
(1962) 10 AP CK 0006
In the Andhra Pradesh High Court
Case No : Case Ref. No. 25 of 1959

M.S. Kalyan Shetty

APPELLANT

Vs

Inspector General of Stamps, Hyderabad (Dn.)

RESPONDENT

Date of Decision : 29-10-1962

Acts Referred:

Hyderabad Stamp Act, 1331 — Article 31, 32, 6

Citation : AIR 1963 AP 474

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J;Gopalrao Ekbote, J

Bench : Full Bench

Advocate : C. Mallikharjuna Rao, for the Appellant; Ramakrishna Rao, for 2nd Govt. Pleader, for the Respondent

Judgement

P. Chandra Reddy, C.J.—This is a reference by the Board of Revenue, Andhra Pradesh, Chief (Controlling) Revenue Authority, u/s 55 of the Hyderabad Stamp Act, corresponding to Section 57 of the Indian Stamp Act, raising a point as to the chargeability of the proper stamp duty in respect of an instrument dated 10-11-1956 styled "Deed of dissolution."

2. Since the nature of the document turns upon its contentions, it is useful to extract it here in extenso.

"This deed of dissolution of partnership made this 10th (tenth) day of November 1956, between :

1. Mallikharjunappa Kalyanshetti, son of Sri Siddappa, aged about 53 years, Lingayat, residing at Secunderabad and (2) Siddaramappa Barhanpure, son of Sri Vishtalingappa, aged about 31 years, Lingayat, residing at Secunderabad.

Whereas the abovesaid parties have been carrying on business as dealers in motor parts as partners at 50-A, Mahatma Gandhi Road, since 7-11-1953 under the name and style of Messrs. M. S. Kalyanshetti, Automobile Dealers, Secunderabad, and whereas with effect from 3-11-1956 both the partners have agreed to dissolve the abovesaid firm and want to conduct business in their

individual capacity and whereas the partners hereby agreed to dissolve the firm on the following terms and conditions mentioned hereunder this indenture witnesseth as follows :

1. The outgoing partner is No. 2 (viz.) Shri Siddaramappa Burhanpur. The credit balance standing in the name of the outgoing partner to his fixed capital account is Rs. 58,024-8-6 as on 2-11-1956 and apart from this there is a credit balance in the name of outgoing partner's mother Smt. Gowravabai a sum of Rs. 4,640/- as on 2-11-1956. It has been mutually agreed between the parties that the said amount should be transferred to one account of the outgoing partner for which the consent of Smt. Gowravabai has also been obtained. The net credit balance that stands to his credit after making other adjustments will be Rs. 38,712-5-0 as detailed in separate schedule annexed herewith.
2. Out of the total holdings of 500 shares of M/s. Hyderabad Potteries Ltd., with Rs. O. S. 6250/- the outgoing partner Shri Siddaramappa, Burhanpure has received 250 shares and the share will be transferred to his name in due course.
3. It is agreed that future payments receivable from Dalmia Airways Ltd., towards share capital repayment shall be equally distributed.
4. Debts that are tentatively agreed as now doubtful if at a future date are realised the realised amount after deducting legal expenses incurred, if any, shall be distributed in equal proportions between the abovesaid parties.
5. The outgoing partners (viz.,) Shri Siddaramappa Burhanpure has agreed to take saleable goods of the value of Rs. 38,712-5-0 due to him as per schedule in complete settlement of all his outstanding claims. The balance of the goods including all furniture and fixtures and books of account and the other debts which are considered good but other than the debtors mentioned under the head doubtful debts in the schedule shall be taken over by the party of the first part (viz.,) Mallikarjunappa Kalyanshetti and he shall also be responsible for paying the creditors and settling their accounts.
6. The party No. 1, Malikarjunappa Kalyanshetti is permitted to use the old business name Messrs. M. S. Kalyanshetti and he is also permitted to continue his business in the same place.
7. In witnesses here the parties have set their hands this 10th day of November, 1956 in the presence of :

Witnesses :

x x x x

3. It is clear from the document that the outgoing partner was to receive saleable goods of the value of Rs. 38,712-5-0 due to him as per the schedule which indicates as to how this amount was arrived at. The balance of the goods including all furniture and fixtures and books of account and the other debts which were considered good shall be retained by the remaining partner and he

shall be responsible for paying the creditors and settling their accounts. The assets in the shape of 500 shares of Messrs. Hyderabad Potteries Ltd., worth Rs. 6,250/- were to be divided equally between the two sharers, 250 shares having been allotted to each of them. The debts to be collected as also the future payments receivable from Dalmia Airways Ltd., towards the shares capital repayments were to be distributed equally between the two partners.

4. The question for consideration in this reference is whether this document is nothing more than an instrument of dissolution of partnership or whether it brings about a division of the assets of the partnership. If it is a deed of dissolution of partnership, it is chargeable to stamp duty under Article 32 of the schedule to the Hyderabad Stamp Act (IV of 1331 F.) while it is Article 31 that would govern an instrument of partition. An instrument of partition is chargeable to stamp duty as on a bond falling within the purview of Article 10, whereas an instrument of dissolution of partnership is liable to be charged with a duty of Rs. 20/-.

5. Which of the two Articles is applicable here? In this context, it is useful to refer to Section 6 of the Act, which relates :

"Subject to the provisions of Section 5, when an instrument is so framed as to come under two or more items of the schedule, and where different duties are chargeable therefore such instrument shall be chargeable with the highest duty of such items :

Provided that"

6. It is immediately plain from this section that if a document answers the description of both a deed of dissolution of partnership and of partition, it is chargeable with the duty payable on an instrument of partition. The question that falls for decision, therefore, is whether there are elements of partition in this case. The description of the document is not decisive of the matter. The question has to be determined with reference to the recitals in the instrument. If the effect of the document is to bring about division of all the assets, though it is styled a deed of dissolution of partnership, it would attract Article 31. As we have already said, it is not the appellation that matters but it is the effect of the document and the form adopted by the parties that should enter the judicial verdict.

7. This is the test propounded by the Madras High Court in Board of Revenue, Madras Chief Controlling Revenue Authority, Madras Vs. N. Narasimhan and Another, called in aid by Sri Mallikarjuna Rao in support of his contention that the fact that certain assets of the partnership were divided between the partners would not change the nature of the document of the dissolution of partnership. That decision does not render any assistance to his client. On the recitals in the document the learned Judges, reached the conclusion that it was a composite document, portion of which could be construed as a deed of dissolution of partnership or deed of release and the other portion treated as a mere

memorandum of agreement between the parties. The learned Tudees after referring to the decision in *The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another*, , stated that the rights of the quondam partners in a dissolved partnership may be adjusted and squared by various methods. They further observed as follows:-

"A partner may retire from the firm by receiving consideration and release his rights in the partnership in favour of the other partner on partners who may choose to continue the business of the partnership. If the partnership business had ended in loss, a partner might retire from the partnership after making his contribution towards the loss sustained. The accounts of the partnership might be taken and settled and adjusted between the partners and as a result of such account-taking one partner may owe another partner a particular sum of money. Partners may also agree to have the net assets of the partnership divided between them as a result of dissolution. In the last instance if the transaction is embodied in writing it may operate as an instrument of partition, though it came about as a result of the dissolution of the partnership."

It was in the light of these rules that the instrument in that case was found to be one outside the purview of Article 31. The instant case judged with the tests propounded in the above passage comes under Art, 31 since the last one is applicable to it.

8. There can be little doubt that the partition of the effects of the partnership was brought about by this instrument. A document does not cease to be one evidencing partition simply because it is a scheme for dissolution of partnership. In this case, there is no room for doubt that by this document the partners agreed to divide the assets between themselves and the instrument could rightly be described as one of partition.

9. This opinion of ours receives confirmation from *The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another*, and *Thellakula Jalayya Vs. Namana Venkateswara Rao and Others*, .

10. In the result, we hold that the instrument is chargeable to duty as one under Article 31 of the schedule to the Hyderabad Stamp Act. The reference is answered accordingly. The applicant will pay the costs of the respondent-Advocate's fee Rs. 100/- (One hundred).