(1994) 01 MAD CK 0042

In the Madras High Court

Case No : Writ Appeal No. 1355 of 1993 and Writ Petition No. 10903 of 1991

T.T. Meenakshi Achi and others APPELLANT

Vs

The District Registrar, Coimbatore and another RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:

Partnership Act, 1932 — Section 32, 42
Stamp Act, 1899 — Article 23, 44, 46, 2(10), 29(1)

Citation : AIR 1994 Mad 317 : (1994) 1 LW 316 : (1994) WritLR 476

Hon'ble Judges : K.A. Swami, C.J;Somasundaram, J

Bench : Division Bench

Advocate : R. Muthulingam, for the Appellant; P. Rajamanickam, Government Advocate, for the Respondent

Judgement

K.A. Swami, J.—When the writ appeal 1355 of 1993 came up for orders,we directed the Writ Petition 10903 of 1993 be also posted

along with it for hearing.Accordingly,the writ appeal and writ petition are posted for hearing.We have heard both sides.

2. The writ appeal is preferred against the interim order passed in the writ petition, therefore the result of it would depend upon the decision in the

writ petition.Accordingly,we first take up the writ petition for consideration.

3. The petitioners have sought for issue of a writ in the nature of certiorari quashing the orders dated 30-5-1990 and 3-5-1991,passed in 1.

No.1/A1/90 and Ra.Mu.57774/E3/9 by the 1st and 2nd respondent respectively.

4. The contention of the learned counsel for the appellants is that the document dated 12-3-1990 produced at page 1 of the typed set of records

does not warrant payment of stamp duty as demanded by 2nd respondent,in as much as the said document cannot at all be considered to be a document of conveyance.

5. On the contrary, it is contended by learned Government Advocate that the documents in question transfers interest of the outgoing partners to

the partners who continue in the partnership,therefore there is conveyance of property from one living person to another and as such,the document

attracts art.23(b) of the Stamp Act,hence the demand made by the 2nd respondent is justified in law.

6. We may point out here that the 1st respondent considered the document as a document of conveyance and demanded deficit stamp duty of

Rs.32,400/- and a penalty of Rs.100/- paid by the petitioners for registration of the document.

7. Aggrieved by the aforesaid order,the petitioners went up in revision before the 2nd respondent.The 2nd respondent agreed with the conclusion

of the 1st respondent,but nevertheless, demanded stamp duty on Rs. 6,27,750/- whereas the 1st respondent had demanded stamp duty on a sum

of Rs.3,60,000/-.

8. The fact necessary for the purpose of deciding the contentions urged on behalf of the petitioners and the respondents ares as follows:--

There was a partnership knows as Raja Raja Textiles consisting of some of the parties to the document in question dated 12-3-1990 formed on

28-8-1989.It consisted of six persons, viz., V.Vaidhia Pillai,R.Chinnasamy,P.V. Palanisamy,A.Murugesan,V.Arumugham and S.Kamalam.This

partnership on 6-1-1990 came to be reconstituted by another deed of partnership of the same date.As per the reconstitution,all the parties to the

deed dated 12-3-1990 became the partners of Raja Raja Textiles.Thereafter,on 12-3-1990,the petitioners retired from the partnership and

executed the deed styled as release deed on 12-3-1990.It is necessary to re-produced the said deed,because the questions involved are as to the

nature of the deed and whether it attracts payment of stamp duty as per Art.23(b) of the Stamp Act.Therefore,we reproduce the said document:--

The deed of release executed on the 12th day of March, 1990 executed in favour of Smt. T.T. Meenakshi Achi, wife of Sri T. Thennappan,aged

about 66 years, residing at T.N.T.House, T.N.Street,Kulipirai,Pudukottai District 622402;(2) Smt.T.Mekalla, wife of T.N.Thenappan, aged about

40 years,residing at C/5,Chemplast Colony,Raman Nagar,Mettur Dam 636403;(3)

Smt.M.Visalakshi,wife of Sri Km.No. Meiyappan,aged about

39 years,residing at 64,Valipalayam Road, Tirupur,Coimbatore District 638604; (4) Sri T.Ramanathan,son of Sri T.Thenappan,aged about 35

years, residing at T.N.T.House,T.N.Street,Kulipirai (Page....2) Pudukottai District 622402;and(5) Sri T.Nachiappan,son of Sri T.Thenappan,aged

about 32 years,residing at No.105,3rd Street,Gandhipuram,Coimbator 641012. (The aforesaid five parties hereinafter referred to as the

`releasees''which expression shall wherever the context admits include their heirs, successor, legal representatives and assigns).

By (1)Sri V.Vaithiapillai,son of Sri Velupillai, aged about 51 years,residing at 32, Aruna Nagar,West Govidapuram,Dindugal 6244008;(2) Sri R.

Chinnasamy,son of Sri Ramaya Gounder,aged about 52 years,residing at 5/4B (Page....3)Pappampatty 641016;(3)Sri P.V.Palaniswamy,son of

Velu Pillai aged about 36 years,residing at 32,Aruna Nagar,West Govindapuram,Dindugal 624008;(4)Sri A.Murugesan,son of Andia Pillai,aged

about 31 years,residing at Sennamanickanpatty Post,Dindigul;(5) Sri V. Arumugam, B.E., son of Sri Vaithia Pillai,aged about 23 years, residing at

32, Aruna Nagar, West Govindapuram,Dindigul 624008;and (6)Smt.S. Swaminathan aged about 58 years,residing at E.Vadugapalayam

Elavandhi P.O.Palladam (Page....4)Taluk the aforesaid the aforesaid six parties hereinafter referred to as the `releassors'' which expression shall

wherever the context admits their heirs, successors,legal representatives and assigns;

Witnesseth:

Whereas the property more fully described in the schedule hereunder belongs to the firm of M/s. Raja Textiles.

Whereas the property was contributed as capital by No.2 of the releassors under deed of Partnership dated (Page....5) 28-8-1989. duly

registered as document No.2010 of 1989 with Sub-Registrar, Singanallur.

Whereas subsequently under the deed of reconstitution dated 6-1-1990 and under a deed of retirement-cum-reconstitution dated 12-3-1990,the

firm was reconstituted and in pursuance whereof,the releassors retired from the firm and the releassees have taken over the assets and liabilities of

the firm and are continuing the business.

Now This Deed Witnesseth:

That in pursuance of the reconstitution dated 12-3-1990,the releassors are hereby releasing all their rights, title and interest over the scheduled

property in favour of the releasees to further affirm and confirm the factum of their retirement and the release of rights.The releasees may enjoy the

property henceforth as absolute owners thereof without let or hindrance.The releassors or their heirs have no further right over or title to the

scheduled property.

Schedule of Property

Coimbator District, Palladam Taluk,Pappampatti Village,Singanallur Sub-Registration District,S.F. No. 241/1 and 242/5,land measuring 24.75

cents and building bearing door No. 5/4A(Page....6)

Boundaries

North of Chettipalayam-Palladam Road South of R. Chinnasamy''s agriculture land East of R.Chinnasamy''s agriculture land West of

R.Chinnasamy''s residential building with building constructed with asbestors tiles and wooden parts measuring about 6114 sq.ft.more fully shown

in the attached plan together with approach Road.The market value of the property is Rs.3,60,000/-.In witness whereof the releassors and

releasees have singed this instrument of this day,the month and the year first above mentioned at Coimbator before the following witnesses:--

1. 1.

2. 2.

3. 3.

4. 4.

5. 5.

Releassees Releassors

Witnessees:--

1. Mr. Arumugham,

S/o Peria Ramia Gounder

Kannampalayam

Sulur(via)Coimbator(Dt.).

2. T.Thenappan,

S/o T.Thenappan Chettair,

TNT House,Kulipirai,

Pin Code.622402.

Prepared by:P.R.Ramakrishnnan,B.Com.,

B.L.,Advocate, Ram Prasad,

2.Kamar Koil Street.

9. As already pointed out,both the authorities have construed it as a document of conveyance.The 2nd respondent appears to have taken a view

that as no document dated 6-1-1990 reconstituting the partnership firm and the release deed are produced,the deed in question having taken place

on the same date,it cannot be construed as a document adjusting the interests of the partners among themselves.It may be relevant to notice that

neither the 1st respondent nor the 2nd respondent directed the petitioners to produce the reconstituted deed of partnership dated 6-1-1990,even

though it was specifically stated in the document dated 12-3-1990 in question.Before us,the reconstituted deed dated 6-1-1990 has been

produced.It is a registered document.As per that document,all the parties to the deed in question dated 12-3-1990 are also the partners of the

partnership known as Raja Raja Textiles.Therefore,on 12-3-1990 when the petitioners executed the document in question releasing their interests

in favour of the partnership,they were the partners of Raja Textiles. Respondents 1 and 2 on ignoring the document dated 6-1-1990 have arrived

at the conclusion that only on 12-3-1990,the petitioners became the partners and also retired from the partnership,therefore, it cannot be

construed to be a release deed.

10. A reading of the document which has been re-produced above, would clearly show that the document cannot at all be construed as

conveyance.It is nothing but a document releasing the interests of the petitioners as Partners in favour of other partners who continued the

partnership.In the case of Settlement of interest among the partners, it settled position of law that there is no transfer of interest,nor there is

conveyance. it is held by the Supreme Court in the decision reported in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others,

:--

The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including

immovable property.Once that is done whatever is brought in would cases to be the exclusive property of the person who brought it in.It would be

the trading assets of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of

the partnership.The person who brought it in would,therefore,not be able to claim or exercise any exclusive right over any property which he has

brought in,much less over any other partnership property.He would not be able to exercise his right even to the extent of his share in the business

of the partnership.As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as may be

agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the

net partnership assets as on the date of dissolution or retirement after as deduction of liability and prior charges.It is true that even during the

subsistence of the partnership a partner amy assign his share to another.In that case what the assignees would get would be only that which is

permitted by S. 29(1) that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the

partners.There are not many decisions of the High Court on the point.In the few that there are the preponderating view is in support of the position

which we have stated.In Joharmaly v.Tejkam Jaglup, ILR(1893) 17 Bom 235 which was decide by Jardine and Telang, JJ.the latter took the view

that though a partners'' share does not include any specific part of any specific item of partnership is entitled to immovable property,such share

does not include in interest in immovable property and,therefore,every instrument operating to create or transfer a right to such share requires to be

registered under the Registration Act.In coming to this conclusion he mainly purported to rely upon an observation is not to be found in the present

edition of Lindley''s Partnership nor in the 9th or 10th editions which were brought to out notice.The 5th edition, however,is not available the

learned Judge after quoting an earlier statement which is that the ""doctrine merely amounts to this that on the death of a partner his share in the

partnership property is to be treated as money,not as land"" says: ""This obviously would not affect matters either during the lifetime of a partner--

Lindley, L.N.,says in so many words that it has no practical operation till his death (P.348)--or as against parties strangers to partnership,e.g.the

firm''s debaters."" While it is true that the position so far as third persons are concerned would be different it may be pointed out that in Forbes

v.Seten,(1870) 10 EQ 178,James V.C.,has,as quoted by the learned Judge,said: ""It has long been the settled law of this Court that real estate

bought or acquired by a partnership for partnership purpose (in the absence of some controlling agreement or direction to the contrary)is as,

between the partners and as between the real and personal property, and devolves and is distributable and applicable as personal estate and as

legal assets."" Telang J.,seems to have overlooked, and we say so with great respect,the words ""as between the partners"" which precede the words

and as between the real and personal representative of the partner deceased"" and to have confined his attention solely to the latter.We have not

found in any of the editions of Lindley''s Partnership an adverse criticism of the view of the Vice-Chancellor.But on the contrary, as already stated,

the view expressed is full accord with these observations Jardine J.,has discussed the English authorities at length and after referring to the

documents upon which reliance was placed on behalf of the defendant stated his opinion thus:

To lay down that the three letters in question,which deal generally with the assets, moveable and immovable,without specifying any particular

mortgage or other interest in real property require registration,would,I incline to think,in the present state of the authorities,go too far.It may be

argued that such letters are not `instruments of gift of immovable property'' but rather disposals of share in a partnership of which the business is

money lending, and the mortgage securities merely incidental thereto."" The view of Telang J., was not accepted by the Madras High Court in

Chitturi Venkataratnam and Others Vs. Siram Subba Rao, . The learned Judges there discussed all the English decisions as also the decision in

Sudarsanam Maistri v. Narasinhulu Maistri, ILR(1902) Mad 149 and Gopal Chetty v. Vijayvaraghava Chartai, ILR Mad 378: 1922 I AC 488:

AIR 1922 PC 115 and the opinion of Jardine J.,in Jaharmal''s case, ILR (1883) 17 Bom 235 held that an unregistered deed of release by a

partner of his share in the partnership business is admissible in evidence, even where the partnership owns immovable property.The learned may be co-owner in the partnership property he has no right to ask for a share in the property but only that the partnership business should be wound up

including therein the sale of Immovable property and to ask for his share in the resulting assets.This decision was not accepted as laying down the

correct law by a Division Bench of the same High Court in R.N. Samuvier and Another Vs. R.N. Ramasubbier, The learned Judges there relied

upon the decision in Ashworth v.Munn ,(1880) 15 Ch D 363 in addition to the opinion of Telang,J., and also referred to the decision in Glay

v.Smith,(1889) 43 Ch D 208 in coming to a conclusion contrary to the one in the earlier case.It may be pointed out that the learned Judge have

made no reference to the decision of the Privy Council in Gopala Chetty''s case, ILR Mad 378 : (1922) 1 AC 488 : AIR 1922 PC 115 though

that was one of the decisions relied upon by Phillips,J.,in the earlier case.In so far as Ashworth''s case,(1880) 15 Ch D 363 is concerned that was

case which turned on the provisions of the Mortmain Act and is not quite pertinent for the decision on the point which was before them and which

is now before us.In (1889) 43 Ch D 208 Kekewich,J.,held that an agreement by one of the partners to retire and to assign his share in the

partnership assets including immovable property, is an agreement to assign an interest in land and falls within the Stature of Frauds. The view of

Kekwich, J.seems to have received the approval of Cotton L.J. one of the Judges of the Court of Appeal, though no argument was raised before it

challenging its correctness.it may,however,be observed that even according to Kekewich,J,the authorities(1800) 5 Ves 308 and (1846) 5 Hare

369 on appeal to (1847) 2 PH 266 established that one may have an agreement of partnership is to deal with land. He, however,went on to

observe:

But it does not seem to me to follow that an agreement for the dissolution of such partnership need not be expressed in writing, or rather that there

need not be a memorandum of the agreement for dissolution,when one of the terms of the agreement, either expressly or by necessary implication

is that the party sought to be charged must part with and assign to others an interest in land.That seems to me to give rise to entire different

consideration.In one case you prove the partnership by parol: you prove the object,the terms of the partnership,and soon.But in the other case it is one of the essential terms of the agreement that the party to be charged shall convey an interest in land and that seems therefore to bring it

necessarily within the 4th section of the Statute of Fraud.

In the case before us,as also in R.N. Samuvier and Another Vs. R.N. Ramasubbier, the document cannot be said to convey any immovable

property by a partner to another expressly or by necessary implication.If we may recall,the document executed by the Addanki Partners in favour

of the Bhaskara Partners records the fact that the partnership business has come to an end and that the latter have given up their share in ""the

machine etc., and in the business''and that they have ""made over same to you alone completely by way of adjustment."" There is no express

reference to any immovable property herein.No doubt,the document does recite the fact that the Bhaskara family has given to the Addanki family

certain property.This however is merely a recital of a fact which had taken place earlier.To cases of this type the observations of

Kekewich,J.which we have quoted do not apply.The view taken in R.N. Samuvier and Another Vs. R.N. Ramasubbier, seemed to commend itself

to Varadachariar, J. in Panyam Thirumalappa Vs. Alasyam Ramappa and Others, but it was reversed in Alasyam Ramappa Vs. Panyam

Thirumalappa and Others, .

Therefore,it is clear that the deed of the nature in question cannot at all be construed to be a deed of conveyance.I fact,a Division Bench of this

Court in T.K. Subramaniam Vs. Chief Controlling Revenue Authority (Stamps) and Inspector General of Registration, Madras, has also held thus

(at pp. 260-261):--

We have perused the deed of dissolution as well as the release deed. We find that the immovable properties have been allotted in the deed of

dissolution to the appellants.The deed of release is only a sort of acknowledgement of the title of the appellants to the immovable properties which

was conferred on them by the deed of dissolution.It cannot by any stretch of imagination be treated as a conveyance of the properties because the

releasers had no right to the properties at the time of the release.In that view, the document cannot be treated as a conveyance and stamp cannot

be demanded on that basis.The view taken by the Chief Controlling Revenue Authority and the District Registrar that the document in question is a document of conveyance is not correct.Hence, we accept the contention of the appellants that the document is release deed.

Much earlier to this, a Full Bench of this Court in the Board of Revenue and Another Vs. V.M. Murugesa Mudaliar of Gudiyatham, took a view

that(at pp. 642, 643):

Where property is owned by a number of persons as co-owners each co-owner is in theory entitled to enjoy the entire property in part and

whole.A document by which one co-owner purports to abandon or relinquish his claim to the share to which he would be entitled,would be in the

nature of a release within the Article 44 of the Stamp Act.In such a case there need be no conveyance as such by the co-owner in favour of the

other co-owners.A document under which a Hindu co-parcener purports to give up his rights to the family property in favour of remaining co-

parceners would not be a deed of conveyance but a deed of release.There is no difference in principle between such a document as between

members of a coparcenary and one between co-owners.

As per clause (10) of S. 2 of Stamp Act, conveyance includes a conveyance on sale and every instrument by which property, whether movable or

immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.As already pointed out,as regards the deed

of the nature in question releasing the interests of some of the partners in favour of other who continue the partnership, there is no transfer inter

vivos and there is no fresh right or interest being conveyed to others.This aspect is already pointed out, while referring to the aforesaid decision of

the Supreme Court.Article 23(b) is attracted only if the document is a conveyance as defined under S. 2(10) of the Act. Therefore, we are of the

view that the order passed by respondents 1 and 2 cannot be sustained.

11. It is, however, contended by learned Government Advocate that as the reconstituted partnership deed dated 6-1-1990 was not produced

before respondents 1 and 2, the matter may be remitted to the 1st respondent to reconsider the same in the light of the reconstituted document of

partnership dated 6-1-1990.As the document is a registered deed and as the Respondents had full opportunity before this Court to state the case

and as the legal position is very well settled as just and appropriate to remit the matter to the 1st respondent as contended by learned Government

Advocate.Accordingly, the contention is rejected.

12. For the reasons stated above,the writ petition is allowed.The impugned orders dated 30-5-90 and 3-5-91 passed by respondents 1 and 2 are

quashed.The 1st respondent is no directed to register the document dated 12-3-1990 treating it as a release deed.

13. In the light of the order passed in the writ petition,the writ appeal does not survive. It is,accordingly,dismissed as having become

infructuous.There will be no order as to costs.

14. Order accordingly.

