

(2001) 07 KAR CK 0082

In the Karnataka High Court

Case No : Writ Petition No"s. 13754 to 13757 of 1995

Y.C. Susheela Devi and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Registration Act, 1908 — Section 88 (d)

Citation : AIR 2001 Kar 489 : (2002) 3 KarLJ 413

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Balakrishna, for the Appellant; A. Padmanabhan, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The petitioner constituted a partnership firm under a deed dated 27-8-1981. The firm purchased Site Nos. 65, 66, 67 and 68 in Prakash Nagar, Bangalore and put up a commercial complex known as Eswari Complex. The partnership underwent reconstitution and finally dissolved with effect from 1-4-1992. Since there were differences among the partners of erstwhile partnership firm in the matter of division of assets and liabilities, under Annexure-B, dated 25-5-1989 the partners decided to refer the matter to Arbitrator and an agreement to that effect was also entered into as per Annexure-C, dated 2-11-1992. As there was no mutual co-operation amongst the partners, Arbitration Case No. 14 of 1993 was filed on the file of Additional City Civil Judge, Bangalore. By an order dated 20-4-1993 the Civil Court referred the matter to sole Arbitrator with a direction to submit an award within four months. Accordingly, the Arbitrator conducted arbitration proceedings after affording an opportunity to the partners and passed an award proposing division of all the assets and liabilities of Eswari Complex. The Civil Court accepted the same and passed a decree as per Annexure-C. The same was sent to the Sub-Registrar for registration u/s 88(d) of the Indian Registration Act. The Sub-Registrar opined

that the document is an instrument of partition deed and referred to the higher authorities for determination. The first respondent-Chief Controlling Revenue Authority passed the impugned order at Annexure-F, dated 28-12-1994 holding that the document is a partition deed under Article 39(c) of the Karnataka Stamp Act, 1957 and ordered to pay the deficit stamp duty on the instrument presented for its registration. Based on the said order, the 2nd respondent issued the impugned endorsement at Annexure-G, dated 4-3-1995 calling upon the petitioner to pay the difference stamp duty amount of Rs. 1,86,650,00 and equal amount of penalty, in all Rs. 3,73,300.00. Aggrieved by the same the petitioner has filed this writ petition seeking to quash Annexure-F and G and for issuing a direction to the 3rd respondent to return the document after completing all the formalities.

2. In the counter filed on behalf of the respondents the impugned action is sought to be justified. It is contended that the document in question falls u/s 2(1) (k) of the Act and hence it is a partition deed, Justifying the payment of deficit stamp duty amount and levy of penalty, respondents have prayed for dismissal of the writ petition.

3. Having regard to the facts and circumstances of the case, the following points arise for consideration.-

(1) Whether the reference made by the 3rd respondent for determination of category of the document u/s 37(2) of the Act is legal and valid?

(2) Whether the impugned order passed by the first respondent at Annexure-F is in conformity with Article 40-B(b) of the Act?

(3) Whether the imposition of penalty equal to the amount of difference of stamp duty determined is valid and proper?

4. The answer to the first point depends upon the answer to the second point. Hence, this Court first takes up the second point for consideration. In the case of M/s. Gowri Enterprises, Gowribidanur, Kolar District Vs. State of Karnataka and Others, similar question arose before this Court. In paragraphs 11 and 12 law has been laid down by this Court on the point, in the following terms.-

"11. Even assuming that the property was purchased under the sale deed dated 28-3-1992 by the twenty purchasers as co-owners, the position would be no different insofar as the stamp duty payable on the dissolution deed. This is because the partners of a firm are entitled to contribute their individual property to the firm whereupon such property becomes the property of the firm. As observed by the Supreme Court 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 a capital money or even property including immovable property and once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in and it would become the trading asset of the partnership in which all the

partners would have interest in proportion to their share in the joint venture of the business of partnership. Therefore, even if it is assumed that the property was acquired under the sale deed dated 28-3-1992 by the twenty purchasers as co-owners, having regard to the fact that the sale price and the stamp duty has been paid from the funds of the firm and khata has been transferred to the name of the firm and the taxes are being paid by the firm and the property has been shown as the property of the firm, it has to be held that such property was treated as the property of the firm. In fact the dissolution deed clearly recites that the said property was the property of the firm. Therefore, on dissolution different portions of the property could be allotted to the 18 partners and 2 minors admitted to the partnership. As the property was purchased after the commencement of partnership by twenty persons and treated as the asset of the firm, and as the allotment of different portions of the property is to the very persons who earlier held it as co-owners, the deed of dissolution would fall under Article 40-B(b) and not under Article 40-B(a). Article 40-B(a) will not apply as this is not a case where "X" contributes the property to the firm and at the time of dissolution, the property is allotted to "V. This would be a case of XYZ as co-owners contributing the property to the firm and on dissolution the property being allotted by metes and bounds to X, Y and Z. Therefore, the case would fall under the residuary part of Article 40-B, that is Article 40-B(b)".

"12. There is thus no basis for the third respondent to hold that the dissolution deed has to be stamped as a partition, even assuming that the property was purchased on 28-3-1992 as co-owners. Partition presupposes co-ownership as on the date of partition. If a property had ceased to be the co-ownership property of the 20 purchasers, but had been treated as the asset of the partnership as on the date of execution of the deed of dissolution, the dissolution deed cannot be treated as a partition".

In view of the aforesaid law, it has to be held that the decree passed by the Civil Court based on the award of the Arbitrator has to be construed as an instrument falling under Article 40-B(b) of the Act and it cannot be treated as a partition deed u/s 2(1)(k) falling under Article 39 of the Act. Hence, the first point is answered in the negative.

Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, 5. Adverting to the first point, the Sub-Registrar has impounded the document presented for registration u/s 33 of the Act and referred to the 2nd respondent u/s 37(2) of the Act. The 2nd respondent did not follow the procedure prescribed under Sub-section (1) of Section 39 of the act but referred the document for determination u/s 53 of the Act to first respondent. Since the document falls under Article 40-B(b) of the Act for the purpose of payment of stamp duty, it was not at all a matter for the 3rd respondent to make the reference u/s 37(2) of the Act. Therefore, the reference made was not legal and valid. In fact, reference of the document was wholly unwarranted.

6. Coming to the question of levy of penalty, in the impugned order at Annexure-

F the first respondent has not levied any penalty. But, in the impugned endorsement at Annexure-G the second respondent has called upon the petitioner to pay a sum of Rs. 1,86,650.00 as penalty, which amount is equal to the difference amount determined by the first respondent in Annexure-F. Since it is held that the impugned order is bad in law and liable to be quashed and the document falls under Article 40-B(b) of the Act, petitioner is not liable to pay the penalty. Consequently, the third point is answered in the negative.

7. For the reasons stated supra, the writ petitions are allowed and the order at Annexure-F and endorsement at Annexure-G are quashed. Third respondent is directed to return the document to the petitioner within two weeks from the date of receipt of a copy of this order after completing the formalities of registration.