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In the Madras High Court

Case No : W.A. No. 1197 of 2012 and M.P. No. 1 of 2012

P.N. George Wilson APPELLANT

Vs

The State and others RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Stamp Act, 1899 — Section 2(24), 2(24)(a), 2(24)(b), 5, 58(a)(ii)
Transfer of Property Act, 1882 — Section 8

Citation : (2012) 4 LW 76 : (2012) 210 TAXMAN 348

Hon'ble Judges : M. Venugopal, J;Elipe Dharma Rao, J

Bench : Division Bench

Advocate : V. Selvaraj for M/s Devadason and Sagar, for the Appellant;

Final Decision : Dismissed

Judgement

M. Venugopal, J.—Animadverting upon the order dated 01.11.2011 in W.P. No. 23719 of 2008 passed by the Learned Single Judge, the

Appellant/Petitioner has projected the present Writ Appeal. The Learned Single Judge, while passing the order in W.P. No. 23719 of 2008 on

01.11.2011 has, among other things, observed that ""all the orders passed by the Respondents are perfectly legal and valid and the document in

question could be charged in stamp duty under Article 58 and treating it as a Settlement Deed."" However, the Learned Single Judge on

consideration of the facts and circumstances of the case, reduced the penalty imposed to Rs. 5/- and consequently, dismissed the Writ Petition

without costs.

2. The Learned Counsel for the Appellant/Petitioner submits that the Appellant/ Petitioner had created a Trust for the purpose of maintenance of his

Family Graveyard and therefore, the Learned Single Judge ought to have held that the Deed of Declaration of Trust dated 14.07.2003 would fall

under Art. 64 of the Indian Stamp Act, 1899 and not u/s 2(24) of the said Act.

3. The Learned Counsel for the Appellant/Petitioner urges before this Court that Section 2(24) of the Indian Stamp Act, 1899 is applicable only if

there is an instrument which transfers the property to any religious or charitable purpose and in that event, the stamp duty is payable as per Art. 58

of the Indian Stamp Act.

4. Advancing his arguments, it is the submission of the Learned Counsel for the Appellant/Petitioner that the Deed of Declaration of Trust, dated

14.07.2003 also does not result in distribution of the property and as such neither Clause (a) nor Clause (b) nor Clause (c) of Section 2(24) of the

Indian Stamp Act is attracted. Therefore, the order of the Learned Single Judge dated 01.11.2011 in dismissing the W.P. No. 23719 of 2008 filed

by the Appellant/Petitioner is to be set aside in the interest of justice.

5. To lend support to the contention that the Deed of Declaration of Trust, dated 14.07.2003 is chargeable to stamp duty as per Art. 64(a) of the

Indian Stamp Act, 1899 and not as per Art. 58(a) as a ''settlement'' as defined in Section 2(24) of the Act, the Learned Counsel for the Appellant

cites the Full Bench decision of this Court in The The Chief Controlling Revenue Authority, Board of Revenue Vs. T. Rangnathan Pillai,

Represented by the Power of Attorney Agent, R. Krishnaveni, (Full Bench). In this case, A document purporting to be a trust deed was executed.

The object of creating the trust was to preserve the properties for the benefit of testator respondent and the members of the family. There were

some crucial sentences in the deed. One such sentence was that if any one of his children became a major, the trustee was under an obligation to

entrust the trusteeship to that major so that he could administer the properties for the benefit of himself and the other heirs of the respondent. The

document further stated that if before any one of the heirs of the respondent attained majority, the trustee wanted to free himself from the

trusteeship, it was open to him to nominate another trustee and hand over the trusteeship to him. The person who thus became a trustee had to

perform the obligations and exercise the rights referred to in the trust deed. The document concluded by stating that the testator had no right to

either modify or cancel the same.

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In those circumstances, it has been held that ''the document in question was chargeable to stamp duty under Art. 64(A) as a declaration of trust

and not under Art. 58(a) as a settlement as defined in S. 2(24) of the Act.''

It is further held in this Judgment ""Before a transaction can fall within the scope of definition of settlement in Section 2(24) the property must be

made for one or other of the three purposes mentioned in cls.(a), (b) and (c). The document in question is not an agreement in writing to make any

disposition. Therefore, it cannot fall within the first limb of the inclusive part of the definition as well. Then it has to be seen whether it can be said to

be an instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition. The crucial word to be

considered in this behalf is the word ''such'' qualifying the expression ''disposition''. Therefore, in the inclusive portion of the definition, the

expression ''such disposition'' will undoubtedly govern only the disposition contemplated by clauses (a), (b) or (c) of S. 2(24). If the disposition

does not fall within the scope of S. 2(24)(a), (b) or (c) then the inclusive portion of the definition also will not apply.

6. The Learned Counsel for the Appellant refers to Section 5 of the Indian Trust Act, 1882 which reads as follows:-

5. Trust of immovable property:- No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing

signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of movable property:-No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is

transferred to the trustee.

There rules do not apply where they would operate so as to effectuate a fraud.

7. He also invites the attention of this Court to Section 6 of the Indian Trust Act, 1882 which reads hereunder:-

6. Creation of trust:-Subject to the provisions of Section 5, a trust is created when the author of the trust indicates with reasonable certainty by

way words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c)the beneficiary, and (d)the trust-property,

and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee etc.,

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8. At this stage, we deem it appropriate to quote Clause 1 of the Trust Deed dated 14.07.2003 which enjoins thus:-

1. That the Founder Trustee conveys, transfers and grants unto the trust all and every such property, and assets in the Schedule land TO HAVE

AND TO HOLD the same in trust for the objects of trust as described below to be used exclusively for the specific purpose of utilizing and using

the said property by allowing the members of the families of the five Trustees to bury them and using it as a graveyard for the said members,

erecting graveyards and for carrying such other lawful religious and sacred acts in connection with the said object as mentioned above.

9. Clause 2 of the aforesaid Trust Deed runs as follows:-

2. The Trustees shall have authority and power to accept from time to time grants, donations and gifts in the form of cash or other investments from

relation, friends or others, interested in the welfare of the beneficiaries and to hold the same for the objects of the Trust. The same, when received,

shall become a part and parcel of the Trust fund and shall be held by the Trustees on the same terms and conditions of the Trust Fund.

(i)Registered Office of the Trust shall be situate at George Villa, Marayapuram, Kappicaud Post and other places as decided by Trustees. To

open and operate account with any bank by the managing Trustee or any other person as decided by the majority of the trustees. The trustees

may, from time to time, frame rules for the conduct and regulation of the meeting of the trustees.

(ii)The primary source of funds for the trust for the upkeep of the property will be generated from the income from the property. Should this

becomes insufficient, the Trustees should contribute the amounts required as decided by majority of them for the upkeep and maintenance of the

said Trust property.

10. It is to be borne in mind that apart from the above two Clauses referred to in the Trust Deed dated 14.07.2003, there are other Clauses

mentioned by the founder trustee. It is stated that the trust is a body incorporated under the Trust Registration Act or other statutory provisions

which shall be governed by its rules and bye-laws.

11. We aptly cite Section 2(24) of the Indian Stamp Act, 1899 which defines ''Settlement'' as under:-

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(24)""Settlement""-""Settlement"" means any non-testamentary disposition, in writing, of movable or immovable property made-

(a)in consideration of marriage.

(b)for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing

for some person dependent on him, or

(c)for any religious or charitable purpose; and includes an agreement in writing to make such a disposition [and, where any such disposition has not

been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition].

12. It is to be noted that a settlement is an admixture of gift or partition or trust. In Law, a Family Arrangement/Settlement is accepted as a transfer

of interest in the property in favour of an individual between whom the Family Arrangement or Settlement is so made. Just because a

Deed/Instrument answers the description of a ''Trust Deed'', it does not cease to be a ''settlement'' for the purpose of stamp duty, if it answers the

description of ''settlement'' also. As a matter of fact, a Deed of Trust/Trust Deed can also be a settlement deed.

13. We pertinently point out the decision of the Hon''ble Supreme Court in Namburi Basava Subrahmanyam Vs. Alapati Hymavathi and others, it

is laid down as follows:-

5. The said recital clearly would indicate that the settlement deed executed on that date is to take effect on that day. She created rights thereunder

intended to take effect from that date, the extent of the lands mentioned in the Schedule with the boundaries mentioned thereunder. A combined

reading of the recitals in the document and also the schedule would clearly indicate that on the date when the document was executed she had

created right, title and interest in the property in favour of her second daughter but only on her demise she was to acquire absolute right to

enjoyment, alienation etc. In other words, she had created in herself a life interest in the property and vested remainder in favour of her second

daughter. It is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the

property would devolve on the settle with absolute rights on settlor''s demise. A reading of the documents together with the Schedule would give

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an indication that she had created right and interest in presenti in favour of her daughter Vimlavathy in respect of the properties mentioned in the

schedule with a life estate for her enjoyment during her life time. Thus, it could be construed rightly as a settlement deed but not as a will. Having

divested self thereunder, right and title thereunder, she had, thereafter, no right to bequeath the same property in favour of her daughter

Hymavathy. The trial Court and the learned single Judge rightly negatived the claim. The Division Bench was not, therefore, correct in law in

interfering with the decree of the trial Court.

14. Indeed, Section 8 of the Transfer of Property Act, 1882 is a rule of construction which avoids speculation as to the particular interest, which

was in the mind of a transferor. However, Section 8 is not intended to lay down any rule as to what words are necessary to effect a transfer of any

particular kind of property. A document has to be read in its entirety. Real intention of the parties has to be gathered, not merely from what prima

facie is stated as the description of the property in the schedule, but from the totality of the recitals in a deed. The intention of the executant is to be

gathered from the words employed in a document. Construction of the deed depends upon the language of the recitals, but not on its form or

nomenclature. In fact, Law does not permit to pick up a sentence in a document and to construe the same on that score.

15. In order to find out, whether a document is a settlement, gift or a Will, etc., the nature of a document is to be examined, whether it transferred

any interest in property in praesenti, or after the demise of an executant.

16. The term ''disposition'' in Stroud''s Judicial Dictionary is defined as ""a devise intended to comprehend a mode by which a property can pass,

whether by act of parties or by an act of the Law"".

17. In Limmer Asphalte Paving Co. v. Commrs. Of Inland Revenue, (1972) 7 Ex. 211, it is held as under:-

In order to determine, whether any, and if any, what stamp duty is chargeable upon an instrument the legal rule is that the real and true meaning of

the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even although they may have

believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declare"", which was approved by the

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Hon''ble Supreme Court in the decision in The Madras Refineries Ltd. Vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras,

18. It is to be noted that as per Section 6 of the Indian Stamp Act, 1899 when an instrument falls within the ambit of two or more descriptions

mentioned in Schedule I-A, it should be chargeable with the higher of such duties. Therefore, when an instrument is covered both by Art. 58 and

64 of the Act, it is chargeable as per Art. 58 of the Act, since being higher than the duty to be levied as per Art. 64.

19. It is not out of place for this Court at this juncture to refer to the decision in Board of Revenue, U.P., v. Sridhar, Advocate AIR 1964

Allahabad at p.537 (V 51 C 176) (Special Bench) at p.538. In this case according to the terms of an instrument the future rental income of the two

houses of the donor from the date of execution of the deed was to be utilised by the trustee for the benefit of the various beneficiaries who were all

minor children of the donor. Form the date of its execution the two houses would vest in the trustee and so also would vest in him the rental income

accruing from these two houses. This rental income, was to be divided among the various beneficiaries who were all minor children of the donor.

The nature of the instrument was at issue. In these circumstances, it has been held that:

The instrument was a ""settlement"" satisfying the requirements of S. 2(24)(b). It was clearly a non-testamentary disposition of the property

consisting of the future rental income for the purpose of distributing that property of the donor amongst members of his family. This would be so

even though the instrument was by way of declaration of trust. The future income or the right to future income could not be excluded from the

scope of the word ""property"" as used in Section 2(24). Even if this instrument were to be treated as containing solely a disposition of the property

consisting of the two houses, and not a disposition of the property consisting of the future rental income, the instrument would still be a deed of

settlement, because the disposition of the houses in favour of the trustee was clearly for the purpose of providing for the minor children of the

donor who ere dependent on him. AIR 1947 All 141 (SB) Diss from.

Thus the instrument was liable to stamp duty as an instrument of settlement under Art. 58 of Sch.IB and not under Art. 64.

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20. In Chief Controlling Revenue Authority, etc., v. Dr. H. Narasimhaiah etc., Opposite Parties, AIR 1991 Karnataka at p. 392 (Special Bench),

at para No. 14, it is held as follows:-

The instrument converting a society registered under 1960 Act into a trust and transferring the properties belonging to the Society to the Trust, falls

within the meaning of ''settlement'' as defined in S. 2(1)(q)(iii) of Stamp Act of 1957. The instrument is liable to duty under Art. 48 of the Sch. to

the Stamp Act of 1957.

21. We also cite the decision of the Hon''ble Supreme Court in S.N. Mathur Vs. Board of Revenue and Others, , wherein it is held as follows:-

Merely because an instrument answers the definition of a ""trust deed"" it does not cease to be a settlement deed for the purpose of stamp duty, if it

answers the definition of ''settlement'' also. It is well settled that all trusts are not settlements, and all settlements are not trusts, but a deed of trust

can also be a deed of settlement.

It is evident from the definition of ""settlement"" in Section 2(24) that any non-testamentary disposition in writing, either of movable or immovable

property made for any religious or charitable purpose is a settlement. The definition also makes it clear that even where there is no such disposition

in writing, any instrument recording whether by way of declaration of trust or otherwise, the terms of any of such disposition will also be a

settlement. It is thus evident that not only instruments which are non-testamentary dispositions of property for any religious or charitable purpose,

but also declarations of trust which record the terms of such disposition, are settlements.

Disposition"" is a term of wide import which encompasses any devise or mode by which property can pass and includes giving away or giving up

by a person of something which was his own. The Supreme Court has also held that the word ""disposition"" refers to a bilateral or multilateral act of

transfer and will not apply to a unilateral act as, for example, when a person treats his individual property as a joint family property. Black''s Law

Dictionary defines ""disposition"" as ""the act of transferring something to the care or possession of another; or relinquishment or giving up of

property"".

In this case, the instrument is not termed as a ""settlement"". It is clearly a

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declaration of trust and is described as a ""deed of trust"". But it records the

terms of disposition of an immovable property for religious and charitable purposes. The operative portion of the instrument clearly recites that the

three donors/founders grant, convey and transfer their property ""Mathur Atithishala"" unto the trustees (that is the three founders and two others)

and also declares that the Trust shall own, possess and manage the same as the absolute owner. The three executants of the trust deed divested

themselves of ownership of the property which was transferred to the Trust represented by five trustees. Thus there was a disposition for religious

and charitable purposes. It is thus clear that the instrument answers the definition of ""settlement"" u/s 2(24) of the Act. As the stamp duty leviable

under a deed of settlement under Article 58 is more than the stamp duty leviable in regard to a deed of trust under Article 64, the authorities under

the Stamp Act have rightly held that the instrument is chargeable with the higher duty prescribed under Article 58 applicable to a settlement.

22. It cannot be gain said that Art. 58 of the Indian Stamp Act, 1899, has been substituted by Tamil Nadu Act 42 of 1981 which runs hereunder:-

Art. 58. SETTLEMENT:-

(a) Instrument of (including a deed of dower)-

Explanation-For the purpose of Article, the word ""family"" means father, mother, husband, wife, son, daughter, grandchild. In the case of only one

whose personal law permits adoption, ""father"" shall include an adoptive father, ""mother"" as adoptive mother, ""son"" and adopted son and ""daughter

an adopted daughter.

(ii) in any other case-

23. As regards the plea of the Appellant/Petitioner that to the Trust Deed dated 14.07.2003 Art. 64 of the Indian Stamp Act, 1899 is applicable,

(Since the deed in question pertains to a declaration of or concerning, any property when made by any writing not being a Will and that the same

duty as a Bottomry Bond (No. 16) for a sum equal amount or value of the property concerned as set forth in the instrument but not exceeding

(One hundred and eighty rupees) is chargeable-amended as per Tamil Nadu Act 9 of 2001 w.e.f. 11-07-2001), we hold that Art. 64 of the Indian

Stamp Act would come into operative play only, where the executant of the instrument makes himself a Trustee and not where he conveys the

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property to others as Trustee, as per the decision in Sita Ram Vs. Board of Revenue, (Special Bench). Further, in the present case on hand, the

property mentioned in the document is transferred to the Trust through the Trust deed dated 14.07.2003.

24. In the present case on hand, the Fourth Respondent/The Chief Controlling Authority, Inspector General of Registration, Chennai-28 passed an

order on 31.05.2008 among other things observing that ""as per the deed the property is transferred to the trust and held that the deed is settlement

outside the family and hence stamp duty leviable as per Section 58(a)(ii)"" and dismissed the revision upholding the orders of the District Registrar.

25. Earlier, the Second Respondent/the District Registrar (Administration), Marthandam in his proceedings No. 164/Aa/2004, dated 04.02.2004

addressed to the Appellant has stated that the pending document before the Joint Sub-Registrar II in P. No. 21/2003 as per Art. 58(a)(2) is a

settlement, not between members of the family and held that the stamp duty leviable for the document is Rs. 20,472/- and since Rs. 180/- has

already been paid the deficit stamp duty of Rs. 20,292/- is to be paid. Further, the registration charges leviable for the document is Rs. 1,710/- but

Rs. 200/- only has been paid as per document and there remains a deficit registration charges of Rs. 1,510/- to be paid and in all a sum of Rs.

22,010/- including penalty of Rs. 208/- is to be paid to the Joint Sub-Registrar II, within 15 days from the receipt of the notice, failing which,

proceedings shall be initiated under the Revenue Recovery Act. The Joint Sub-Registrar No. 2, Marthandam/third Respondent by his order dated

12.08.2003 has advised the Appellant/Petitioner by stating that since the trust deed created by the Appellant/Petitioner has properties, valued at

Rs. 1,16,640/-, a deficit stamp duty of Rs. 14,004/- and deficit registration fees of Rs. 1170/- are to be paid, failing which, further informed that,

proceedings u/s 33(A) of the Revenue Recovery Act for realisation of the amount would be initiated.

26. Looking at from any point of view, on an over all assessment of the facts and circumstances of the present case in a cumulative fashion, we

come to an inescapable conclusion and hold that the Trust Deed dated 14.07.2003 in issue is chargeable to stamp duty as per Art. 58(ii) of the

Indian Stamp Act, 1899 treating it as a ""Settlement Deed"" as per Section 2(24) of the Act.

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27. Viewed in that perspective, we do not find any material irregularity or patent illegality in the order of the Learned Single Judge dated

01.11.2011 in W.P. No. 23719 of 2008 in dismissing the Writ Petition filed by the Appellant/Petitioner. Also, we are not inclined to interfere with

the discretion exercised by the Learned Single Judge in reducing the penalty based on the facts and circumstances of the present case to Rs. 5/-.

As such the Writ Appeal sans merits. In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Resultantly, the order

passed by the Learned Single Judge in W.P. No. 23719 of 2008 dated 01.11.2011 is affirmed by this Court for the reasons assigned in this Writ

Appeal. Consequently connected Miscellaneous Petition is also dismissed.

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