

(1976) 08 AP CK 0019

In the Andhra Pradesh High Court

Case No : Case Referred No. 52 of 1975

N. Guruva Reddy

APPELLANT

Vs

The District Registrar, Hyderabad

RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:

Stamp Act, 1899 — Article 35, 41, 2(17), 5, 6

Citation : AIR 1976 AP 417 : (1976) 2 APLJ 187

Hon'ble Judges : B.J. Diwan, C.J.;Muktadar, J;Alladi Kuppu-Swami, J

Bench : Full Bench

Advocate : Vada Rajagopala Reddy, for the Appellant; Government Pleader, for the Respondent

Judgement

B.J. Diwan, C.J.—In this reference u/s 57 of the Indian Stamp Act the following question has been referred to us for our opinion.

"Whether the document under reference is a "deed of dissolution or partnership as also a "Mortgage deed" and also other points of law."

The facts giving rise to this reference are as follows : Gurava Reddy, son of Chenchu Rami Reddy, and six other persons and legal heirs of Smt. P. Sreedevamma were carrying on a partnership business at Hyderabad in the name of M/s. Sudha Enterprises with the Trade name of "Blue Moon Hotel". The legal representatives of Smt. P. Sreedevamma and five other partners expressed their desire to retire from the partnership and actually retired on September 6, 1973. A deed of dissolution of partnership was executed on January 3, 1973. The parties to the deed of dissolution were Sri n. Gurava Reddy and his wife, Smt. N. Sudaranamma, who were described in the deed as the continuing parties of the first part, and the remaining partners including the heirs of the deceased Smt. P. Sreedevamma of the other part. The parties of the other part were described in the document as "outgoing parties". The deed of dissolution was executed on a stamp paper of the value of Rs. 32-50. According to the deed of dissolution, the partnership was dissolved with effect from September 6, 1973. Clause 4 of the

deed of dissolution states, "the accounts of the assets and liabilities of the partnership have been taken and duly audited and a final profit and loss account as well as a final balance sheet has been prepared after jointly assessing the stocks, securities, goodwill, actionable claims and all other assets, movable and immovable, and undertakings of the firm, which has been signed in triplicate by each of the parties". After adjusting the loans, various amounts which had to be paid to the outgoing partners, have been set out in clause 6 of the deed of dissolution. Under Clause 7, the outgoing partners had to transfer and assign to the continuing partners all the rights, title and interest in the shares of the said outgoing partners in the partnership and the business, property effects, assets and the book debts thereof and all other assets and liabilities of the partnership outstanding against other persons to hold the same to the continuing parties absolutely. Under Clause 8 the amounts payable to each of the outgoing partners were to be paid in the following manner; One half of the amount payable to each outgoing partner was to be paid on or before June 30, 1974, 25% was to be paid on or before December 31, 1974 and the balance of 25% was to be paid on or before June 30, 1975. The continuing parties had to pay interest at 12% per annum on the dues from January 1, 1974 to December 31, 1974. That interest was to be paid along with the instalment amounts. The balance outstanding as on January 1, 1975 was to carry interest at 14% per annum till the date of payment. Clause 9 is material for the purpose of this judgment and is as follows:

"The continuing parties to this agreement hereby create a charge on the assets of the partnership subject only to the first charge in favour of A.P. State Financial Corporation, Hyderabad, for the payment of the amounts mentioned above, to the various outgoing parties."

It appears that, after the document was executed, it was presented for registration in accordance with the provisions of the Indian Registration Act to the Joint Sub Registrar, Khairatabad, Hyderabad, who impounded it as insufficient stamped and referred the matter to the District Registrar, Hyderabad. The District Registrar adjudicated it (1) as a release of partnership rights for a consideration of Rs. 2,10,000 by the legal representatives of the deceased partner, Smt. P. Sreedevamma. The District Registrar accordingly levied a deficient duty of Rs. 11,302-8- p under the relevant articles of Schedule 1-A of the Stamp Act read with Section 5 of the said Act. He also imposed a penalty of Rs. 25. Against the order of the District Registrar, a revision petition was preferred before the Board of Revenue u/s 56(1) of the Stamp Act by Sri N. Gurava Reddy. He contended that the document is a deed of dissolution of partnership simpliciter and nothing else. The Board of Revenue heard the petitioner and examined the matter carefully, but could not give any finding as intricate questions of law were involved and ultimately referred the matter for a decision of this Court. Apart from the question hereinabove set out, two other points have also been referred to us viz. (2) If so, "whether stamp duty has to be charged under the relevant articles of Schedule 1-A of the Stamp Act read with Ss. 5 and 6 of the said Act? and (3) Whether the document is only simple

dissolution of p and nothing else and is chargeable with stamp duty only as a dissolution of partnership."

2. As to what exactly is the legal effect, when a partnership is dissolved, has been decided by the Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, and Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, . These two decisions were considered by a Full Bench of the Gujarat High Court in Velo Industries Vs. Collector, Bhavnagar, . There, the Full Bench of which I was a member held :

"When a partner retires from the partnership and the amount of his share in the net partnership assets after deducting liabilities and prior charges is determined on taking accounts on the footing of a notional sale of the partnership assets and given to him, what he receives is his share in the partnership and not any price for sale of his interest in the partnership. There is in such transaction no element of sale within the meaning of Art. 25, clause (b) of Schedule I to the Bombay Stamp Act, 1958." The two decisions of the Supreme Court viz., Narayanappa v. Bhaskara Krishnappa AIR 1968 SC 1300 and Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, are cases of dissolution of partnership. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , after referring to the relevant provisions of the Partnership Act in the following terms :

"From a perusal of these provisions, it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to any one. His 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."

In the course of the same judgment, the Supreme Court also observed :

"..... his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

3. It is in the light of these two decisions of the Supreme Court viz. Addanki

Narayanappa and Another Vs. Bhaskara Krishtappa and Others, and Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, , and the decision of the Full Bench of the Gujarat High Court in Velo Industries Vs. Collector, Bhavnagar, with which we respectfully agree that we have to consider the legal effect flowing from the deed of dissolution.

4. u/s 5 of the Indian Stamp Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount o the duties with which separate instruments, each comprising or relating to one of such matters would be chargeable under the Act. u/s 6, subject to the provisions of Section 5, an instrument so framed as to come within two or more of the descriptions in Schedule I, or in Schedule 1-A shall, where the duties chargeable thereunder are different, be chargeable only with highest of such duties. The proviso to Section 6 is not material for the purpose of this judgment. Under sub-section (17) of Section 2 of the Indian Stamp Act, "Mortgage deed" includes every instrument whereby, for the purpose of securing money advanced or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers or crates to or in favour of another, a right over or in respect of specified property.

5. It is common ground that, if this deed is held to be a deed of dissolution of partnership simpliciter, the amount of stamp duty payable in respect of this document is Rs. 32-50 p, which is the amount with which it was stamped in the first place. If, however, it is held to be a mortgage deed, then the amount of stamp duty payable would be much higher than the amount payable on the deed of dissolution and if it is held to be a composite deed providing both for dissolution of partnership as well as creating a charge, then, by virtue of Section 6 of the Stamp Act, the amount of stamp duty payable would be the amount payable as on a mortgage deed. It is clear from a reading of the definition in Section 2(17) that the deed creating a charge in favour of another person is mortgage deed for the purpose of the Indian Stamp Act.

6. Mr. v. Rajagopala Reddy, the learned advocate for the petitioner, urged before us that, before a particular document can be said to be relating to several distinct matters, there must be distinct transactions. In the instant case, the transaction of dissolution of partnership and of the creation of a charge must be found to be two distinct transactions. In support of this contention, he has relied upon the detention of the Madras High Court in In re Secretary, Board of Revenue, AIR 1920 Mad 225. There, the Full Bench of the Madras High Court, on a stamp reference, held that a deed of sale, which includes a mortgage of properties not included in the sale as security for the due performance by the vendor of his covenants need not be stamped both as a sale and as a mortgage, as the sale deed is not an instrument comprising or relating to distinct matters within the meaning of Section 5 of the Stamp Act.

7. The learned counsel for the petitioner has also relied upon the decision of a Full Bench of this court in In re Chief Controlling Stamp Authority, Hyderabad AIR

1962 AP 145 . There, the document was termed a rental deed. The deed contained besides the usual undertaking by the lessee, a surety clause by a third person giving an undertaking guaranteeing the payment of rent and the performance of the other conditions of the lease by the lessee. The lessee had induced the surety to give the undertaking. It was held by the Full Bench of this court that the covenant entered into by the surety was incidental and ancillary to the contract between the lessor and the lessee and formed part of the consideration for operating the lease. The surety clause was an additional term of the lease and formed an integral part of it. The lease and the covenant did not relate to two distinct matters but only to the terms on which the lessor let the building and the lessee took it. Thus, the lease and the guarantee formed parts of a single transaction the document in question was not a multifarious instrument relating to several distinct matters and Section 5 of the Hyderabad Stamp Act could not be pressed into service. The test, which was applied by the Full Bench in this particular case was whether the lease and the guarantee formed part of a single transaction.

8. Mr. V. Rajagopala Reddy, also relied upon the following passage from Halsbury's Laws of England, Third Edition, Volume 33, Para 492 at page 274 :

"Except where there is statutory provision to the contrary every instrument containing or relating to several distinct matters is to be separately charged, as if it were a separate instrument, with duty in respect of each of the matters, and an instrument made for consideration, liable to ad valorem duty, and also for other valuable consideration is separately chargeable in respect of each of the considerations. It seems that distinct matters means for this purpose matters which either fall under separate heads of charge or are separate transactions xx xx xx

The line between one matter and several is not easy to draw. It has, however, been regarded as well established that where a provision in an instrument is such that, even if it had not been expressed, it would have been implied by law, such a provision is not a distinct matter and no duty is chargeable in respect of it."

9. In connection with a sale deed and in connection with a lease, it must be borne in mind that, if the entire amount of sale price is not paid at the time of the execution of the sale deed, there is, by operation of law under the Transfer of Property Act, a charge in favour of the unpaid vendor to the extent of the unpaid purchase price. u/s 55(4)(b) of the Transfer of Property Act, the seller is entitled, where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money or any part thereof remaining, unpaid and for interest on such amount or part from the date on which possession has been delivered. Similarly, in the case of lease, u/s 108(1), the lessee is bound to pay or tender, at the proper time and place, the premium

or rent to the lessor or his agent in that behalf. It is in the context of these obligations under the Transfer of Property Act that the decision of the Madras High Court in *In re Sey*, Board of Revenue AIR 1920 Mad 226 and of this High Court in *In re Chief Controlling Stamp Authority*, Hyderabad AIR 1962 AP 145 , have to be read. The main question is whether when a partnership is dissolved, there is an implied right in favour of the outgoing partners to a charge to the other partners as their share of the assets of the firm at the time of dissolution. Mr. V. Rajagopala Reddy has very fairly stated at the Bar that there is no provision in the Indian Partnership Act similar to the provision for a charge in favour of the unpaid vendor u/s 55(4) of the Transfer of Property Act. He, however, stated that, when a partner retires from the partnership firm, there is an implied right to a charge in favour, of the retiring or outgoing partner.

10. In *Santdas Moolchand Jhangiani and Another Vs. Sheodayal Gurudasmal Massand*, , a Division Bench of the Bombay High Court consisting of Nain and Bhole, JJ, has dealt with this aspect of the case. In paragraph 6, at page 229, Nain J., delivering the judgment of the Court, observed :

"Where several matters are contended in one instrument what stamp is payable thereon in England has been dealt with in Halsbury's Laws of England, Third Edition, Volume 33, paragraph 492, pages 274-275. It is not necessary to set out the said paragraph in its entirety but it will be sufficient to state the principles therein enunciated in so far as they pertain to the matter before us. The said paragraph provides that except where there is statutory provision to the contrary, every instrument containing or relating to several distinct matters is to be separately charged, as if it were a separate instrument, with duty in respect of each of the matters, and an instrument made for consideration liable to ad valorem duty, and also for other valuable consideration is separately chargeable in respect of each of the considerations. It seems that distinct matters meant for this purpose matters which either fall under separate heads of charge or amendment separate transactions. There is authority for the principle that an instrument, stamped for its leading and principal object, covers everything necessary to that object. There are, further a number of cases in which various instruments, which in respect of their leading characteristic, were either not liable of duty, or if liable were properly stamped, have been held not to be chargeable with any further duty by reason of the inclusion of provisions considered to be merely ancillary to the leading object."

Thus, this decision of the Bombay High Court lays down the test of principal object of executing the document under consideration and the ancillary part of that document.

11. The last authority which was relied upon by Mr. V. Rajagopala Reddy was the decision of the Full Bench of this High Court in *A. Bapiraju and Others Vs. District Registrar, Registration and Stamps, Srikakulam*, . The Full Bench, in that case, was concerned with the different clauses of a compromise decree and it held that where, under a compromise decree, a charge is treated as property, possession

is handed over a right to appropriate the income from the property towards the decretal amount is given, the owner of the property is prohibited from creating any other charge on such property and a power of attorney authorising such appropriation of income is required to be executed, the document is executed is only a power of attorney and not mortgage with possession. The Full Bench further held :

"The mere fact that the various clauses of the decree are repeated in such document will not alter its character the fact that as a result of those two documents, the property may be treated as a security for realisation of the debt as it was a mortgage with possession is not material since taking such a fact into account will amount to looking to the substance of the transaction which is not permitted. Whether a document is liable for stamp duty or not has to be decided only by reference to the form, nature and the recitals in the document. The practice of resorting to a compromise decree and a power of attorney to evade stamp duty on a document of mortgage with possession cannot be helped as there can be no impediment to a party adopting a particular form to minimise stamp duty. Thus, the document is only a power of attorney and not a mortgage with possession.

12. We fail to see how this decision of our High Court in *A. Bapiraju and Others Vs. District Registrar, Registration and Stamps, Srikakulam*, , can assist us in deciding the matter before us. The question of a compromise decree stands on a different footing altogether. The main question before the Full Bench of this Court in *A. Bapiraju and Others Vs. District Registrar, Registration and Stamps, Srikakulam*, was whether the power of attorney executed in pursuance of the compromise decree could be said to be chargeable with duty as a mortgage with possession.

13. As against these decisions on which Mr. V. Rajagopala Reddy has relied, we find that there is a decision of the Supreme Court, which lays down the correct principles to be followed, when construing a document like the present one. In *The Member, Board of Revenue Vs. Arthur Paul Benthall*, , Venkatrama Ayyar, J, delivering the judgment of the Supreme Court observed :

"Though the topics covered by Sections 5 and 6 are different, it is not difficult to conceive of instruments which might raise questions falling to be determined under both the sections. Thus, if a partnership carried on by members of a family is wound up and the deed of dissolution effects also a partition of the family properties as in *The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another*, the instrument can be viewed both as a deed of dissolution and a deed of partition and u/s 6 the duty payable will be the higher duty as on an instrument of partition. But supposing by that very deed one of the members creates a charge of mortgage over the properties allotted to his share in favour of another member for moneys borrowed by him for his own purposes, that would be a distinct matter which would attract Section 5."

14. The document of the kind with which we are dealing in the instant case came up for consideration before the Calcutta High Court in *Chinmoyee Baxi Vs. on the death of Raja Kalyani Prosad Singh Deo, his heir and legal representative, Raja Sankari Prosad Singh and Others*, . The facts in that case were that one Anandamoyee Sarkar, which was the mother of Chinmoyee Bakshi, the plaintiff in the trial Court and appellant in the appeal, was the owner of certain collieries, and as she had financial and other assistance from her daughter, the plaintiff who set up plants and machineries in the collieries was admitted as a partner of her mother in the colliery business. A deed of partnership was accordingly executed by the parties on December 11, 1937. The partnership was subsequently dissolved by an agreement for dissolution of the partnership executed by the mother and the daughter on March 13, 1938. The principal terms of this deed for dissolution of partnership were firstly, in lieu of the dissolution a sum of Rs. 20,000 was to be paid to Chinmoyee out of which an amount of Rs. 10,000 was paid at the time of the execution of the deed of dissolution and the balance of Rs. 10,000 was to be paid within three months from that date, and secondly, the colliery property of the mother was kept in charge as security for payment of the above sum of Rs. 10,000 a hand note which Anandamoyee had executed in favour of the plaintiff's husband would become satisfied. It was held by the Division Bench of Calcutta High Court that the document under consideration was both an agreement for dissolution of a partnership as well as a bond and hence it was chargeable u/s 5 of the Indian Stamp Act with an aggregate of duties with which two such separate instruments would be chargeable.

15. We are unable to agree with the conclusion of the learned Judges of the Calcutta High Court that, apart from the deed being of dissolution of partnership it was also chargeable as a bond. In our opinion, looking into the definition of "mortgage deed" u/s 2 (17) of the Stamp Act and also looking to the fact that, by Clause 9 of the deed of dissolution, a charge was created in favour of the outgoing partners for the respective amounts, which are payable to them under the terms of the deed of dissolution, the document, in so far as it created a charge, can only be considered to be a mortgage deed and nothing else. Two distinct matters viz., the rights of the parties to the agreement at the time of the dissolution were provided for by the deed. The matters must be held to be two distinct matters or transactions and the charge cannot be said to be merely ancillary to the dissolution of the partnership. Under the Indian partnership Act, there is no implied right or statutory right in favour of an outgoing partner for the security of his share in the assets of the partnership which he is entitled to seek at the time of retirement or dissolution. Since there is no such implied right in favour of an outgoing partner in view of what has been stated in Halsbury's Laws of England, it is obvious that in the instant case, Clause 9 of the Partnership Deed, which creates a charge, must be held to be a separate and distinct matter from the terms of the deed of dissolution. The charge can never be said to be ancillary to the dissolution of the partnership. Bearing in mind the

principles laid down by the Supreme Court in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, and *Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation*, as also the observations of the Gujarat High Court in *Velo Industries Vs. Collector, Bhavnagar*, , to the extent to which the deed of dissolution provides for rights and liabilities of the outgoing partners and continuing partners, the document can be said to be a pure and simple deed of dissolution. However, since by clause 9, the deed provides also for creation of a charge in favour of the outgoing partners in respect of the amounts which each of the outgoing partners is entitled to receive from the continuing partners a separate and distinct transaction can be said to have been entered into by the parties as the charge does not flow from the deed of dissolution automatically. Under these circumstances, in our opinion, following the illustration given by the Supreme Court in *The Member, Board of Revenue Vs. Arthur Paul Benthall*, and the decision of the Calcutta High Court in *Chinmoyee Baxi Vs. on the death of Raja Kalyani Prosad Singh Deo*, his heir and legal representative, *Raja Sankari Prosad Singh and Others*, , it must be held that the document under consideration before us was both a deed of dissolution and a mortgage deed and hence the stamp duty has to be charged under the relevant article of the Schedule to the Stamp Act read with Section 5 and Section 6. So far as point No. 3 referred to the High Court is concerned, it must be held that the document cannot be said to be only a simple deed of dissolution of partnership and hence it cannot be said that it is chargeable with stamp duty only as a deed of dissolution of partnership.

16. In the light of the above discussion, we answer the three points referred to us for our opinion as follows :

(1) Point No 1 in the affirmative i.e. in favour of the revenue and against the petitioner.

(2) Point No 2 : Stamp duty has to be charged under the relevant articles of Schedule 1-A read with Sections 5 and 6 of the Indian Stamp Act.

(3) Point No. 3 in the negative i.e. against the petitioner and in favour of the Revenue.

17. The petitioner will pay the costs of this reference to the District Registrar, Hyderabad, who is the respondent herein. Advocate's fee Rs. 250.

18. Answered accordingly.