
(1971) 04 AHC CK 0019
In the Allahabad High Court
Case No : Misc. Reference No. 114 of 1970

Manohar Das and Others

APPELLANT

Vs

The Board of Revenue, U.P.

RESPONDENT

Date of Decision : 23-04-1971

Acts Referred:

Partnership Act, 1932 — Section 46, 48
Stamp Act, 1899 — Article 45, 46B

Citation : AIR 1971 All 523 : (1971) 41 AWR 513

Hon'ble Judges : Satish Chandra, J;C.S.P. Singh, J;A.K. Kirty, J

Bench : Full Bench

Advocate : B.C. Dey and Vinod Swarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—The Board of Revenue has submitted this statement of the case and has referred the following questions to this Court u/s 57, Stamp Act :--

"1. Whether the document under reference is a deed of dissolution of partnership cum instrument of partition under Article 45, Schedule I-B of the U. P. Stamp (Amendment) Act, 1962 read with Section 6 of the same Act?

2. If so, whether liabilities which do not constitute a charge against the properties to be partitioned are required to be deducted from the value of the assets allotted to each co-owner?

3. If answer to the above question be in the affirmative, then it may also kindly be indicated as to what is the value of the two shares in this case for the purpose of calculating duty under Article 45 aforesaid?

4. In case the document is not an instrument of partition, is it merely a deed of dissolution of partnership and is chargeable under Article 4G-B, Schedule I-B of the U. P. Stamp (Amendment) Act, 1962 with a fixed duty of Rs. 22.50?

5. If the deed is not covered by any of the categories aforesaid, what is the correct nature of the document and what amount of stamp duty is charge able in respect thereof?"

2. The document in question Is dated 30th October, 1967. It is headed as a deed of dissolution between Manohar Das Gupta and Gopal Das Gupta. It states that the parties were carrying on business in partnership under the name and style of M/s. Ram Das Monohardas, a registered firm. The two partners have decided to dissolve the firm and to divide the assets and liabilities thereof. The partnership stands dissolved from the date of the document. After taking into account the assets and liabilities of the firm, the parties have settled among themselves the assets and liabilities. They have divided the same into two lots. Lot "A" is allotted to Manohar Das Gupta while Lot "B" is allotted to Gopal Das Gupta,

3. Paragraph 5 of the deed states that the parties are fully conscious that the assets allotted to each of them respectively are much less in value than the liabilities allotted to them. Paragraph 6 of the deed provides that the first party shall pay and discharge all the liabilities allotted to the share of the first party, as given in lot "A", and that the liabilities allotted to the share of the second party, as given in lot "B", shall be paid and satisfied by the second party. Paragraphs 7 and 8 of the deed provide that, if one party does not pay and satisfy the liabilities allotted to it, and, for that reason, other party to this deed has to suffer any loss and damage, then the party suffering such loss or damage shall be entitled to realise the same from the other party.

4. The details of the two lots are as follows :

"Lot A : Allotted to Sri Manohar Das Gupta patty No. 1

Liabilities

Assets

Sundry creditors :Rs. 56, 700.53 Capital account of

Total Rs. 1,70, 481.56

Sri Manohar Das. Rs. 3,71,863.51 Balance net Liabilities Rs. 2,58,082.48"

"Lot B : Allotted to Sri Copal Das Gupta party No. 2

Liabilities

Assets

Sundry creditors : Rs, 5,14,802.66 Capital account of

Total Rs. 3.98,141.12

Sri Gopal Das Gupta : Hs. 139,856.88 Balance net Liabilities : Rs. 2,56,518.32"

5. The Board of Revenue held that the document was also an instrument of

partition liable to duty as such, because thereby the two parties, who were joint owners of the firm, divided its assets and liabilities amongst themselves. The document cannot be taken out of that category, merely because the partition is in the course of dissolution of partnership. The document was also a deed of dissolution, but nonetheless it was chargeable as partition-deed, with higher duty of Rs. 3,836.25 under Article 45, Schedule I-B of the U. P. Stamp Act, on Rupees 1,70,481.56 representing the value of the lower share.

6. The Board observed that it is a fact that certain liabilities have also fallen to the share of each partner but they should not be taken into account so as to reduce the value of the shares for the purposes of stamp duty, because they do not constitute a charge against any property. Moreover, Rs. 3,71,863.51 shown as capital account in lot "A" and Rs. 1,39,856.88 shown as capital account in lot "B" were the capital investments of each of the partners and not their liabilities.

7. At the instance of the executants of the document, the Board referred the questions mentioned above for decision by this Court.

8. Both parties are agreed that the document is a deed of dissolution. The Board, however, was of the opinion that the document is a composite one. It is a deed of dissolution of partnership as well as an instrument of partition. In my opinion, it is unnecessary to enter into the controversy whether the document involved any partition, because, even assuming it does so, it is not chargeable to higher duty, as, in my opinion, the value of the share was nil. The Board of Revenue was in error in determining the value of the lower share at Rs. 1,70,481.56.

9. The Board of Revenue observed that the liabilities cannot be taken into account while determining the value of the share, because they do not" constitute a charge against any property. I am not aware of any principle or authority of law, under which for finding the value of a share or lot, the liabilities cannot be deducted from the value of the assets, unless they are charged on the allotted properties. In paragraphs 5 and 6 of the document, it was clearly agreed between the parties that each party shall pay and discharge all the liabilities allotted to it. So each party was exclusively responsible to pay and discharge the liabilities that fell to his share. Each party, therefore, got the assets of the firm along with an obligation to pay out the liabilities allotted to him. It cannot hence be said that the document in question distributed the assets between the partners, in disregard of the liabilities of the firm. The allotment of assets as well as the liabilities was an integral part of the same transaction of the winding up of the affairs of the firm; one cannot be divorced from the other, in determining the value of the lot allotted to each partner as his share.

10. The second reason that appealed to the Board of Revenue was that Rs. 3,71,863.51 shown as capital account in Lot "A" and Rs. 1,39,856.88 shown as capital account in Lot "B" represented the capital investment of each partner and not their liabilities. This observation discloses a misapprehension of the correct legal position of partners in the matter of distribution of assets of a dissolved

partnership firm.

11. u/s 46 of the Indian Partnership Act 1932 on the dissolution of a firm, every partner is entitled, as against all the other partners, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners according to their rights.

12. Section 48, Indian Partnership Act, 1932, provides for the mode of settlement of accounts between the partners of a dissolved firm. It states :

"48. In settling the accounts of a firm after dissolution, the following rule shall, subject to agreement by the partners, be observed :

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partnerships to make up deficiencies of capital, shall be applied in the following manner and order :--

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateable what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateable what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."

It will be seen that the partners are entitled to divide only the residue, namely the balance of the assets of the firm which remain after payment of its liabilities to outsiders as well as to the partners under Clauses (i), (ii) and (iii) of Sub-section (b) of Section 48. In law, partition can only be of the residue. The distribution of assets in paying out the other liabilities mentioned in Clauses (i), (ii) and (iii) aforementioned is not part of the process of partition.

13. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , the Supreme Court observed:--

"His (namely the partner's) 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."

Then, again, at page 1306, the Supreme Court approved the following observation of Cornelius, J. in Ajudhia Pershad v. Sham Sunder (AIR 1947 Lah 13) (FB) :--

"These sections require that the "debts and liabilities should first be met out of the firm property and thereafter the assets should be applied in rateable payment to each partner of what is due to him firstly on account of advances as distinguished from capital and, secondly on account of capital, the residue, if any, being divided rateable among all the partners it will, therefore, be correct to say that the share of each partner is, in the words of Lind-lay : "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."

It would, thus, appear that the share of a partner, upon the winding up of a dissolved firm, is only in the residue, which is left after the liabilities mentioned in the various clauses of Section 48 have been paid out. Payment of capital and advances to partners is not out of the residue. The amount paid as capital investment to a partner will have to be deducted in order to find the value of the residue; because the value of a partner's share is only his proportion of the residue.

14. Section 48, Indian Partnership Act, indicates the various steps to be undergone while settling accounts of a dissolved firm; but it specifically makes its provisions subject to the agreement of the partners. The partners can devise a composite scheme in which assets and liabilities may instead of being respectively realised and discharged be distributed amongst themselves. That would be a valid manner of settling accounts of the dissolved firm. But, in view of Sections 46 and 48, whatever actual method of distribution is adopted by the partners, in law, there can be a pro rata division only of the residue, if any, left after taking into account the various liabilities. Assuming that a deed of dissolution could also be deemed to be a deed of partition, it could be so deemed only in respect of the residue. Value of a partner's share in the residue will be the value of the assets less the liabilities allotted to him. In the present case the Board held that part of the allotted liabilities represented the payment of the capital investment of that partner. As seen- the firm is liable to repay the partner's investment under Clauses (ii) and (iii) of Section 48(b). This amount had to be deducted to find the value of each partner's share in the residue. Doing so, the value is in the negative, because liabilities are more than the allotted assets. No additional stamp duty will be chargeable, even if the deed is held to amount also to an instrument of partition.

15. My answer to the questions, is : (1) that the document is a deed of dissolution of partnership. It is not necessary to decide whether it is an instrument of partition as well.

(2) Assuming that the document is also an instrument of partition, all allotted liabilities, even though they do not constitute a charge against the properties to be partitioned, have to be deducted from the value of the assets allotted to each co-owner.

(3) The value of the two shares for the purposes of calculating duty is nil.

(4) and (5) -- do not arise.

A.K. Kirty, J.

16. I agree.

C.S.P. Singh, J.

17. I agree.