

(1942) 03 AHC CK 0005
In the Allahabad High Court
Case No : (Misc.) Case No. 717 of 1938
In Re: Tirathraj and Others

Date of Decision : 31-03-1942

Acts Referred:

Citation : (1942) 03 AHC CK 0005

Judgement

Allsop, J.—This is a reference under S. 60, Stamp Act, arising out of proceedings under the Encumbered Estates Act. In the course of those proceedings, a question arose whether certain property belonged to the applicants under the Act or to one Bam Charan who was a member of the same family. Ram Charan alleged that the property was his under the terms of a partition and in proof of his allegation he produced a witness called Kali Prasad. This man appeared in Court with a bahi in which were recorded certain terms which might be described as terms of a partition or terms of partnership. The opposite side immediately took the objection that the document was not admissible in evidence because it was not stamped. The learned Judge at the time heard the parties and examined the document and then recorded an order in which he said:

I am satisfied that the document is a deed of partition and also of partnership. Munsarim to report on the amount of duty and penalty to be charged on it.

This order was dated 25th May 1938. After the order was signed, Ram Charan made an application asking that he should be allowed a further opportunity to be heard upon the point, as he wished to produce certain rulings. The learned Judge was apparently impressed with the need to give the parties a further opportunity to study the question and adduce their arguments, supported, if necessary, by authority. He therefore passed an order on the application that he would hear the parties again. Thereafter, there were certain adjournments because the Munsarim reported that the value of the property was not entered in the document and eventually the Judge who had passed the order of 25th May 1938, was transferred and another Judge took his place. When the question came up before the latter for argument whether the document was liable to be stamped, he made this reference to us. He has drawn up certain questions upon which he

has asked for our decision. Of these questions 3, 4 and 5 raise the point whether the Judge who made the reference could reconsider the order, as he calls it, of his predecessor that the document was a deed of partition and partnership. We do not think that it is necessary for us to answer these questions. We have two reasons. The first is that the learned Judge has now made a reference to us and it is unnecessary for him to go into the question himself again and, therefore, it is not necessary for him to be informed whether he can or cannot go against the decision of his predecessor. Our second reason is that we do not think that there is really any question of revising the previous order. The first learned Judge's order merely was that the Munsarim should report on the amount of stamp duty to be paid. That order was carried out and nothing further is to be done. It is true the learned Judge recorded his opinion that the document was a deed of partition and a deed of partnership, but the fact that he himself would have allowed the parties to re-argue the question shows that he did not consider that his decision was final. In these circumstances we do not give any answer to questions Nos. 3, 4 and 5.

2. The remaining four questions really amount to one, namely, how much duty, if any, is to be paid upon the document. In order to decide that question, we have to decide the nature of the document. We have been taken through it and we have heard arguments on behalf of the Provincial Government. We are satisfied on an examination of the document that it is neither a deed of partition nor a deed of partnership. On the face of it, the document is neither of these. That it does not pretend to be a deed of partition is quite clear, because it recites certain facts about a previous partition saying that certain houses were allotted at that partition to certain members of the family. There is also a reference to the rights of the parties as mortgagees; and in respect of some zamindari property which was presumably ancestral. The reference is that the parties might by some separate agreement arrange for the partition of these., There is also a mention of a previous partition of certain zamindari pro-parties which apparently came to the parties by means of deed of sale. There is nothing to suggest that this instrument itself was intended to divide the properties mentioned in it. On the face of it, they had already been divided by a previous partition between the parties or were to be divided afterwards by a separate agreement. The document is not an award because it was not signed by any arbitrators; the parties themselves signed it. There are undoubtedly certain arrangements mentioned in the deed for the management of the partnership business, but we do not think that it amounts to an instrument of partnership. Apparently, there was a previous partnership which conducted a shop and the provisions in the deed itself are merely provisions for the better management of the firm. They do not seem to be provisions by which any partnership or new partnership was created. We are satisfied that this deed is not liable to the payment of stamp duty and we direct that steps shall be taken under the provisions of S. 60, Stamp Act for sending the necessary copies to the Court below and the chief controlling revenue authority. Order accordingly.