09-1994 and as per the terms

and conditions, the assets and liabilities of the Economist Press were taken over by the petitioner who was inducted as the eighth partner in the

Economist Press as stated above. Consequent to the dissolution of the partnership firm, the other 7 partners have executed deed of release in

favour of the petitioner on 07-02-1995 and fixed the stamp as a release deed. However, the second respondent, Sub-Registrar has passed an

order on 19-06-1995 holding that the release deed should be treated as conveyance and therefore, charged 13% stamp duty on the said

document and also charged penalty. The document which was registered as pending No. 135 of 1995 was impounded by the second respondent.

As against the order of the second respondent dated 19-06-1995, the petitioner has filed an appeal before the first respondent, the Chief

Controlling Revenue Authority as per Section 56(1) of the Indian Stamp Act. However, the first respondent has confirmed the order of the second

respondent holding that the document should be treated as conveyance. Challenging the same, the present writ petition is filed on various grounds

stating that the deed of release by the seven erstwhile partners was pursuant to the dissolution of the partnership deed dated 15-04-1994; that a

Division Bench of this Court in W.A. No. 1355 of 1993, in a similar circumstance has decided that in such circumstances, the documents cannot

be treated as a conveyance; that by virtue of the dissolution of the partnership by which one of the partners has been given the property and

therefore, the release by other partners cannot be treated as a transfer intervivos as per Section 2(10) of the Indian Stamp Act apart from many

other grounds.

3. In the counter affidavit filed by the respondents, while the factual situation is not denied, the respondent has taken the stand that as per the

dictum laid down by the Supreme Court, a partnership firm is not a person and therefore, it should not be treated as individual. It is only on that

basis that a partnership firm is not a legal entity, the respondents state that the transfer of property in favour of one of the partners should be treated

as a transfer intervivos attracting Section 2(10) of the Indian Stamp Act.

4. The learned Counsel for the petitioner has relied upon the judgment of this Court in T.K. Subramaniam Vs. Chief Controlling Revenue Authority

(Stamps) and Inspector General of Registration, Madras, wherein under similar circumstances the Division Bench, consisting of M.N. Chandurkar,

C.J. and Srinivasan,J., has held that the document cannot be treated as a conveyance on the basis that the releasors had no right to the properties

at the time of the release. Another Division Bench, consisting of K.A. Swami, C.J. and Somasundaram,J., in T.T. Meenakshi Achi v. The District

Registrar, Coimbatore 1994 II MLJ 1 has also concurred with the above said view.

5. I have heard the learned Counsel appearing on behalf of both the parties and perused the records available. A perusal of the deed of dissolution

dated 01-09-1994 in which all the eight partners of Economist Press, the erstwhile partnership firm constituted under the partnership deed dated

15-06-1994, came to be dissolved with following clause, "" The immovable property being factory Land & Building situated at S. No. 36 Part 54

Part 75 Part (Block No. 6, Alandur) bearing Shed No. S-15 fo the extent of 8026 Sq.ft. is to be held and owned by the 8th partner in the scheme

of dissolution aforesaid."" It was consequent to the said contents of the Dissolution deed the other seven partners have executed deed of release in

favour of the writ petitioner in February 1995. The Dissolution deed also makes it clear that the writ petitioner is a Public Limited Company

registered under the Indian Companies Act and therefore is a legal person.

6. In T.K. Subramaniam Vs. Chief Controlling Revenue Authority (Stamps) and Inspector General of Registration, Madras, a similar issue arose

where a partnership consisting of four partners out of whom two partners were allotted the immovable properties and the other two partners have

executed a release deed releasing their right on dissolution of the firm. Considering the said factual position, rejecting the contention of the

respondent-Department that the document should be treated as a conveyance, the Division Bench has held that on execution of the deed of

dissolution, it is made clear that 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

relevant portion of the judgment of the Division Bench is as follows:

3. We have perused the deed of dissolution as well as the release deed. We find that the immovable properties have been allotted in the deed of

dissolution to the appellants. The deed of release is only a sort of acknowledgement of the title of the appellants 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 cannot

be demanded on that basis. The view taken by the Chief Controlling Revenue Authority and the District Registrar that the document in question is a

document of conveyance is not correct. Hence, we accept the contention of the appellants that the document is a release deed.

7. The judgment reported in 1994 II MLJ 1 (cited supra), is a concurrent judgment and in fact, that was a case where the partnership was not

dissolved but in an existing partnership, two partners have released their interest in favour of other continuing partners and even in those

circumstances, by construing Section 2(10) of the Indian Stamp Act, the Division Bench has held that the release cannot be treated as conveyance.

The appurtenant portion of the judgment of the Division Bench is as follows:

As per Clause (1) of Section 2 of the Stamp Act, conveyance includes a conveyance on sale and every instrument by which property whether

movable or immovable is transferred inter vivos and which is no otherwise specifically provided for by Schedule I. As already pointed out, as

regards the deed of the nature in question releasing the interests of some of the partners in favour of others who continue the partnership, there is

no transfer inter vivos and there is no fresh right or interest being conveyed to others. This aspect is already pointed out, while referred the

aforesaid decision of the Supreme Court. Article 23(b) is attracted only if the document is a conveyance as defined u/s 2(10) of the Act.

Therefore, we are of the view that the order passed by respondents 1 and 2 cannot be sustained.

8. 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 respondent is not having character of a conveyance and it has to be treated as a

deed of release. It is also brought to the notice of this Court that as per the interim orders the Registrar has also registered the document. In view

of the same, the writ petition stands allowed. The impugned order is set aside. The second respondent is directed to release the document without

insisting for the continuance of the bank guarantee, if any furnished already, as per the conditional order already passed in this case and the

document has to be stamped as release deed.

9. However, there will be no order as to costs. The connected miscellaneous petition is closed.

