

(2000) 12 MAD CK 0055

In the Madras High Court

Case No : R.C.No. 3 of 1999

The Chief Controlling Authority (Stamp Act) and the
Inspector General of Registration, 120, Santhome High Road,
Chennai-28

APPELLANT

Vs

Sarojini Muthusamy and four others

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Partnership Act, 1932 — Section 48
Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 57(1)

Citation : (2001) 1 LW 489 : (2001) 3 RCR(Civil) 123

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J;F.M. Ibrahim Kalifullah, J

Bench : Full Bench

Advocate : Mr. M. Dhandapani, for the Appellant; Mr. S. Parthasarathy, Advocate for M/s. Sarvabhauman Associates, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Chief Controlling Revenue Authority (Stamp Act) has made a reference u/s 57(1) of the Indian Stamp Act,

1899 and sought a clarification regarding classification of the document in question and chargeability to stamp duty.

2. There is a firm, by name, M/s. Lakshmi Spinners constituted under the Indian Partnership Act, 1932 and M/s. Sampurna Spinning Mills Ltd.

was admitted as a partner on 22.10.1986 and the profit sharing ration as well as capital investment was arrived at as under:-

Tmt. Sarojini Muthusamy 25% Rs. 1,81,250.00

Tmt. Vasantha Valayutham 25% Rs. 1,81,250.00

Tmt. Mallammal 20% Rs. 1,45,000.00

Tmt. Amirtham 10% Rs. 72,500.00

M/s. Sampurna Spinning Mills 20% Rs. 1,45,000.00

The partners have decided to dissolve the firm on 12.11.1986 and the properties were shared as under:

1. Sampurna Spinning Mills Rs. 15,59,600

2. Tmt. Sarojini Muthusamy Rs. 18,800

3. Tmt. Vasantha Valayutham Rs. 18,800

4. Tmt. Mallammal Rs. 15,400

5. Tmt. Amirtham Rs. 7,800

3. The Registering Authority was of the opinion that the assets were not divided at the agreed ration as per section 48 of the Indian Partnership Act

and the deed of dissolution should be treated as a deed of conveyance. The respondents have not accepted the view of the Revenue Authority and

hence, the reference has come before us.

4. We have perused the deed of dissolution dated 12.11.1986 and in the deed, it is stated that the partnership existed between the parties and it

was dissolved with effect from 12.11.1986 and the assets and liabilities of the dissolved firm were divided among the five partners as detailed in

the deed. In so far as M/s. Sampurna Spinning Mills Ltd. is concerned; the said concern was allotted certain properties and other partners were

also allotted certain other properties. The Registering Authority was of the view that the value of the property allotted in favour of M/s. Sampurna

Spinning Mills Ltd. was much more the the value of the properties allotted to other partners and the allotment was not in accordance with the

provision of Section 48 of the Indian Partnership Act, and hence the deed in question should be treated as a deed of conveyance. It is relevant to

mention here that in so far as liabilities of the firm are concerned, the entire liability of the firm was fastened on M/s. Sampurna Spinning Mills Ltd.

as under the deed it is required to discharge all pending liabilities including Income Tax, sales- tax, property-tax, excise duty, etc. whether existing

at present or that may arise in future. In other words, in the document, it is made clear that M/s. Sampurna Spinning Mills Ltd. is solely responsible

for the discharge of all liabilities of the erstwhile firm and all other partners were absolved from all the liabilities. The Registering Authority has

focused its attention only on the value of the assets allotted in favour of M/s. Sampurna Spinning Mills Ltd. overlooking the fact that M/s.

Sampurna Spinning Mills Ltd. is also required to discharge all liabilities of the erstwhile firm existing on the date of dissolution or that may arise in

future and other partners were absolved of all liabilities of the firm. It is, in this factual situation, the question that has to be considered is whether

the deed in question is a deed of conveyance or a deed of release. It is also relevant to mention here that the parties have paid stamp duty on the

basis that is a deed of partition.

5. In our opinion, the document in question is not a deed of conveyance. The Supreme Court in *S.V.Chandra Pandian and others v. S.V. Sivalinga*

Nadar and others, 1993 (1) LW 612 considered the question whether allotment of properties to the partners on the dissolution of the firm would

amount to transfer and after referring to its earlier decisions in *Commissioner of Income Tax, West Bengal, Calcutta Vs. Juggilal Kamalapat*, ,

Commissioner of Income Tax, U.P. Vs. Sh. Bankey Lal Vaidya (Dead) by Lawyers, and *Malabar Fisheries Co. Vs. Commissioner of Income*

Tax, Kerala, laid down the law as under: -

... 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 interestable it 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 assets 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) (ii) 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 movable 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 or 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 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 u/s 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.

6. The Supreme Court in the earlier decision in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, held that upon dissolution of a partnership, every erstwhile partner is entitled to a share in the money representing the value of the property and the distribution of assets does not amount to transfer amount the erstwhile partners. This Court in

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Gudiyatham, , T.K. Subramaniam Vs. Chief Controlling Revenue Authority (Stamps) and Inspector General of Registration, Madras, and T.T.

Meenakshi Achi and others Vs. The District Registrar, Coimbatore and another, also held that the view taken by the Revenue Authorities that the

deed of dissolution of partnership should be treated as a deed of conveyance was not correct and held that the deed of dissolution of partnership

should be treated as a deed of release.

7. The submission of the learned Government Advocate is that the value of the property allotted in favour of M/s. Sampurna Spinning Mills was

much more than the value of the properties allotted to other partners and therefore it is a colourable transaction. However, we are unable to accept

the submission of the learned Government Advocate, as M/s. Sampurna Spinning Mills Ltd. was not only allotted assets at the time of dissolution

of the firm, but the said company was also made solely responsible to discharge all the liabilities of the erstwhile firm existing on the date of

dissolution or future liability if any that may arise in future. Hence, on the facts of the case, the document cannot be considered to be a device to

convert the personal properties of the other erstwhile partners in favour of M/s. Sampurna Spinning Mills Ltd. It is a case where the existing

partners decided to dissolve the firm and divided the properties by way of a deed of dissolution. When the partnership firm was dissolved, the

partners are entitled to the benefits that flow from it. Hence, the deed cannot be regarded as a deed to convey or transfer their interest in the

properties in favour of M/s. Sampurna Spinning Mills Ltd. The deed in question, in our opinion, should be classified only as a deed of release.

Since the respondents have paid the duty on the basis that the document in question is a deed of partition. It is not necessary to refund the excess

amount collected, if any. Our answer to the question is that the document in question should be classified and treated as a released deed.