

(2015) 06 KL CK 0197

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34751 of 2008

Vinayakrishnan

APPELLANT

Vs

Commissioner for Land Revenue

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Registration Act, 1908 — Section 16, 17
Stamp Act, 1899 — Section 37(2), 54(2), 55

Citation : (2015) 3 KHC 752 : (2015) 3 KLJ 347 : (2015) 3 KLT 214

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : T.M. Sreedharan, Senior Advocate and V.P. Narayanan, for the Appellant; Manoj P. Kunjachan, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J—The petitioner is aggrieved with Exhibit P7 order, which is passed in conclusion of a proceeding for impounding, initiated on Exhibit P2 deed being presented for registration. The question raised is, as to what is the stamp duty leviable on Exhibit P2 deed; whether it be under Article 43(b) as a "dissolution of partnership deed" or under Article 48(b) as a "release deed", as per the Schedule to the Stamp Act, 1959 (Kerala) [for brevity "Stamp Act"]. The petitioner entered into a partnership on 06.05.2005, as is evidenced by Exhibit PI. The partnership was formed with four other individuals and the same was to carry on a business in the name and style "TULSI BUILDERS". The capital brought in by each of the five partners as also the share of profit and loss of the business is evident at Exhibit PL Exhibit PI deed was not registered. Subsequently, a dissolution is said to have been effected by Exhibit P2. The petitioner paid Rs. 70.50 lakhs to the other partners and obtained exclusive right to carry on the business and also the rights over the assets and liabilities of the business. The deed evidencing such transaction, evidenced at Exhibit P2, was styled as one effecting dissolution of the partnership and presented for

registration, stamped with Rs. 250/- and paying registration fee of Rs. 1,41,000/-.

2. The Sub Registrar impounded the document and forwarded it to the District Collector, who is the District Registrar, for further action under S. 37(2) of the Stamp Act. The District Registrar passed Exhibit P4 order, which was challenged inter alia on the ground of violation of principles of natural justice. This Court found that Exhibit P4 was a consequential order passed on a reference under S. 54(2) of the Act, being answered against the petitioner. The 1st respondent herein, who was the 3rd respondent there, answered the reference under S. 54(2). On the ground of no notice having been issued to the petitioner and no opportunity for hearing afforded to him, this Court by Exhibit P6 judgment set aside the order and directed reconsideration. The Land Revenue Commissioner was directed to issue notice to the petitioner and answer the reference made under S. 54(2) of the Stamp Act. That order on re-consideration, evidenced at Exhibit P7, is impugned herein.

3. The learned counsel for the petitioner would urge that the dissolution of partnership made as per Exhibit P2 would not attract the stamp duty under Article 48(b) and would attract stamp duty only under Article 43(b). The learned counsel would also rely on a Full Bench decision of this Court reported in *The Secretary, Board of Revenue Vs. S.S. Sankaranarayana Reddiar and Others*, AIR 1981 Ker 181 : (1981) 2 ILR (Ker) 341 and a decision of the Allahabad High Court reported in *Balbir Singh Vs. State of U.P. and Others*, (2012) 5 ADJ 468 : AIR 2012 All 113 . As already stated, the short question to be considered is as to whether the deed at Exhibit P2 ought to be treated as a "dissolution" or a "release".

4. The law with respect to partnership has been clearly laid down in the Full Bench decision of this Court cited by the learned counsel for the petitioner, wherein a reference under Section 55 of the Stamp Act, by the Board of Revenue, was answered. An agreement; amicably distributing the surplus assets of a partnership firm, in which one of the two existing partners died; between the surviving partner and the legal heirs of the deceased, was the document which came up for consideration in the above case. The Board of Revenue sought reference on the question whether the same should be treated as a "conveyance" under Article 21, a "release" under Article 48(b) or a "deed of dissolution of partnership" under Article 43(b). The deed was treated by the executants as a mere "agreement" under the Stamp Act. Clearly, there was a distribution of assets of the partnership as per the document. The Full Bench, after considering the various decisions of the Hon'ble Supreme Court as also other High Courts, held that the same can only be an "agreement". The dissolution occurred on the death of one of the partners and the distribution by consent of parties, which fact was reduced into writing, gives the document, the status of a mere agreement was the finding. The facts in the said case stands distinct from the facts disclosed in the present case.

5. The contention of the State, in the aforesaid case was based on a decision of a Full Bench of the High Court of Bombay in *In re. Hiralal Nawalram* (10 Bom.Law Reporter 1908 Page 730 F.B.). The facts in the said case and those which came up for consideration in *Sankaranarayana Reddiar* (supra) were succinctly noticed by the Full Bench in the following manner:

"In *Hiralal Nawalram*'s case, assignees from the legal representatives of a deceased partner in turn assigned their rights for consideration in favour of the surviving partner. Such a document was held to be a conveyance by the Bombay High Court. This decision does not affect the proposition stated earlier, viz., that the process by which the surplus assets of a partnership business are distributed among persons entitled thereto does not amount to a transfer. *Hiralal Nawalram*'s case deal with a transaction entered into by the parties under which one party assigned his rights in favour of the other for consideration. It was not intended to be a mere adjustment of the rights of the parties in regard to the surplus assets in the process of winding up the partnership business. The intention of parties was to transfer rights for consideration".

This is the essential difference which this Court also finds in the instant case and the case decided by the Full Bench. The present case is factually identical to *Hiralal Nawalram*'s case (supra), wherein there was a release effected by the legal representatives of a deceased partner to the surviving partner; transferring rights for consideration.

6. It is trite that a partnership firm is not a separate legal entity having no existence apart from that of the partners. Whatever property or assets brought into the partnership or subsequently acquired by it would be the property of the firm and none can separately deal with it despite the common right over the entire properties. The individual partner's right is only to share in the profits to the extent of his share, during the existence of the partnership and there can be no individual/separate rights over the properties. Dilating upon the principles of partnership, the Full Bench held that the distribution of surplus assets of a partner is only an adjustment of the rights of parties and does not involve a transfer of title from one party to the other. A significant aspect noticed was that there was no consideration evident in such distribution of surplus assets. The Full Bench found that the dissolution of a partnership would be either by deed or by act of parties. In that case, by the death of one of the two partners, the partnership stood dissolved. The agreement entered into by the legal heir(s) and the surviving partner only dealt with the distribution of surplus assets and, hence, could not be registered as a "deed of dissolution of partnership".

7. The learned counsel for the petitioner also referred to the decision in *N. Khadervali Saheb and Anr Vs. N. Gudu Sahib* (Decd.) and *Others*, (2003) 261 ITR 1 and specifically referred to the following declaration of law:

"...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

herein before belonged to each partner, will, after the 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 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 u/S. 17 of the Registration Act since the document does not transfer or assign interest in any asset".

Therein also, the question dealt with was the distribution of assets between the partners individually and not a "release" as in the present case.

8. The question raised in that case was whether the arbitration award, distributing assets of the firm after settlement of accounts, between partners in accordance with their shares, was compulsorily registrable under S. 17 of the Registration Act, 1908. Herein, it is to be emphasised that, no such dispute arises, since the impounding was occasioned when the document was presented for registration. Dissolution of partnership, whether it was compulsorily registrable, when the partnership assets included immovable property, was a vexed question which was finally resolved in the two decisions referred to in N. Khadervali Saheb (supra); viz., S.V. Chandra Pandian and Others Vs. S.V. Sivalinga Nadar and Others, (1993) 1 ARBLR 386 : (1995) 212 ITR 592 : (1993) 1 JT 278 : (1993) 1 SCALE 141 : (1993) 1 SCC 589 : (1993) 1 SCR 58 : (1995) 80 TAXMAN 151 and Ratan Lal Sharma Vs. Purshottam Harit, AIR 1974 SC 1066 : (1974) 1 SCC 671 : (1974) 3 SCR 109 : (1974) 6 UJ 185 .

9. Ratan Lal Sharma (supra) was concerned with the necessity of registration under Section 16 of the Registration Act. The dispute between the two partners was referred for arbitration, in which the partnership assets were assigned to one partner, in consideration of a specified sum. This exclusive allotment of the assets of the partnership, which included immovable property, was held to create rights in the immovable property, thus making registration compulsory. This decision was pressed to advance the contention of compulsory registration of an arbitration award which allotted the immovable properties and assets of a partnership to each of the partners in accordance with their shares S.V. Chandra Pandian (supra). The decision in Ratan Lal Sharma (supra) was distinguished in S.V. Chandra Pandian (supra) in the following manner:

"This Court while reiterating that the share of a partner in the assets of the partnership comprising even immovable properties, is moveable property and the assignment of the share does not require registration under Section 17 of the Registration Act. The legal position is thus affirmed. However, since the award did not seek to assign the share of the respondent to the appellant but on the contrary made an exclusive allotment of the partnership asset including the factory and liabilities to the appellant, thereby creating an absolute interest on payment of consideration of Rs. 17,000 plus half the amount of the realisable debts, it was held to be compulsorily registrable under S. 17 of the Registration

Act. The Court did not depart from the principle that the share of a partner in the asset of the partnership inclusive of immovable properties, is moveable property and the assignment of the share on dissolution of the partnership did not require registration under S. 17 of the Registration Act. The decision, therefore, turned on the interpretation of the award in regard to the nature of the assignment made in favour of the appellant".

10. The essential distinction hence is in looking at whether there is an allotment of the surplus assets, on dissolution, amongst the partners. If that is so, the partners who owned the assets together, during the existence of the partnership, had a right to share in the business in accordance with their shares. On dissolution and allotment of the remaining assets, even if there is immovable property, each goes with his share, not creating any new right. But when there is an assignment in favour of one or other and consideration is passed then it creates new rights on the immovable property. A deed creating such rights would have to be registered compulsorily and the creation of such right is a "release" under Article 48(b) to be stamped accordingly.

11. In the present case, it is to be noticed that Exhibit P1 is the deed by which the partnership is said to have been formed. The partnership business was one for carrying out acquisition, construction and sale of immovable properties and other allied activities. The petitioner herein, who was the Managing Partner, contributed 21.30 cents of land at R.S. No. 9/1, W4, B1 of Kannur amsom, which was valued at Rupees Thirty Lakhs. The balance share brought in by the petitioner was by way of cash. The proportionate rate at which the other partners brought in funds are also evident from Exhibit PL. The dissolution of partnership, said to have been effected by Exhibit P2, was hardly an year and a half later, on 5.10.2006, by Exhibit P2 deed. The petitioner paid off the other partners with a total of Rs. 70.50 lakhs. The business carried on by the partnership was conceded in favour of the petitioner herein. The petitioner herein paid off the other partners, the amounts as indicated in Exhibit P2. The amounts paid to each of the other partners were also not in accordance with their share as is evident from Exhibit P1.

12. The petitioner, who was the first party in Exhibit P2 deed, was conferred with the exclusive right to use the name of the partnership firm, being "TULSI BUILDERS", and continue the business of the firm in exclusion to the other partners. Obviously the partnership was a business, which dealt with acquisition of landed properties and construction activities carried on thereat. The property which was brought in at the time of inception of the partnership and that acquired after such inception belonged commonly to all partners. The partners enjoyed a share in the profits of the business and a liability on the losses created only to the extent of their shares; but none could independently deal with those properties. The properties so acquired and held in the name of the partnership firm, which remained under the co-ownership of all the partners, were released in favour of one of the partners, which can only be a "release". The assets which

were so taken over have not been specifically indicated in Exhibit P2, but obviously they comprise of immovable properties. In almost similar circumstance, but in the context of retirement of a partner, by receiving consideration *Phiroskhan Vs. Jabbar*, (2006) 1 ILR (Ker) 186 : (2006) 1 KLT 38 the deed was held to be a "release" under Article 48(b) and not an agreement under Article 5(c). The law as declared in *Ratan Lal Sharma* (supra) applies in the facts of this case. The learned counsel for the petitioner would urge that the balance-sheet of the firm would indicate that there are assets other than immovable property. But, that would not be alive for consideration at this point of time, since for one, the balance-sheet has not been produced and then, the same was not urged before the lower authorities when the matter was heard.

For all the above reasons, the Writ Petition would stand dismissed. No costs.