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Court : Chennai Madurai

Decided On : Dec-19-2016

Judge : M.S. Ramesh

Appeal No. : Writ Petition (MD) No. 17257 of 2013 & M.P(MD)No. 1 of 2013

Appellant : D. Balan

Respondent : The Inspector General of Registration, 100, Santhome Highways, Foreshore Estate, Chennai and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records culminating in the impugned order dated 10.05.2013 in proceedings Pa. Mu. No.32660/P1/2012 passed by the 1st respondent and quash the same as illegal void abinitio without jurisdiction ultravires and direct the 3rd respondent to register the release deed No.133/2008 in Book in 1 by collecting the deficit stamp duty of Rs. 72 000/-)

1. The brief facts of the petitioner's case is as follows:-

The properties comprised in T.S.Nos.73/4 and 73/1A, Natham Road, Dindigul were originally vested with M/s.I.Bahrudeen, I.Rafeeq and I.Abdul Salam. The aforesaid three persons constituted a partnership firm under the name and style of

Shan Theatre through a partnership deed dated 07.03.1988. Subsequently, the petitioner and eight others were inducted into the said partnership firm as partners through a partnership deed dated 27.03.2003. As per the recitals in the partnership deed, the property bearing No.27 Natham Road, Dindigul, valued at Rs.9 lakhs was shown as the share capital of the said three persons. The petitioner was the Managing Partner of the said Shan Theatre which was subsequently renamed as Vijay Theatre. The aforesaid three persons had relinquished their respective rights in the partnership firm through a retirement deed dated 23.10.2008 by which they had received a sum of Rs.9 lakhs towards their share in the firm. The second respondent by his proceedings dated 08.11.2010 had directed the petitioner to pay a sum of Rs.12,75,251/- towards deficit stamp duty by calculating the market value of the properties situated at Door No.27, Natham Road, Dindigul thereby treating the said document dated 23.10.2008 as a conveyance deed. Aggrieved against the same, the petitioner had preferred an appeal under Section 56(1) of the Indian Stamp Act, 1899 before the first respondent. The said appeal was partly allowed on 10.05.2013 by setting aside the proceedings of the second respondent. However, it was held that the value of the property has to be calculated as eight shares and the value of three shares out of eight shares has to be calculated for the purpose of levying stamp duty under Section 55-D of the Indian Stamp Act, 1899. Pursuant to the order of the first respondent, the second respondent had passed a revised order dated 31.07.2013 whereby the deficit stamp duty was calculated at Rs.6,37,476/- and deficit registration fee at Rs.70,726/-. Aggrieved against the orders of the first and second respondents, the petitioner has filed the present writ petition. 2. Heard Mr.K.S.Shankar Murali, learned counsel appearing for the petitioner and Mr.M.Alagadevan, learned Special Government Pleader appearing for the respondents.

3. Learned counsel for the petitioner submitted that the release deed enables releasing the rights of the retiring partners in the partnership firm and it should not be considered as a conveyance deed. According to the learned counsel for the petitioner, out of 12 partners, three partners retired from the said partnership firm after receiving a sum of Rs.9 lakhs and therefore, the appropriate stamp duty payable for the above release deed should only be Rs.72,000/- along with

registration fee of Rs.9,000/- and therefore, he would submit that the claim of the second respondent towards the deficit stamp duty at Rs.12,75,251/- is incorrect.

4. Per contra, learned Additional Government Pleader submitted that at the time of audit, the District Registrar of the Registration Department, Palani had directed the Assistant Executive Engineer, Madurai to value the properties for proper registration since the subject document is a release deed under Section 55-C of the Indian Stamp Act, 1899. When the order in appeal was passed, it was observed that the release deed has been executed under Section 55.D(ii) for 3/8th share and consequently, the second respondent had correctly calculated the deficit stamp duty at Rs.6,37,476/- together with registration charges for a sum of Rs.70,722/-. The Learned Additional Government Pleader would submit that there is no infirmity in the orders passed by the first respondent and hence, the writ petition is liable to be dismissed.

5. I have given careful consideration to the submissions made by the learned counsel on either side.

6. On a perusal of the deed dated 23.10.2008, it is seen that I.Bahrudeen, I.Rafeeq and I.Abdul Salam had relinquished their respective rights in the partnership firm, after receiving a sum of Rs.9 lakhs towards their share in the firm. The said deed is deemed to be a release deed whereby the rights of the retiring partners in the firm were alone released and it can never be construed to be a conveyance deed. Under the Indian Partnership Act, 1932 all the properties are vested with the firm and they cannot be construed to be personal property of the individual partners. Section 55.D(ii) of the Indian Stamp Act, 1899 deals with the release of right in favour of a partner, when such release is between the partners who are not family members. As per the recitals of the release deed, the three releasors held 3/12th undivided share jointly which was valued at Rs.9 lakhs towards their share in the firm. Hence, stamp duty can be levied only on the value mentioned in the document and not on the market value. While calculating the stamp duty, the quantum of amount mentioned in the release deed cannot be ignored and the market value of the entire property cannot be taken into account. The retiring partners had executed the said document after receiving a sum of

Rs.9 lakhs (Rs.3 lakhs each) as their share amount. While that being so, the respondents, by no stretch of imagination, can take into account the market value of the property, since the amount referred to in the release deed is the decisive factor for the purpose of calculating stamp duty.

7. In this background, learned counsel appearing for the petitioner relied upon a judgment of the Hon'ble Division Bench of this Court reported in 1994-1-L.W.317 (T.T.Meenakshi Achi Vs.The District Registrar, Coimbatore). The relevant portion of the judgment reads as follows:

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 Narayanappa, A.v.Bhaskara Krishnappa:-

"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 may 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*, (1893) ILR 17 Bom 235 which was decided by Jardine and Telang, JJ. the latter took the view that though a partner's share does not include any specific part of any specific item of partnership is entitled to immovable property, such share does not include an 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 our 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 debtors." 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. Seton*, (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 in 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 immoveable, 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 Venkataratnam v. Subba Rao, ILR 49 Mad 738: (AIR 1926 Mad 1040). The learned Judges there discussed all the English decisions as also the decision in Sudarsanam Maistri v. Narasinhulu Maistri, (1902) ILR 25 Mad 149 and Gopal Chetty v. Vijayvaraghava Chartai, ILR 45 Mad 378: 1922 I AC 488: (AIR 1922 PC 115) and the opinion of Jardine J., in Jaharmal's case, (1883) ILR 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 immoveable 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 Samevier v. Ramasubier, ILR 55 Mad 72: (AIR 1931 Mad 580). 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 45 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 Statute of Frauds. The view of Kekewich, 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 Samuvier's case, ILR 55 Mad 72 (AIR 1931 Mad 580) 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 Samuvier's case, ILR 55 Mad 72: (AIR 1931 Mad 580) seemed to commend itself to Varadachariar, J. in Thirumalappa V. Ramappa (AIR 1938 Mad 133) but it was reversed in Ramappa V. Thirumalappa, AIR 1939 Mad 884."

Therefore, it is clear that the deed of the nature in question cannot at all be construed to be a deed of conveyance. In fact, a Division Bench of this Court in *T.K. Subramaniam v. C.C. Revenue Authority (Stamps)* 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 v. V.M. Murugesu 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 coparcener purports to give up his rights to the family property in favour of remaining coparceners 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.

8. The aforesaid judgment had taken into consideration the Full Bench judgment of this Court reported in 1955 AIR (Madras) 641 (Board of Revenue and another Vs. V.M. Murugesu Mudaliar). The principle laid down in the aforesaid judgment is squarely applicable to the facts of the present case.

9. Learned counsel appearing for the petitioner would also bring to my notice about the proceedings of the first respondent dated 27.02.2013 in the case of Kalaivani Theatre wherein the first respondent had held that the amount mentioned in the release deed alone can be taken into consideration and not the market value. On a perusal of the order in the case of Kalaivani Theatre which is filed before this Court, I am unable to understand as to how the first respondent can take two contrary stands in the case of Kalaivani Theatre and that of the petitioner.

10. Learned Additional Government Pleader would also bring to my notice that the release deed was wrongly registered before the Sub Registrar Office, Chathirapatti instead of Sub Registrar's Office, Nagalnaickenpatti where the partnership firm's property is situated. The said release deed was also registered in Book No.4 instead of Book No.1. It would be appropriate to refer to Rule 160 of the Tamil Nadu Registration Rules, 1908 which provides that when the document is registered in a wrong office, the Registering Officer shall advise the party to apply to the Registrar for a fresh registration in the proper office and when such a direction is so issued, the Sub Registrar shall register the document without levying of any fee and in the endorsement of presentation shall refer to the orders of the Registrar. The Registering Officer who had originally received the document shall also forward to the concerned Sub Registrar, a copy of the document. As such, there is no impediment on the part of the registering authorities to entertain

registration of the present document though the same has been presented before the Sub Registrar, Chathirapatti instead of Sub Registrar Office Nagalnaickenpatti.

11. For all the foregoing reasons, the impugned orders dated 10.05.2013 and 31.07.2013 passed by the first and second respondents are quashed. The third respondent is directed to register the release deed No.133 of 2008 in Book No.1 by calculating the deficit stamp duty in the light of the above observations, within a period of four weeks from the date of receipt of a copy of this order.

12. The writ petition stands allowed. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

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