
(2018) 03 MP CK 0006

In the Madhya Pradesh High Court

Case No : W.P. NO.6413, 5586 OF 2014

State Of Madhya Pradesh

APPELLANT

Vs

Shobhadevi Mohatta And Ors.

RESPONDENT

Date of Decision : 08-03-2018

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 109, 110
Indian Stamp Act, 1899 — Section 3(bb), 2(14), 19A, 48B
Special Economic Zones Act, 2005 — Section 2
Registration Act, 1908 — Section 17

Citation : (2018) 03 MP CK 0006

Hon'ble Judges : S.C. SHARMA, J

Bench : Single Bench

Advocate : Umesh Gajankush, A.K Sethi, Rishabh Sethi

Final Decision : Disposed Of

Judgement

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order,

they are being disposed of by this Court. Facts of the Writ Petition No.6413/2014 are narrated hereunder.

2. Present writ petition has been filed by the State of Madhya Pradesh against the order dated 08.11.2013 passed by the Board of Revenue in

Revision Case No.2930-2/13.

3. The facts of the case reveal that a partnership firm established in the name and style of M/s Mohatta Brothers Property Company having

registered office at Mohatta Bhawan (4th Floor) P. Moses Road, Worli Mumbai was having property situated in Mumbai and Indore. The partnership

firm was the owner of the property as already stated earlier situated at Indore ad-measuring 1.133 Hectare bearing Khasra No.180, Municipal Zone 2

Ward No.21 along with Temple, Bungalow, outhouses garden and Samadhi etc. situated at 115-A, Hazur Ganj, Gram Sirpur, Airport Road (Bijasen Road) Indore.

4. The dispute arose between the partners and a civil suit was filed before the Bombay High Court, which was registered as Civil Suit No.497/2006

and all the partners consented to refer all the disputes for an arbitration. In the civil suit, the Bombay Court has appointed the Hon'ble Justice S.N.

Variava, a retired Judge of the Supreme Court as an arbitrator, who has passed an award dated 02.03.2006.

5. As per the award, the property situated in Indore came to the share of the respondents and the partner executed a deed of retirement on

24.03.2008 pursuant to the award stating that they have become the exclusive owner of the property and the respondents submitted an application

before the Tehsildar on 13.08.2009 under Section 109 and 110 of the M.P. Land Revenue Code, 1959 for mutation of their names in revenue records

in respect of the land which came into their share and Tehsildar has registered the case as case number No.64/316/13-14 and directed for issuance

of a public notice in the newspaper and also requisitioned a report from Patwari.

6. The facts further reveal that the revenue authorities also at the same time referred the matter to the Collector of Stamps to ascertain whether the

document was duly stamped or not and the Collector of Stamps initiated proceedings under Section 48-B of the Indian Stamps Act by giving notice to

the respondent to produce the original award, however, the original award was not presented and finally an order was passed by the Collector of

Stamps on 28.05.2013 directing payment of stamp duty as well as penalty. The Collector of Stamps assessed the stamp duty to the tune of

Rs.4,38,90,795/- including penalty.

7. The respondents have preferred a revision before the Board of Revenue and the Board of Revenue has set aside the order passed by the Collector

of Stamps holding that the arbitrator was appointed as per the order of Mumbai High

Court and no stamp duty is liable to be paid as held by the Collector of Stamps vide order dated 28.05.2013.

8. Learned Deputy Advocate General, Shri Umesh Gajankush has vehemently argued before this Court that the order passed by the Board of

Revenue is bad in law as it has not taken care of statutory provisions as contained in Indian Stamps Act, 1899.

9. He has further argued that the Board of Revenue while passing order impugned (Annexure P/4) has wrongly set aside the order of the Collector of

Stamps, while in the Award of Arbitrator in para 26 has been clearly mentioned that the stamp duty shall be payable. The relevant portion of the

award reads as under:-

“Agreed and ordered that the respondents No.1 and 2 at the cost of the claimant and/or respondent No.3 do sign/execute and deliver to the

claimants and/or Respondent No.3 at the cost of the claimant and Respondent No.3 such deed writing or documents as may be required for the due

implementation of proper transfer of the said Indore properties, in favour of claimant and respondent No.3 Stamp duty and registration charges, if and

as applicable at Indore will be borne by the claimant and respondent No.3”

He has further stated that the Board of Revenue by overlooking the aforesaid clear findings has wrongly held that it not a 'conveyance' while in the

Award (Annexure P/1) it has been clearly mentioned that the award shall operate as a conveyance of the said Mohatta Bhawan and Mohatta bag

Indore properties. He has further stated that the view taken by the learned board of Revenue in fact is not correct in as much as it is contrary to the

statutory provisions and has been passed over looking the contents of the Award (Annexure P/1).

10. He has further stated that factual aspect of the case is that such rights have been created out of the Award. Such a change includes in itself the

transfer of assets from original owners to the respondents no. 1 and 2 i.e. Shobhadevi and Anandkumar. Such a transaction is a 'conveyance' and the

same attracts payment of stamp duty applicable in Madhya Pradesh at Indore as per guidelines prescribed by the competent authority and same can

not be treated the transaction in other States as the respondents No. 1 and 2 are desiring.

11. It has been stated that the board of revenue ignored the wording of the Award in para 41 and same reads as under:-

“Respondent No. 1 and 2 do at their cost attend the office of the Sub Registrars of assurance Mumbai Maharashtra and/or at Indore M.P. To

admit execution and lodge and registrar. The said consent terms and the

award to made in terms there of on or before 30th April 2008.â??

The aforesaid paragraph of the award clearly stipulates that there was a statutory obligation to lodge and register the award. In pursuance thereof the mutation proceedings were initiated and the document as was charged with Stamp duty as payable in M.P. He has further contended that the document was chargeable with stamp duty under Sec. 19-A read with Sec. 3(b) of the Stamp Act. The Board of Revenue failed to consider the award which is mentioned in Schedule â??Aâ?? Article 11, the same reads as under :-

AWARD : â??That is to say any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to arbitration and not being an award directing a partition.â??

12. He has further contended that the Award in question is a document (conveyance) which creates new right, therefore, the percentage of stamp duty of the Article is not attracted as it comes under the exception clause,Â whereas in the present case the stamp duty is payable as per Article 22 of schedule 1-A which is reproduced as under :-

22.Â Conveyance, not being a transfer charged or exempted under No.56Â 8% of the market value of the property which is the subjectÂ Â matterÂ Â of conveyance.

13. He has further argued that by the deed in question, the freshÂ rights have been created in favour of Shobhadevi and Anand Kumar, which were

earlier with the partnership firm and therefore, the deed of Award as was presented for mutation purpose was chargeable with higher duty in M.P.

Thus the Stamp duty so imposed was in consonance with sec. 19-A and 3 bb of the Act which did not require and interference and requires a

registration by making payment of the requisite stamp duty.

14. It has been further argued that by the instrument in question, infact, the properties which were in the hands of respondents no. 3 to 8 earlier, now

has been transferred to a new persons i.e. Shobhadevi and Anand Kumar therefore, the Award is to be taken as 'conveyance' only and is chargeable

to duty as per law.

15. He has further argued that in light of the Article 49(1A) (B), as it is dissolution of partnership, stamp duty has to be paid keeping in view the Indian Stamp Act and Madhya Pradesh Amendment Act, 2005, which came into force w.e.f 01.02.2006.

16. On the other hand, learned counsel appearing for the respondent has argued before this Court that the question of payment of stamp duty in the peculiar facts and circumstances of the case does not arise as the property has been transferred on the basis of the award passed by the arbitrator appointed by Bombay High Court. He has argued that the Board of Revenue was justified in passing the impugned order and no case for interference is made out in the matter.

17. Learned counsel has placed reliance upon the judgments delivered by the Hon'ble Supreme Court in the cases of M/s. Malabar Fisheries Co.

Calicut Vs. Commissioner of Income Tax, Kerala, reported in 1979 (4) SCC, 766; N. Khadervali Saheb (Dead) by Lrs. and another Vs. N. Gudu

Sahib (Dead) and others, reported in 2003 (3) SCC 299 and S.V. Chandra Pandian and Ors. Vs. S.V. Sivlinga Nadar and Ors., reported in 1993 (1)

Supreme Court Cases 589.

18. Heard the learned counsel for the parties at length and perused the record.

19. The basic question in the present case revolves around the issue of payment of stamp duty in respect of the award which has been passed on account of dissolution of firm.

20. Undisputedly, the respondents have received property on account of the award passed by the arbitrator dated 25.03.2008.

â??The definition of instrument as defined under Section 2(14) of the Indian Stamp Act, 1899 reads as under:-

â??2 (14) â?" Instrumentâ? includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or record.â??

Article 49, Schedule 1A of the Indian Stamp Act, 1899 reads as under:â??49.Â Â Partnership: -

A. Instrument of â?

(a) Where there is no share of contribution in partnership or where such share of contribution does not exceed Rs.50,000.Â Â Â Â Â Two

thousand rupees

(b) Where such share of contribution is in excess of Rs.50,0000. Two percent of the shares contributed, subject to a minimum of rupees two thousand and a maximum of rupees ten thousand.

(c) Where such share of contribution is brought by way of immovable property. Two percent on the market value of such property.

Explanation â?" Where such share of contribution is brought by way of cash and immovable property, clauses (b) and (c) both shall apply.

B.Â Dissolution of partnership or retirement of a partner.

(a) Where on dissolution of partnership or on retirement of a partner, any immovable property is taken as his share by a partner other than a partner

who brought in that property as his share of contribution in the partnership The same duty as a conveyance (No.25) on the market value of such

property.

(b) In any other case. One thousand rupees Where, there is no share of contribution in partnership or where such share of contribution does not exceed Rs.50,000/-.

Section 3(bb) of the Indian Stamp Act, 1899 reads as under:-

â??3 (bb).-Â every instrument mentioned in Schedule I-A as chargeable with duty under that schedule, which not having been previously executed

by any person, is executed, out of Madhya Pradesh on or after the commencement of the Central Provinces and Berar Indian Stamp (Amendment)

Act, 1939 and relates to any property situated, or to any matter or thing done or to be done, in Madhya Pradesh and is received in Madhya pradesh:

Provided that no duty shall be chargeable in respect of:-

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be

liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely, or by way of mortgage or otherwise of nay ship or vessel, or any part,

interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894 or under Act 19 of 1838, or the Indian

Registration of Ships Act, 1841, as amended by subsequent Acts.

(3) any instrument executed, by, or, on behalf of, or, in favour of, the Developer,

or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

Explanation –" For the purpose of this clause, the expressions –Developer–, –Special Economic Zone– and –Unit– shall have meanings

respectively assigned to them in clause (g), (za) and (zc) of section 2 of the Special Economic Zones Act, 2005. –

Section 19-A of the Indian Stamp Act, 1899 reads as under:-

–19-A. Payment of duty on certain instruments liable to increased duty in Madhya Pradesh under clause (bb) of section 3 –

Where any instrument has become chargeable in any part of India other than Madhya Pradesh with duty under this Act or under any other enactment

for the time being in force in any part of India and thereafter becomes chargeable with a higher rate of duty in Madhya Pradesh under clause (bb) of

the first proviso to section 3 –

(i) the amount of the duty chargeable on such instrument shall, notwithstanding anything contained in the first proviso to section 3, be the amount

chargeable on it under Schedule I-A, less the amount of duty, if any, already paid on it in India;

(ii) such instrument shall, in addition to the stamps, if any, already affixed thereto, be stamped with the stamps necessary for the payment of the

amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same person as though such instrument were an

instrument received in India for the first time at the time when it becomes chargeable with the higher duty.

– Explanation -- In this section 'India' means the whole of India (except Part B States).

In light of the aforesaid, the stamp duty has to be charged under Section 19-A, read with Section 3(b)(b) of the Stamps Act. The award in question is

a document (conveyance) which creates new rights and, therefore, the stamps duty is payable as per Article 22 of Schedule 1A.

21. In the case of M/s Malabar Fisheries Co. Calicut (supra), the Apex Court in paragraph No.18 and 20 has held as under:-

–18. Having regard to the above discussion, it seems to us clear that a partnership firm under the Indian Partnership Act, 1932 is not a distinct legal

entity apart from the partners constituting it and equally in law the firm as such

has no separate rights of its own in the partnership assets and when one talks of the firm's property. Or firm's assets all that is meant is property or assets in which all partners have a joint or common interest. If that be the position, it is difficult to accept the contention that upon dissolution the firm's rights in the partnership assets are extinguished. The firm as such has no separate rights of its own in the partnership assets but it is the partners who own jointly in common the assets of the partnership and, therefore, the consequences of the distribution, division or allotment of assets to the partners which flows upon dissolution after discharge of liabilities is nothing but a mutual adjustment of rights between the partners and there is no question of any extinguishment of the firm's rights in the partnership assets amounting to a transfer of assets within the meaning of Section 2 (47) of the Act. In our view, therefore, there is no transfer of assets involved even in the sense of any extinguishment the firm's rights in the partnership assets when distribution takes place upon dissolution.

20. There is yet another reason for rejecting the contention of the counsel for the Revenue and that is that the second condition required to be satisfied for attracting Section 34(3) (b) cannot be said to have been satisfied in the case. It is necessary that the sale or transfer of assets must be by the assessee to a person. Now every dissolution must at point of time be anterior to the actual distribution, division or allotment of the assets that takes place after making accounts and discharging the debts and liabilities due by the firm. Upon dissolution the firm ceases to exist; then follows the making up of accounts, then the discharge of debts and liabilities and there upon distribution, division or allotment of assets takes place inter se between the erstwhile partners by way of mutual adjustment of rights between them. The distribution, division or allotment of assets to the erstwhile partners, is not done by the dissolved firm. In this sense there is no transfer of assets by the assessee (dissolved firm) to any person. It is not possible to accept the view of the High Court that the distribution of assets effected by a deed takes place eo instanti' with the dissolution or that it is effected by the dissolved firm.â??

22. The aforesaid case was a case under the Income Tax Act and Their Lordships were dealing with an issue of assessee firm consisting of four partners carrying out six different businesses under six different names and

styles. The dissolution of firm also took place and different businesses were taken over by the different partners.

23. The Income Tax Officer took a view that there was a transfer of machinery within an assessment year and applied Section 64 (3)(B) of the Act

and in those circumstances, it was held by the Apex Court that there is no transfer of assets involved even in the sense of any extinguishment of the

firm price in the partnership assets when the dissolution takes place. The judgment is certainly not at all applicable in the peculiar facts and

circumstances of the case.

24. In the case of *N. Khandervali Saheb (supra)*, the issue was in respect of the registration of the documents.

Paragraph No.3 of the aforesaid judgment reads as under:-

“3. We have carefully perused the award in question. By the award the arbitrators have distributed the assets of the dissolved firm between the

partners in accordance with their respective shares in the partnership. The real question for consideration is whether such an award amounts to

creation of or transfer of any fresh rights in movable or immovable properties so as to bring it within the ambit of Section 17 of the Registration Act?

A perusal of the award shows that it is simply a case of distribution of assets of the dissolved firm amongst the partners themselves. A partnership

firm is not an independent legal entity, the partners are the real owners of the assets of the partnership firm. Actually the firm name is only a

compendious name given to the partnership for sake of convenience. The assets of the partnership belong to and are owned by the partners of the

firm. So long as partnership continues each partner is interested in all the assets of the partnership firm as each partner is owner of the assets to the

extent of his share in the partnership. On dissolution of the partnership firm, accounts are settled amongst the partners and the assets of the

partnership are distributed amongst the partners as per their respective shares in the partnership firm. Thus, on dissolution of a partnership firm, the

allotment of assets to individual partner is not a case of transfer of any assets of the firm. The assets which hereinbefore belonged to each partner,

will after dissolution of the firm stand allotted to the partners individually. There is no transfer or assignment of ownership in any of the assets. This is

the legal consequence of distribution of assets on dissolution of a partnership

firm. The distribution of assets may be done either by way of an arbitration award or by mutual settlement between the partners themselves. The document which records the settlement in this case is an award which does not require registration under Section 17 of the Registration Act since the document does not transfer or assign interest in any asset. This question stands concluded by a decision of this Court in *S.V. Chandra Pandian and Others vs. S.V. Sivalinga Nadar and others* [(1993) 1 SCC 589]. This was also a case of distribution of assets of a dissolved firm by way of an award. This Court noticed that the award read as a whole made it clear that the arbitrators had confined themselves to the property belonging to the partnership firm and had scrupulously avoided other properties. While distributing the residue assets, the arbitrators allocated the properties to the partners. Section 48 of the Partnership Act was applied and the properties were allocated to the partners as per their share on the distribution of the residue. The award sought to distribute the assets of the partnership firm after settlement of accounts on dissolution. This Court took the view that the property falling to the share of the partner on distribution of the residue would naturally belong to him exclusively "but since in the eye of law it is money and not an immovable property there is no question of registration under Section 17 of the Registration Act.

In the aforesaid case, the issue whether the arbitration award distributing the residue assets of the dissolved firm after settlement account requires compulsory registration or not and the Apex Court has held that compulsory registration is not required.

25. In the case before this Court, the issue is certainly not at all in respect of registration under the Registration Act, 1908. It is a case in respect of payment of stamp duty under the Act, 1899 and in light of the Article 44 (B), this Court is of the opinion that stamp duty is certainly required to be paid by the respondent.

26. In the case of *S.V. Chandra Pandian (supra)*, again the issue was in respect of registration of an arbitration award, which was passed on dissolution of firm distributing residue amount among partners. Paragraph No.8 and 16 of the aforesaid judgment reads as under:-

â??8. The above provisions make it clear that regardless of the character of the property brought in by the partners on the constitution of the

partnership firm or that which is acquired in the course of business of the partnership, such property shall become the property of the firm and an individual partner shall only be entitled to 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. It is well-settled that the firm is not a legal entity, it has no legal existence, it is merely a compendious name and hence the partnership property would vest in all the partners of the firm. Accordingly, each and every partner of the firm would have an interest in the property or asset of the firm but during its subsistence no partner can deal with any portion of the property as belonging to him, nor can he assign his interest in any specific item thereof to anyone. By virtue of the implied authority conferred as agent of the firm his action would bind the firm if it is done to carry on, in the usual way, the business of the kind carried on by the firm but the act or instrument by which the firm is sought to be bound must be done or executed in the firm name or in any other manner expressing or implying an intention to bind the firm. His right is merely to obtain such profits, if any, as may fall to his share upon the dissolution of the firm which remain after satisfying the liabilities set out in the various sub-clauses (i) to (iv) of clause (b) of section 48 of the Act.

16. From the foregoing discussion it seems clear to us that regardless of its character the property brought into stock of the firm or acquired by the firm during its subsistence for the purposes and in the course of the business of the firm shall constitute the property of the firm unless the contract between the partners provides otherwise. On the dissolution of the firm each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with section 48 of the Partnership Act. Thus in the entire asset of the firm all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit. Thus during the subsistence of the partnership a partner would be entitled to a share in the profits and after its dissolution to a share in the residue, if any, on settlement of accounts. The mode of settlement of accounts set out in section 48 clearly indicates that the partnership asset in its entirety must be converted into money and from the pool the disbursement has to be made

as set out in clause (a) and sub-clauses (i), (fi) and (iii) of clause (b) and thereafter if there is any residue that has to be divided among the partners in the proportions in which they were entitled to a share in the profits of the firm. So viewed, it becomes obvious that the residue would in the eye of law be moveable property i.e. cash, and hence distribution of the residue among the partners in proportion to their shares in the profits would not attract section 17 of the Registration Act. Viewed from another angle it must be realised that since a partnership is not a legal entity but is only a compendious name each and every partner has a beneficial interest in the property of the firm even though he cannot lay a claim on any earmarked portion thereof as the same cannot be predicated. Therefore, when any property is allocated to him from the residue it cannot be said that he had only a definite limited interest in that property and that there is a transfer of the remaining interest in his favour within the meaning of section 17 of the Registration Act. Each and every partner of a firm has an undefined interest in each and every property of the firm and it is not possible to say unless the accounts are settled and the residue of surplus determined what would be the extent of the interest of each partner in the property. It is, however, clear that since no partner can claim a definite or earmarked interest in one or all of the properties of the firm because the interest is a fluctuating one depending on various factors, such as, the losses incurred by the firm, the advances made by the partners as distinguished from the capital brought in the firm, etc, it cannot be said, unless the accounts are settled in the manner indicated by section 48 of the partnership Act, what would be the residue which would ultimately be allocable to the partners. In that residue, which becomes divisible among the partners, every partner has an interest and when a particular property is allocated to a partner in proportion to his share in the profits of the firm, there is no partition or transfer taking place nor is there any extinguishment of interest of other partners in the allocated property in the sense of a transfer or extinguishment of interest under section 17 of the Registration Act. Therefore, viewed from this angle also it seems clear to us that when a dissolution of the partnership takes place and the residue is distributed among the partners after settlement of accounts there is no partition, transfer or extinguishment of interest attracting section 17 of the Registration Act.â??

27. From bare perusal of the aforesaid judgment, it can be safely gathered that the aforesaid case is again a case in respect of registration of award

under the Registration Act, 1908 whereas the present case is in respect of payment of stamp duty under the Stamp Act, 1899.

28. In the considered opinion of this Court, the Collector of Stamp was justified in passing the order dated 28.05.2013 and the Board of Revenue has

erred in law and facts in setting aside the order passed by the Collector of Stamp. Resultantly, the writ petition preferred by the State Government

stands allowed and the impugned order passed by the Board of Revenue dated 08.11.2013 is hereby quashed.

29. The other writ petition filed by the beneficiaries of the award i.e W.P. No.5586/2014 is against the refusal by the Tehsildar to mutate the name of

the petitioner in the revenue record on account of non-payment of the stamp duty. As this Court has decided W.P. No.6413/2014 and has held that

stamp duty has to be paid by the petitioner, the present petition also stands disposed of with a direction to the Tehsildar to carryout mutation

proceedings only after stamp duty is paid by the present petitioner as assessed by the Collector of Stamp.

No order as to costs.