

(1999) 03 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 38378 of 1998

M/s. Gowri Enterprises, Gowribidanur, Kolar District	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 04-03-1999

Acts Referred:

Karnataka Stamp Act, 1957 — Section 39, 40 B (b), 53
Partnership Act, 1932 — Section 28, 31, 39, 53

Citation : AIR 1999 Kar 389 : (1999) ILR (Kar) 2022 : (2000) 1 KarLJ 39

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri B.G. Sridharan, for the Appellant; Sri N.B. Vishwanath, High Court Government Pleader, for the Respondent

Judgement

1. Petitioner, a partnership firm, was constituted with 18 partners with 2 minors admitted to the benefits of partnership, evidenced by Deed of Partnership dated 12-7-1990 (Annexure-A). The firm was duly registered with the Registrar of Firms, Kolar. The first two paras of the Partnership Deed recites thus:

"Whereas the above partners formed themselves into partnership to carry on the business as real estate agents, developers etc., on oral terms and conditions on 21-02-1990 under the name and style of M/s. Gowri Enterprises having its principal place of business at B.H. Road, Gowribidanur, Kolar District.

And whereas the above partners also participated in the Public auction of property belonging to M/s. Mysore Tobacco Company situated at No. 459, E-DVN, B.H. Road, Gowribidanur held on 27-2-1990 and the same was confirmed in favour of G.H. Nagaraja and Others in the auction by the letter No. MTC/MD/34/90-91, dated 23rd April, 1990 from M/s. Mysore Tobacco Company Limited, Bangalore".

2. Subsequently, the said eighteen partners entered into a Deed of Dissolution dated 16-7-1994 (Annexure-C). A stamp duty of Rs. 200/- was paid on the Deed

of Dissolution under Article 40-B(b) of the Schedule to the Karnataka Stamp Act, 1957 ("the Act", for short). The Deed of Dissolution contains the following recitals.--

"Whereas the above partners formed themselves into a partnership to carry on the business as real estate developers, builders etc., under the name and style of "Gowribidanur Enterprises" having its principal place of business at B.H. Road, Gowribidanur under the Deed of Partnership, entered into between them on 12th July, 1990 and duly registered with Registrar of Firms, Kolar, registered as No. 132 of 1991-92.

And whereas the said firm acquired land and building property bearing No. 459, E Division, Gowribidanur from M/s. Mysore Tobacco Company Limited, through sale deed dated 28-03-1992 and registered as No. 115 of 1992-93 in Book No. 2, Volume No. 1562 in pages 81-87 with Sub-Registrar, Gowribidanur, dated 21st April, 1992.

And whereas the above partners due to financial stringency were not able to implement the objective of partnership mutually decided to dissolve the partnership.

And whereas the above partners mutually decided to incorporate the terms of dissolution of partnership into writing and embodied on a valid deed of document.

Now this Deed of Dissolution of Partnership witnesseth as hereunder:

1. The only property held by the firm as on the date of dissolution is the land and building situated at No. 459, E Division, Gowribidanur, Kolar District. The said land and buildings have been sub-divided into 46 units consisting of units vacant land and 14 units with building as per the plan annexed to this deed.
2. The partners herein mutually decided to distribute the only asset i.e., land and buildings amongst themselves in full and final settlement of their right in the erstwhile partnership, which is as hereunder".
3. The dissolution of the Partnership was notified to the Registrar of Firms as required under the Partnership Act, 1932 with a copy of the said Dissolution Deed. The Registrar of Firms who also functions as Deputy Commissioner of Stamps/District Registrar having entertained a doubt as to whether the document stamped under Article 40-B(b) was properly stamped or whether it required to be stamped under Article 40-B(a) referred the matter to the third respondent u/s 53 of the Act. [Note.--The said Articles have been renumbered as Article 40-C(a) or Article 40-C(b) and amended under Karnataka Act No. 8 of 1995, with effect from 1-4-1995].
4. The petitioner contended that the Deed did not fall under Article 40-B(a), but fell under Article 40-B(b). It was pointed out that there was no change in the partners constituting the firm at any time and that the property was purchased with the funds of the firm and when the firm was dissolved, the property of the

firm was divided among all the 18 partners and the two minors admitted to the benefits of the partnership.

5. The third respondent has passed an order dated 7-10-1998 (Annexure-D) holding that the deed does not fall under Article 40-B(a) and that the deed should be treated as a partition deed falling under Article 39. The third respondent has held that if the property was to be treated as a property of the firm, the property ought to have been purchased in the name of the firm; that as the property was purchased in the name of 20 persons (18 partners and two minors admitted to benefits of the partnership), the property was the co-ownership property of the 20 purchasers; that payment of sale consideration and stamp duty by the firm and the transfer of katha to the name of the firm and the property being treated as the asset of the partnership and taxes being paid by the partnership, are immaterial to decide whether the property was the property of the firm; and that as the instrument divided the property among co-owners, it attracted stamp duty as if Deed of Partition.

6. Feeling aggrieved, the petitioner has filed this petition and sought quashing of Annexure-D dated 7-10-1998. The question for decision is whether the Dissolution Deed dated 16-7-1994 (Annexure-C) is liable to be stamped under Article 40-B(a) or 40-B(b) or under Article 39.

7. An "instrument of partition" is defined in Section 2(1)(k) of the Act as any instrument whereby co-owners of any property divide or agree to divide such property in severally. Article 39 prescribes the stamp duty in regard to an instrument of partition. "Dissolution of Partnership" is not defined under the Act. Section 39 of the Partnership Act, 1932 defines dissolution of a firm as dissolution of partnership among all the partners of a firm. Article 40-B of the Schedule to the Act which was in force at the relevant time (corresponding to present Article 40-C) is extracted below:

"Article 40. Partnerships.--

B. Dissolution of-

(a)

Where the property which belonged to one partner or partners when the partnership commenced is distributed or allotted or given to another partner or partners.

The same duty as conveyance (No. 20) for a market value equal to the market value of the property distributed or allotted or given to the partner or partners under the instrument of dissolution, in addition to the duty which would have been payable on such dissolution if such property had not been distributed or allotted or given.

(b)

In any other case

Rs. 200.00".

8. If a partnership property is distributed among the partners of a firm on dissolution of the firm, the Instrument is a Dissolution Deed and not a partition. However, Deeds of Dissolution are classified into two categories for purposes of stamp duty. Article 40-B(a) will apply where the property belonging to one partner or partners (say X) when the partnership commenced, is distributed or allotted or given to another partner or partners (say Y) on dissolution. In other words, if a property belonging to a person is contributed to the partnership and becomes the property of the firm and at a subsequent dissolution the property is allotted to another partner to whom it did not belong before it was contributed towards the capital of the firm, sub-clause (a) of Article 40-B will apply. In all other cases in particular in the following cases, the residuary Article 40-B(b), equivalent to present Article 40-C(b), will apply: (a) where the property is purchased by the partnership and at a subsequent dissolution of the partnership, the property is distributed among the partners of the firm; (b) where a property contributed by a partner/s, to the firm is allotted to the very same partner/s on dissolution of the firm. The reason for separating dissolution falling under Article 40-B(a) from other Dissolution Deeds was to check evasion of stamp duty on transfers under guise of dissolution. Earlier if A who is the owner of a property valued at Rs. Ten lakhs wanted to sell it to B all that he had to do was enter into a partnership with B. A would contribute the property to the firm and B would contribute Rs. Ten lakhs as capital. Later or immediately thereafter, the firm will be dissolved and the property will be allotted to B and Rs. Ten lakhs will be allotted to A. As against the stamp duty of 12% applicable to conveyances, on the sale consideration of Rs. Ten lakhs, the parties used to incur a fixed stamp duty of Rs. 200A for the Partnership Deed and another Rs. 200/- for the Deed of Dissolution, To avoid such misuse, Article 40-B(a), now Article 40-C(a) was introduced.

9. A copy of the registered sale deed dated 28-3-1992 is produced as Annexure-B. It shows that the sale deed has been executed in favour of G.N. Nagaraja, E.S. Satish Kumar, A. Aswathappa, N. Hemavathy, M. Deepak Kumar, B.R. Srinivasa Murthy, A.R. Nagaraja, R.S. Chandrashekar, E.R. Lakshminarayana, S. Sunanda, H. Mahadev, E.S. Vasanthi, M. Padma, A. Sudha, K.R. Girish, P.M. Nanjundaiah Setty, N.V. Suresh, N.K. Sriramaiah Setty (the eighteen partners) and Tejaswini and H. Naveen Kumar (the two minors admitted to the benefits of partnership) all represented by G.H. Nagaraja, Managing Partner, Gowri Enterprises. The first paragraph of the sale deed reads thus.--

"Whereas all the purchasers mentioned 1 to 20 herein are the partners enjoying the right to share in the profits and properties of the firm in the ratio specified in Clause 6 in the Deed of Partnership entered into between them on 12-6-1990 carrying on the business under the name and style of M/s. Gowri Enterprises, having its principal place of business situated at B.H. Road, Gowribidanur, Kolar District, registered as No. 132 of 1991-92 with District Registrar, Kolar".

10. The purchasers under the sale deed are the eighteen partners and two minors admitted to the benefits of the firm. They are shown as being represented by the Managing Partner of Gowri Enterprises. The first paragraph of the sale deed recites that the purchasers are carrying on business in the name of Gowri Enterprises. These are sufficient to show the property has been purchased for and on behalf of the firm. If the 20 purchasers had purchased the property to hold the property as co-owners, the question of G.H. Nagaraja. Managing Partner of Gowri Enterprises representing them, does not arise. In a co-ownership, none of the co-owners can represent the other co-owners. On the other hand, in a partnership, every partner is the agent of the other partners and, therefore, does not require a power of attorney to represent the other partners. This distinction between co-ownership and partnership is well recognised. In *Champaran Cane Concern Vs. State of Bihar and Another*, , one of the four differences listed between a partnership and co-ownership is that while in a partnership each partner acts as an agent of the other partners, in a co-ownership one co-owner is not as such the agent, real or implied of the other co-owner/s. Thus it is clear from the sale deed that the purchase is by the twenty persons as partners constituting the partnership firm of Gowri Enterprises. The purchase is not by the said twenty persons in their individual capacity, as co-owners.

11. Even assuming that the property was purchased under the sale deed dated 28-3-1992 by the twenty purchasers as co-owners, the position would be no different, insofar as the stamp duty payable on the Dissolution Deed. This is because the partners of a firm are entitled to contribute their individual property to the firm whereupon such property becomes the property of the firm. As observed by the Supreme Court in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as a capital money or even property including immovable property and once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in and it would become the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. Therefore, even if it is assumed that the property was acquired under the sale deed dated 28-3-1992 by the twenty purchasers as co-owners, having regard to the fact that the sale price and the stamp duty has been paid from the funds of the firm and katha has been transferred to the name of the firm and the taxes are being paid by the firm and the property has been shown as the property of the firm, it has to be held that such property was treated as the property of the firm. In fact the Dissolution Deed clearly recites that the said property was the property of the firm. Therefore, on dissolution different portions of the property could be allotted to the 18 partners and 2 minors admitted to the partnership. As the property was purchased after the commencement of partnership by twenty persons and treated as the asset of the firm, and as the allotment of different portions of the property is to the very persons who earlier held it as co-owners, the Deed of Dissolution would fall

under Article 40-B(b) and not under Article 40-B(a). Article 40-B(a) will not apply as this is not a case where "X" contributes the property to the firm and at the time of dissolution, the property is allotted to "Y". This would be a case of XYZ as co-owners contributing the property to the firm and on dissolution the property being allotted by metes and bounds to X, Y, and Z. Therefore, the case would fall under the residuary part of Article 40-B, that is Article 40-B(b).

12. There is thus no basis for the third respondent to hold that the Dissolution Deed has to be stamped as a partition, even assuming that the property was purchased on 28-3-1992 as co-owners. Partition presupposes co-ownership as on the date of the partition. If a property had ceased to be the co-ownership property of the 20 purchasers, but had been treated as the asset of the partnership as on the date of execution of the Deed of Dissolution, the Dissolution Deed cannot be treated as a partition.

13. While considering this matter, the extent and scope of the enquiry by the Chief Controlling Revenue Authority u/s 53 to assess and charge the duty on an instrument requires to be considered. A doubt was raised as to whether any enquiry beyond the contents of the instrument can be embarked to determine the stamp duty. Reference was made to the decision of this Court in Huleppa Balappa Karoshi Vs. Sub-Registrar, wherein this Court, while dealing with the Sub-Registrar's power to impound an Instrument u/s 33(2) of the Act held as follows:

"It is evident from sub-section (2) of Section 33 that for determining whether an instrument bears the proper stamp and thus complies with the requirement of being "duly stamped" the stamp duty payable on the instrument must be determined only with reference to the terms of the instrument and not evidence de hors or beyond the instrument. Section 33 does not contemplate an enquiry, with reference to material other than the instrument itself, to reach a conclusion as to whether such instrument is duly stamped or not. In other words, only the description, nature and contents of the document and the consideration mentioned in the instrument can be looked into, to find out whether the instrument is "duly stamped".

The nature of enquiry by a Sub-Registrar u/s 33(2) is completely different from the nature of enquiry by a Deputy Commissioner while adjudicating the proper stamp duty u/s 31 or determining the proper stamp duty in regard to an impounded instrument u/s 39, or the nature of enquiry by the Chief Controlling Revenue Authority in a reference or revision u/s 53 of the Act. The limited enquiry u/s 33(2) is to find out whether the instrument is "duly stamped". But, the enquiry under Sections 31, 39 and 53 is to assess and determine the duty with which any instrument is chargeable.

14. Section 28 requires that all facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth in the instrument. If such facts

and circumstances are not set forth in the instrument, either the Deputy Commissioner while exercising jurisdiction u/s 31 or 39, or the Chief Controlling Revenue Authority while exercising jurisdiction u/s 53, may look into evidence or material outside the instrument, that is those facts and circumstances which ought to have been set out in the instrument, but have not been set out, having a bearing on the chargeability of the instrument.

Let me illustrate the position. Article 40-B(a) [now Article 40-C(a)] provides that if property which belonged to one partner when the partnership commenced, is allotted to another partner on dissolution, an ad valorem stamp duty as a conveyance on the market value of the property is payable. On the other hand, if the property belonging to the firm is distributed among the partners or if property which belonged to a partner when the partnership commenced, is allotted to the same person on dissolution, only a fixed stamp duty of Rs. 200/- (later increased to Rs. 500/-) is payable. Thus, there is a need to recite in the Deed of Dissolution, as to how each of the property of the firm which is subjected to distribution/allotment on dissolution, was acquired by the firm. If the details are not forthcoming, the Sub-Registrar will not be able to decide whether the instrument is duly stamped. Consequently he is bound to impound the same and refer it to the Deputy Commissioner u/s 37(2). The Deputy Commissioner, may either decide the matter himself or refer it to the Chief Controlling Revenue Authority u/s 53 for decision. In the case of such an instrument, the Deputy Commissioner acting u/s 39 or the Chief Controlling Revenue Authority acting u/s 53 will have to hold such enquiry as they deem fit, call for such documents or particulars as may be necessary and then decide the chargeability of such instrument and classification of the instrument under the appropriate Article in the Schedule. The principle that the Sub-Registrar can only look to the contents of the instrument and not extrinsic material to find out whether a document is duly stamped, is inapplicable to determination as to the chargeability and classification for purposes of stamp duty, by the Deputy Commissioner or Chief Controlling Revenue Authority, under Sections 31, 39 and 53 of the Act.

15. The petition is therefore allowed as follows:

(a) The order dated 7-10-1998 (Annexure-D) passed by the third respondent is quashed:

(b) It is declared that the Deed of Dissolution dated 16-7-1994 (Annexure-C) is a Deed of Dissolution chargeable to stamp duty under Article 40-B(b) of the Schedule to the Karnataka Stamp Act, 1957 as it stood on 16-7-1994 and thus the stamp duty of Rs. 200/- paid on the deed is sufficient.