
(1958) 07 BOM CK 0028

In the Bombay High Court

Case No : Civil Reference No. 11 of 1958

The Chief Controlling Revenue Authority

APPELLANT

Vs

Rasikchandra Tulsidas Patel

RESPONDENT

Date of Decision : 14-07-1958

Acts Referred:

Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 2, 57

Citation : (1958) 60 BOMLR 1379

Hon'ble Judges : M.C. Chagal, C.J.;V.S. Desai, J;Tarkunde, J

Bench : Full Bench

Judgement

M.C. Chagla, C.J.—This is a reference u/s 57 of the Indian Stamp Act, and the document that we have to consider is a document which purports to acknowledge a certain partition which was effected earlier. The transaction evidenced by the document is this. There was a joint family consisting of Rasikchandra Tulsidas Patel, his widow mother Narmadabai, his wife Savitaben, his minor son Chandrakant, minor unmarried daughters Indira and Anila, and two major sons Harilal and Shashikant, and from the document it appears that there was an oral partition on March 29, 1956, and the partition took this form. A sum of a lakh of rupees each was given to the two major sons Harilal and Shashikant, and the mode of transferring this sum of Rs. 1 lakh to the two major sons was that the father had an amount standing to his credit in the firm of Shah Construction Co. Ltd. and the necessary entries were made crediting the two sons with Rs. 1 lakh each. The rest of the joint family property consisting of land, pots and pans, etc. went to the smaller joint family as it is described which was left after excluding the two major sons.

2. Now, the two rival views which are before us are the view of the Revenue Authority who suggests that although in form the document is merely an admission and an acknowledgment of a partition which had already been effected, in substance this is an instrument of partition, and it should be stamped u/s 2(15) of the Stamp Act. The other view is that this document merely recites

a statement of fact, and it has not by itself created any interest and, therefore, it is not liable to be stamped under the Stamp Act at all. Section 2(15) is in the following terms:

"instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue authority or any Civil Court and an award by an arbitrator directing a partition.

Before we look at the document itself and before we look at the authorities which were cited at the Bar, perhaps it is just as well to look at the principle underlying this section. When you have a joint Hindu family, you may have a partition effected, which partition may only result in a division of interest. Members of the joint family may not specifically divide the joint family property. The result of this would be that the members of the joint family would cease to be coparceners and would become tenants-in-common and would hold the property as tenants-in-common. At a subsequent stage by a document the tenants-in-common may specifically divide the property. In such a case, although in one sense the partition has already taken place, still the fact that the tenants-in-common are specifically dividing the property would attract the application of Section 2(15). You may have another case where a partition may take place not only in interest but also a specific partition of property. The coparceners may by this partition divide the property which belongs to the joint family and then you may have a subsequent document which may recite the fact not only of partition in interest but the actual partition specifically of the property of the joint family. In such a case it is difficult to understand how the document which merely admits and acknowledges a past event, which recites a partition which has already taken place, and which does not in any sense of the term bring about a partition, can be considered to be an instrument of partition u/s 2(15). The third case may be where the document itself may bring about both a division in interest and a partition with regard to specific property. That would be a clear case of an instrument of partition partitioning the joint family property. If these principles are understood and appreciated, then there is not much difficulty in deciding in which category the document we are considering falls.

3. When we look at the document, it first recites clearly that on March 29, 1956, an oral partition took place between the parties. It also recites that the joint family estate was orally partitioned and that the land, hereditaments etc. were allotted to and came to the shares of the smaller joint family in severalty. The smaller joint family, as we have just described, is the family which remains after excluding the two major sons. Then comes the further recital that a sum of Rs. 1 lakh was paid by getting transferred to their individual names deposits of rupees one lac each in the undertaking known as Shah Construction Co. Ltd. from loan account of the larger joint family standing in the name of the said Rasikchandra Tulsidas Patel to his credit with the said Shah Construction Co. Ltd. to each of the said Harilal and Shashikant in severalty in full satisfaction and in lieu of their

respective undivided share, right, title and interest in the larger joint family's estate. So that these assignments make it clear that on March 29, 1956, there was a partition and there was also a specific partition of the property of the joint family, and the land, hereditaments etc. were allotted to the share of the smaller family and Rs 1 lakh each was paid to the two sons. Therefore, when this took place on March 29, 1956, there was nothing left to be done. One of the tests which may be safely applied is this. Has everything which is necessary to be done in order to bring about a partition been done before the document is executed? If everything has been done, then there is nothing which the document brings about. If something is left to be done which is done by the document, then the document may be considered as an instrument of partition. Then the document goes on to say:

And whereas the said Harilal and the said Shashikant have agreed to accept the said sum of Rs. 1 lakh each in full satisfaction and in lieu of their respective undivided share as aforesaid absolutely freed and discharged of and from all the claims whatsoever whether subsisting or future or reversionary of the said Rasikchandra and the smaller joint family.

Then there is a similar recital with regard to the smaller joint family and the lands, hereditaments etc. which go to their share, and then comes the operative part:

Now these presents witness that the parties hereto and each of them doth respectively hereby admit and acknowledge that they came to a partition orally on the 29th day of March 1956 as aforesaid and that the said land hereditaments and premises described in the schedule hereunder written etc. of the larger joint family were allotted and came to the share of the smaller joint family in severalty and these presents further witness that the said Harilal and the said Shashikant hereby admit and acknowledge to have each of them respectively received a sum of Rs. 1 lakh each from the larger joint family....

Now, the Revenue Authority has attached emphasis on the fact that by this document the parties hereby admit and acknowledge, and in the opinion of the Authority this expression creates an interest by the document itself. In our opinion, with respect, that is an erroneous way of looking at the matter. Although the admission and acknowledgment is in presentia, it is an admission and an acknowledgment with regard to a past event and that is clear from the language of the document itself. What is admitted and acknowledged is what happened on March 29, 1956, viz., the allotment of land, furniture, fixtures, etc. to the smaller joint family and the allotment of Rs. 1 lakh each to the two major sons. Therefore, there is nothing in this document which by itself creates or relinquishes any interest. It is nothing more than a simple admission and acknowledgment of what transpired before the document was executed.

4. Turning to the authorities, we might first look at a decision of our own Court which is reported in *Sakharam Krishnaji v. Madan Krishnaji* ILR (1881) Bom. 232.

It is an old decision which was not dealing with a case under the Stamp Act, and what Mr. Justice West was concerned to decide was whether a certain document was admissible in evidence, the contention being that as it required registration and it not being registered it was not admissible in evidence. In his judgment Mr. Justice West was considering the expression "declare" as used in Section 17 of the Registration Act, and what the learned Judge says is that "declare" as used in Section 17 must create, assign etc. and must be understood in the language used in the same section as implying a definite change of legal relation to the property by an expression of will embodied in the document referred to, and that it should imply a declaration of will, not a mere statement of a fact. Therefore, the document itself must constitute an act or a declaration of will on the part of the executants ;it must not be a mere statement of fact.

5. Then there is a Full Bench decision which dealt with a similar point reported in *Superintendent of Stamps Bombay v. Chimanlal* (1922) 25 Bom. L.R. 112 . That is rather an instructive case because the three brothers who constituted a joint Hindu family owned shares in a limited company which stood in the name of the eldest of them. They became divided in interest, but the shares stood in the elder brother's name as before. Two deeds were then executed by which he transferred the number of shares that fell to the lot of each of his brothers, and the question arose as to how the deeds should be stamped, and the Full Bench consisting of Sir Lallubhai Shah, Acting Chief Justice, Mr. Justice Crump and Mr. Justice Mulla, held that the two deeds were chargeable under Article 45 of the Indian Stamp Act as instruments of partition. It will be noticed that there was only a division in interest but the shares which constituted the property of the joint family were not specifically divided. They were only divided by the two documents, and it is for this reason that the Court came to the conclusion that the documents constituted instruments of partition within the meaning of Section 2(15), The Full Bench also holds that the brothers after partition were tenants-in-common and held the shares as tenants-in-common.

6. Our attention was also drawn to, two Full Bench decisions of the Madras High Court. One is Reference under Stamp Act Section 49 ILR (1884) 7 Mad. 385 and the other is Reference under Stamp Act Section 46 ILR(1891) 15 Mad. 164 In Reference under Stamp Act Section 49 the document signed by the members of the Hindu family was an account of the share of one member of the family in the family property, and it was recited that the parents of the family were to enjoy certain lands and that the outstanding debts should be divided at a future date, and it was held that the document was not liable to stamp duty as a partition deed, and the Court held that the document was a note that a certain property had, on partition, been allotted for the maintenance of parents, and a memorandum of the particulars of property which had, on partition, fallen to the share of one of the brothers. It did not of itself operate to release the joint interests of the other parties to the partition and create a sole interest in the person whose share it recorded. The later judgment which records no reason but which is clear from the facts is Reference under Stamp Act, Section 46, That was

a case where three out of the seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property made over to him, a division of family property having been effected, and acknowledged himself liable for one-seventh of the debts of the family. One of the documents contained a clause to the effect that the executant had no further claim to the property of the family. These documents were held by the Madras Full Bench as instruments of partition. It is clear from the language of the document that although it refers to a partition which was effected by lottery, the executant of the document agrees to take the specific share by the document itself, and from the language of the document it seems to appear that the division of the property by lottery and the execution of this document were part and parcel of the same transaction, and therefore the view which seems to have found acceptance with the High Court was that the document itself created an interest or brought about a partition. As we have not the benefit of the reasons in the judgment, it is difficult further to comment on this decision.

7. Then there is a judgment of the Allahabad High Court also to the same effect in *In re Tirathraj* AIR [1942] All. 220 . There also the document recited certain facts about a previous partition stating that certain houses were allotted at a partition to certain members of the family, and the Allahabad High Court held that the document was not liable to stamp duty as it was neither a deed of partition nor a deed of partnership nor an award.

8. Therefore, both on principle and authority, we are of the opinion that inasmuch as this document which we are considering merely recites a partition which has already been effected and also admits and acknowledges a specific partition of joint family property, the document cannot be looked upon as an instrument of partition within the meaning of Section 2(15). In our opinion, it does not create any interest nor does it release any interest.

9. The result is that the answer to the first question submitted to us must be in the negative. The answer to the second question would be that the document does not come under any article of the Stamp Act.

10. Costs to be paid by the referee.