
(2003) 01 MAD CK 0039
In the Madras High Court
Case No : Writ Petition No. 18391 of 2000

T. Dulip Singh

APPELLANT

Vs

Chief Controlling Revenue Authority and Inspector General of
Registration and Registrar of Assurances

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 CTC 295

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : R. Prem Kumar, for the Appellant; V. Velumani, AGP, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The writ petitioner prays for the issue of a writ of certiorarified mandamus calling for the records comprised in

proceedings of the first respondent in Pa.Mu. No. 50470/E3/97 dated 3.11.1998 confirming the proceedings of the 2nd respondent in his

proceedings Pa.Mu. No. 72582/E3/93 dated 5.6.95, quash the same and direct the respondent to refund the excess stamp duty collected by the

respondents to the petitioner.

2. Heard Mr. R. Premkumar, learned counsel appearing for the petitioner and Ms. V. Velumani, learned Additional Government Pleader

appearing for the respondents. With the consent of either side, the main writ petition itself is taken up for final disposal.

3. According to the petitioner, a senior member of the Madras Bar, he joined the firm of M/s. King and Patridge in the year 1967 carrying on

business as Advocates and Solicitors. The petitioner became a partner of the firm on 1.10.1979, which firm has located its branches in Madras,

Ooty, Bangalore and Hyderabad. The firm purchased a property in Ooty known as Brambly Lodge, hereinafter referred to as the property. The

property is shown as the property of the firm in the books of accounts of the firm as well as in its balance sheet. For the purpose of administrative

convenience, it was decided to bifurcate the Bangalore Branch from Madras and to have two separate firms so that the Madras firm will function

within the territory of Tamil Nadu and the other firm at Bangalore. It was also decided to have a parent firm, viz., King and Patridge Holding,

which holding firm continued to hold the property in Ooty.

4. There were six partners in the said firm on 1.4.1990. The petitioner is holding 40% of the interest in the said firm. The partnership deed was

registered on 1.4.90 and it was registered with Registrar of Firms. The petitioner retired from the partnership firm on 15.6.1992, which was

accepted by the remaining partners. Consequent to the retirement, the share value or interest due to the petitioner was arrived at Rs.6,04,350/=,

under the capital account, while the remaining partners were entitled to Rs.9,25,650/= together. The five other partners, who are holding 60% of

interest, opted to release their undivided right, title and interest in favour of the petitioner for a consideration of Rs.9,25,650/= being the value of

their share. The remaining partners executed a deed of release on 30.6.92 in favour of the petitioner in consideration of their receiving

Rs.9,25,650/=.

5. The said release deed was presented for registration. After protracted correspondence, the 2nd respondent adjudicated the document as a

deed of conveyance for the purpose of stamp duty and called upon the petitioner to pay Rs.1,46,460/= towards deficit stamp duty and Rs.60/=

towards penalty. Under protest the petitioner paid the said amount and registration of document No. 527/97 was completed. The petitioner moved

an appeal before the first respondent. The first respondent also confirmed the view taken by the 2nd respondent and held that the document in

question is a deed of conveyance by proceedings dated 3.11.98. The first respondent dismissed the appeal by proceedings dated 3.11.98. The

petitioner moved for reconsideration, but such personal representation to

reconsider did not yield any result. Hence, the present writ petition.

6. According to the petitioner, the document in question is a deed of release of interest and the respondents have acted with illegality in treating the

document as an instrument of conveyance, which is against the ratio of this Court in T.K. Subramaniam Vs. Chief Controlling Revenue Authority

(Stamps) and Inspector General of Registration, Madras, and the Full Bench judgment in Board of Revenue and Another Vs. V.M. Murugesu

Mudaliar of Gudiyatham, : It is further contended that the respondents have misunderstood the difference between sale and release and this has

resulted in miscarriage of justice. In terms of entry No. 55-A of the first schedule to the Indian Stamp Act, a release deed is an instrument whereby

a person renounces a claim upon another person or against any specified property and, therefore, stamp duty of 4% alone has to be paid on the

value of the claim released. It is contended that the impugned proceedings are contrary to well accepted principles of law and it is prayed that this

Court may quash the impugned proceedings.

7. Per contra, it is contended by the learned Additional Government Pleader that the document in question is a deed of conveyance as seen from

the very recitals in the instrument and there is no escape for interference at the instance of the petitioner. It is contended that no interference is

called for with the proceedings of the 2nd respondent as affirmed by the first respondent since the instrument in question is a conveyance and not a

release.

8. The points that arise for consideration in this writ petition are :-

i) Whether the instrument is a deed of conveyance as held by the respondents or a release as contended by the petitioner ?

ii) Whether the order impugned is liable to be interfered in this writ petition ?

iii) Whether the petitioner is entitled to a direction for refund of stamp duty claimed by him ?

All the above three contentions could be considered together.

9. On a perusal of the instrument and the very recital therein, in my considered view, is fatal to the very contention advanced by the counsel for the

petitioner. Concedingly, the petitioner was a partner of M/s. King and Partridge and he has retired from the partnership firm on 15.6.92. As per the

retirement deed, the petitioner is entitled to recover Rs.15,30,000/= representing the amount standing to his credit in the books of the firm.

Therefore, it is clear that on and after 15.6.92, the petitioner is only a creditor of the firm as he ceased to be a partner on that date and he cannot

claim that he is a partner nor a co-owner nor a co-sharer nor a joint owner of the Ooty property. The recital in the instrument reads thus :-

AND WHEREAS the Firm is the owner of the property bearing Old S. No. 252 & 251/A, New R.S. No. 4039/2 & 4040/1B consisting of land

and an old superstructure situated at Bramly Ridge, Ootacamund, Nilgiris morefully described in the schedule hereunder and hereinafter referred to

as "the Ooty Property".

AND WHEREAS the Release has retired from the partnership of the Firm with close of business as on 15th June 1992 and consequently a Deed

of Retirement was made between the Releasers and Release.

AND WHEREAS as per the terms of the Retirement Deed, the Release is entitled to be paid by the Firm a sum of Rs.15,30,000/= representing

the amount standing to his credit in the Ooty property Revaluation Reserve Account in the books of the firm, in addition to the amount standing to

his credit as his share of profits in the Firm until retirement.

AND WHEREAS the Release pressingly requested and the Releasers agreed that they shall allot and release in favour of the Release the right,

interest and title in the Ooty Property in full satisfaction of the amount of Rs.15.30 lakhs due to the Release under the said Revaluation Account.

10. The petitioner requested the continuing partners for settlement of the amount due to him. In full settlement of the amount due to the petitioner,

the continuing partners, who continued in the firm, after the retirement of the petitioner, executed the instrument. The retirement has already taken

effect. Thereafter, the present instrument has been executed as if it is a deed of release. Since the petitioner ceased to be a partner and he became

a creditor simplicitor and the other partners, who continued in the firm have executed the instrument. The respondents have construed the same

instrument on its very recital as a deed of conveyance or sale. The recitals in the very instrument would show that the petitioner ceased to be a

partner and, thereafter, he has purchased the property in question from others, who continued in the firm. It may be that the firm was indebted to

the petitioner and to discharge the same the instrument has been executed in favour of the petitioner transferring the property. On a construction of the very recital it is clearly a deed of conveyance and there is no escape. It cannot be considered as a deed of release or instrument of release as the petitioner has went out of the firm prior to the date of conveyance. It is not as if the partnership firm had continued and in the reconstitution the property in question was allotted towards his share, which could have been by way of a deed of reconstitution and releasing the rights of other partners. That is not the case here.

11. The petitioner, who ceased to be a partner and who ceased to be a co-owner or joint owner of the property in question long prior to the date of execution of the instrument cannot contend that it is a release of rights by co-owners or joint owners, in favour of another co-owner or joint owner, but factually it is a conveyance of the property by the partnership or the partners, who continue in the firm in favour of the petitioner, who ceased to be a partner of the firm on settlement of accounts as well as distribution of assets of the firm among the partners. It is not the case of the petitioner that he was having common or joint interest along with the others on the date of execution of the instrument. Such interest alone could be the subject matter of relinquishment of interest by one and enlargement of interest in favour of the others. The release could be usefully implied as a form of conveyance by a person having some right or interest and another having a limited estate and the release within the parties is an enlargement of the limited right. To determine whether a document is a release or a conveyance, actual character of the transaction and the precious nature of the rights accrued under the instrument and more particularly the recital are relevant . Therefore, on the facts of the case, it is clear that the instrument in question is not a release, but it is a deed of conveyance and, therefore, the respondent has rightly proceeded and construed the instrument as a deed of conveyance and assessed the stamp duty payable thereof.

12. Reliance is placed upon the earlier pronouncement of this Court in BOARD OF REVENUE & ANOTHER VS. V.M.MURUGESA MUDALIAR OF GUDIYATHAM reported in AIR 1995 MAD 641. That is a case where the document in question was executed by co-

owners, who are entitled to 3/5-th share in favour of others, who are entitled to the remaining 2/5-th share. Therefore, the said pronouncement has no application to the facts of the case.

13. Nextly, the learned counsel for the petitioner relied upon the judgment in T.K. Subramaniam Vs. Chief Controlling Revenue Authority

(Stamps) and Inspector General of Registration, Madras, : . In that case, the Division Bench found that immovable properties have been allotted

under the deed of dissolution in favour of the appellant and the instrument in question is only a sort of acknowledgement of the title of the appellant

to the immovable properties. Therefore, it cannot be treated as a conveyance of the properties. This pronouncement also has no application to the

facts of the case.

14. The reasons assigned by the respondents cannot be assailed at all. They are well founded and the interpretation and construction placed on the

instrument as well as the statutory provisions of The Indian Stamp Act is not liable to be interfered.

15. In the result, this writ petition is dismissed, but without costs.