

George Vs. George

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Court : Kerala

Decided On : Apr-09-2010

Reported in : 2010(2)KLJ692

Judge : Thomas P. Joseph, J.

Acts : [Indian Partnership Act, 1932](#) - Section 14; ;Indian Registration Act - Section 17(1); ;Transfer of Property Act - Section 53A

Appeal No. : S.A. No. 339 of 2001

Appellant : George

Respondent : George

Advocate for Def. : T. Krishnan Unni, Sr. Adv. and; S.A. Saju, Adv.

Advocate for Pet/Ap. : S.V. Balakrishna Iyer, Sr. Adv. and; P.B. Krishnan, Adv.

Disposition : Appeal dismissed

Judgement :

Thomas P. Joseph, J.

1. The substantial questions of law framed for a decision are:

i. On a true construction of Ext.B2, was not the suit property and other items included in Annexures I to III thereof thrown into the firm by the retiring partners with an intention to henceforth treat the same as property of the partnership as newly constituted and in view of Section 14 of the Indian Partnership Act (for short, 'the Act') is the said document compulsorily registerable under the Indian Registration Act (for short, 'the Registration Act')?

ii. Is not a mere intention to treat individual properties as partnership properties sufficient to treat such properties as having been transferred to the partnership firm and is it legally necessary to execute any formal conveyance?

iii. Are not the covenants in Ext.B2 to execute conveyances, powers of attorney or to subscribe signatures by the retiring partners at some future point of time as and when called upon to do so by the continuing partners by way of abundans cautela non nocet, so as to ensure utilization of individual properties of the outgoing partners for purposes of the business of the firm, represented by the continuing partners?

2. M/s. V.O. Vakkan & Sons (for short, 'the firm') is a registered partnership firm which was engaged in the business of manufacturing, buying, selling and exporting coir, coirfibre, coir products, etc. While so as per Ext.B2, unregistered deed dated 08.09.1967 three of its partners - M/s. V.V. Antony, V.V. George and V.V. Job retired from the partnership with effect from that day and while making arrangements regarding liability of the retiring partners, made certain arrangements with respect to a few items of immovable properties (referred to in Annexures I to III of Ext.B2) which belonged to the retiring partners. In accordance with that arrangement the said properties were put in the possession of M/s. V.V. Joseph and V.J. George who continued as partners of the said firm. The said V.V. Joseph and V.J. George were authorised to deal with the said properties and if necessary encumber the same provided, no personal liability was created on the retiring partners. Accordingly, the said properties were subjected to an equitable mortgage in favour of the Syndicate Bank, Alappuzha (for short, 'the Bank') on 16.10.1968 for a loan availed by the firm. The Bank filed O.S. No. 120 of 1972 in the Sub Court, Kochi against the firm, its then partners, M/s. V.V. Antony, V.V.

George, V.V. Job and others for realisation of money by sale of the mortgaged properties. The Bank obtained a decree in its favour. In the course of execution of that decree the executing court permitted Shri V.V. Joseph to effect private sale of the said properties and liquidate the decree debt. Certain items of the said properties were sold and liability of the Bank was discharged. Shri V.V. Joseph and V.V. George applied to the executing court to direct the Bank to deliver to them Ext.B2 and the title deeds relating to the immovable properties subjected to the equitable mortgage. There were counter claims also for custody of the title deeds. The executing court as per order dated 17.6.1989 directed that the title deeds and Ext.B2 be delivered to the firm and its partners, Shri V.V Joseph and V.J. George making it clear that dispute regarding title to the properties shall be decided in appropriate proceeding. On 8.5.1992 Shri V.V. Joseph filed O.S. No. 120 of 1992 in the vacation Court (District Court Ernakulam to be filed in the Sub Court Kochi) against Shri V.V. George (one of the partners who retired from the firm as per Ext.B2 dated 8.9.1962) seeking a decree for prohibitory injunction against alienation of the suit property (which is included in Annexures I to III of Ext.B2), inducting strangers or disturbing peaceful enjoyment of the said property claiming title and possession of the said property. Shri V.V. George filed O.S. No. 282 of 1992 in the Sub Court, Kochi against Shri V.V. Joseph, V.J George and others for recovery of possession of the said property and for mandatory injunction on the strength of title claimed by him. Both the suits were tried jointly. Trial court allowed O.S. No. 282 of 1992 while O.S. No. 120 of 1992 ended in dismissal. Trial court took the view that title to the suit property remained with Shri V.V. George as Ext.B2, dated 8.9.1967 involved only an agreement to transfer the suit property in favour of Shri V.V. Joseph and Shri V.J. George and that plea of Shri V.V. Joseph and others that they are entitled to protect their possession under Section 53A of the Transfer of Property Act (for short, 'the TP Act') and at any rate perfected title by adverse possession and law of limitation cannot be sustained. Shri V.V. Joseph and others took up the matter in appeal. In the meantime Shri V.V. Joseph expired and his legal heirs were impleaded. First appellate court observed that Ext.B2 cannot convey title over immovable properties without obtaining a formal sale deed, hence Shri V.V. Joseph could not become absolute owner of the suit property, and confirmed other findings, judgment and decree of the trial court.

Hence these appeals.

3. Shri S.V. Balakrishnan Iyer, learned Senior Advocate appearing for appellants argued that finding of the courts below that Ext.B 2 did not confer title of the suit property in favour of the late V.V. Joseph is not sustainable in law or on facts. According to the learned Senior Advocate it is a case where the suit property was brought into the partnership at a time when Shri V.V. George (referred to hereinafter as the respondent) and the two others continued to be its partner and hence it became property of partnership as understood in Section 14 of the Act. Learned Senior Advocate would contend that when property, moveable immovable is brought into the common stock of the partnership and converter as its property, it did not require registration under the Registration Act. Learned Senior Advocate, Shri T. Krishnanunni appearing for respondent would contend that Ext.B2 only created an agreement for sale of the suit property in favour of the late V.V. Joseph and Shri V.J. George (appellant No. 1) in their individual capacity and not even as partners of the firm. According to the learned Senior Advocate Ext.B2 cannot be taken as a conveyance of the suit property in favour of said V.V. Joseph and V.J. George. Any rate, even if it is assumed that Ext.B2 is a conveyance in favour of the said persons so far the property is not brought into the common stock of the partnership consisting of respondent also question of treating the said property as partnership property under Section 14 of the Act did not arise and hence since Ext.B2 is not registered as required under the Registration Act it cannot affect right, title and interest of respondent in the suit property.

4. Section 14 of the Act reads,

The property of the firm.--Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Lindley on 'The Law of Partnership', 14th Edition at page 444 states as under:

The expressions partnership property, partnership stock, partnership assets, joint stock, and joint estate, are used indiscriminately to denote everything to which the firm, or in the other words all the partners composing it, can be considered to be entitled as such. The qualification 'as such' is important; for persons may be entitled jointly or in common to property, and the same persons may be partners, and yet that property may not be partnership property; e.g. if several persons are partners in trade, and land is devised or a legacy is bequeathed to them jointly or in common, it will not necessarily become partnership property and form part of the common stock in which they are interested as partners. Whether it does so or does not, depends upon circumstances which will be examined hereafter.

At page 445 it is stated,

it is competent for partners by agreement amongst themselves to convert what is the joint property of all into the separate property of someone or more of them and, vice versa. It is also stated that whatever at the commencement of a partnership is thrown into the common stock and whatever has from time to time during the continuance of the partnership been added thereto or obtained by means thereof can be treated as partnership property.

At page 457 it is stated,

It is competent for partners by agreement amongst themselves to convert that which was partnership property into the separate property of an individual, or vice versa. And the nature of the property may be thus altered by any agreement to that effect; for neither a deed nor (save where the property consists of land) even writing is absolutely necessary. Thus where an asset the title to which is vested solely in one partner is shown in the balance-sheet as an asset of the partnership, this would be evidence to show an agreement to treat that asset as partnership property. However, so long as an agreement is dependent upon the unperformed condition, the ownership of the property will remain unchanged.

At page 458 the Author states,

conversion of joint property into separate property or vice versa most frequently takes place when a firm and one of its partners carry on distinct trades; or when a change occurs in a firm either by retirement of some or one of its members or by introduction of a new partner.

5. Halsbury's 'Laws of India' (Volume 4) at page 214 states,

the property of the firm, subject to contract between the partners, includes all property and rights and interests in the property originally brought into the stock of the firm, or acquired by purchase or otherwise, by or for the firm or for the purpose and in the course of the business of the firm and includes also the goodwill of the business. Partners may convert that which was partnership property into the separate property of an individual partner or vice versa by agreement, express or implied.

S.T. Desai's 'The Law of Partnership in India' (7th Edition) at page 123 states,

that the expression property of the firm also referred to as partnership property, partnership assets, joint stock, common stock or joint estate denotes all property rights and interests to which the firm, i.e. all the partners as such, may be said to be entitled and that Section 14 furnishes a useful guide in determining and what is and what is not property of the firm but, the question must ultimately depend on the real intention and agreement of the partners.

At page 124 the Author states,

the general rule stated in the Section (Section 14) is applicable subject to contract between the partners. It is open to the partners to agree themselves as to what is to be treated as the property of the firm and what is to be the separate property of one or more of the partners. Such an agreement need not be express but may be implied from the facts and circumstances of the case.

At page 125 it is stated, 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 cease to be the exclusive property of the person who brought it in. It would be the

trading asset of the partnership in which all the partners would have interest.

6. The Property of the partnership includes all property, rights and interests in property originally brought into the stock of the partnership or acquired by purchase or otherwise by or for the partnership or for its purposes in the course of its business. When a partner brings in his personal asset into the partnership as his contribution to the capital, an asset which till then was subject to the absolute ownership of that partner becomes subject to the rights of all the partners in the firm to share the profits of that asset and at the time of winding up of the partnership to sell the asset and claim share in the resultant asset if any (See *Sujan Suresh Sawant v. Kamalakant Shantaram Desa* : AIR 2004 Bom. 446). Partners may convert which was property of the partnership, moveable or immovable into separate property of the individual partner or property of the individual partners into property of the firm by agreement which may be express or implied. What is relevant is the intention of the partners. For such conversion no document, registered or otherwise is necessary. There must be some evidence to prove that intention. Such intention may even be proved by a course of conduct, for e.g., by entries in the partnership books. The term 'partnership property' is generally used to denote everything to which the firm, i.e., all the partners qua the partners can be considered to be entitled. The partners may be entitled jointly or in common to some property, and the same persons may happen to be partners, yet the property may not be partnership property. In *Morris v. Barret* (1829) 148 E.R. 1228 it is stated that a legacy may be made in favour of persons who are partners in a business, those persons are jointly entitled to the legacy but the legacy will not on that account become partnership property. There should be some evidence of an intention to treat the property as part of the capital of the business. In *Exparte Ruffin* (See *Vesey's Report*, Vol. VI. Page 119) in June 1797, Thomas Cooper took James Cooper into the partnership. It was dissolved on November 3rd, 1798. Thomas Cooper assigned the buildings, premises, stock in trade, debts and effects to James Cooper. Lord Chancellor was of the opinion that joint creditors had no equity attaching upon partnership effects remaining in specie. (The Nagpur High Court in *Jamnadas v. Ramadtar and Ors.* AIR 1922 Nag. 70 has also taken the view that any disposition of the (partnership) property by agreement of partners is effective unless made with a view to defraud the creditors). In *Exparte*

John Owen - In Re John Bowers (See De Gex And Smale's Vol. IV) 1850-51 at Page 351 a sole trader, possessed of stock in trade and household furniture took two partners without any agreement that they were to participate in the profits of the concern. They brought in no capital and paid no premium. No deed or agreement was also executed. The firm became bankrupt. Question arose whether the properties were of the partnership. The Vice Chancellor held that the just inference is that there was an agreement between the three, express or implied that all the stock in trade should become property of the three. In Pilling v. Pilling (See De Gex Jones and Smith's Reports, Page 162) a father took his two sons into partnership under articles by which it was agreed that the business should be carried on with the father's capital which should remain his and that yearly stock taking should be made. The partnership lasted for ten years. It was held that the mode of keeping the accounts and division of profits according to it evidenced a new agreement between the parties and that the account must be taken on that footing and not on the footing of the articles. The properties were treated as property of the partnership. But property belonging to a partner as his personal property in the absence of any agreement does not ipso facto become property of the partnership for the mere reason that it was used for business of the partnership (See Firm Ram Sahay v. Bishwanath : AIR 1963 Pat. 221, Sudhansu v. Manindra Nath : AIR 1965 Pat. 144 and Sujan Suresh Sawant v. Kamalakant Shantaram Desa, supra). The Act does not prescribe any particular mode by which property whether moveable or immovable is to be brought into the common stock of the partnership. As soon as the partners intend that their individual property should become property of the partnership and that property is treated as property of the partnership, then, by virtue of Section 14 of the Act it becomes property of the partnership. Conversion takes place by operation of law under Section 14 of the Act once the intention is expressed and the property is treated as such. The same view is taken in Sahaya Nidhi (Virudha Nagar Ltd. v. Subramania Nadar : AIR 1951 Mad. 209 and L.J.J. Rebello v. Chief Controlling Revenue Authority in Mysore AIR 1971 Mys. 318). The Supreme Court in Sunil v. I.T. Commr., Ahmedabad : AIR 1986 SC 368 has stated that there is no 'transfer' in the general sense of that item when a partner brings his personal asset into the firm as his contribution to its capital (i.e., to the common stock). When a partner

brings in his personal asset into the capital of the partnership firm as his contribution to the partnership he reduces his exclusive rights in the asset to shared rights in it with the other partners of the firm. While he does not lose his rights in the asset altogether what he enjoys is an abridged right which cannot be identified with the fullness of the right which he enjoyed in the asset before it was brought into the partnership. What was the exclusive interest of a partner in his personal asset is, upon its introduction into the partnership firm as his share to the partnership capital transformed into a shared interest with the other partners in that asset.

7. Even when conversion of individual immovable property of the partner into property of the partnership is made as per a written instrument, it does not require registration compulsorily. A deed of release of his share in the partnership by a partner even though the partnership owns immovable property is not required to be registered as an instrument under Section 17(1)(b) of the Registration Act. That is because even though a partner may be a co-owner of partnership property, he has no right to ask for a share in that property, but only that the partnership business be wound up including sale of the immovable property and to ask for his share in the resultant assets. That interest of a partner in the partnership assets, of moveable or immovable property is not a right, title or interest in immovable property within the meaning of Section 17(1)(b) of the Registration Act. The Madras High Court took that view in *Venkataram v. Subba Rao* (1949) 49 Mad. 738 which has been approved by the Supreme Court in *Narayanappa v. Bhaskara Krishnappa* : AIR 1966 SC 1300. The Supreme Court in *Commissioner of Income-tax, West Bengal, Calcutta v. Juggilal Kamalapat* : AIR 1967 SC 401 held that when partners relinquished their individual interest in moveable or immovable assets of partnership in favour of new partners by a deed of relinquishment it did not require registration as an instrument under Section 17(1)(b) of the Registration Act. In *Gangadhar Madhavrao Bidwal v. Haivnantrao Vyankatrao Mungale* : (1995) 3 SCC 205 there was an unregistered deed of dissolution of partnership which indicated that land was in joint ownership of both the partners. On facts it was held that property at the time of dissolution of partnership was partnership property and hence the deed of dissolution was not required to be registered and the recital in the document is admissible in evidence even in the absence of registration.

8. It is within the power of partners to bring their individual property, moveable or immovable into the partnership and convert it into the common stock either at the time of formation of the partnership or during the continuance of that partnership and for the said purpose it is not necessary that there must be a written instrument. What is relevant is the intention of partners which could be proved even by a course of conduct. If the partners intended that property which hitherto was individual property of the partners be brought into the partnership as its asset so that individual right of partners qua partners over the property is lost and it becomes shared rights of the partners and the property is treated as such, then such property becomes partnership property as understood in Section 14 of the Act. Even if such conversion is made by a written instrument it does not require compulsory registration as an instrument under Section 17(1)(b) of the Registration Act. When some of the partners relinquish their interest qua partners in moveable or immovable property of the partnership in favour of the remaining partners also, a written instrument registered or otherwise is not necessary, what is relevant being the intention of the partners and that the property is treated as such proved by some evidence including a course of conduct.

9. Could such conversion happen at the time one or more of the partners retire from the partnership? Lindley says (See Page 458 of 'The Law of Partnership', 14th Edn.) that conversion of joint property (of the firm) into separate property (of the partners) or vice versa most frequently takes place when a firm and one of its partners carry on distinct trades; or when a change occurs in a firm either by retirement of some or one of its members or by introduction of a new partner. It is not the requirement of Section 14 of the Act that to become property of the partnership it must have been brought into the common stock at the time of its formation. That could happen during the continuance of the partnership or when a change occurs in the partnership by introduction of new partners or by the retirement of some or one of its members. But as the expression 'partnership property' indicates when individual property of the partner is brought in to the partnership at the eve of retirement of one or some of the partners, all the partners (including those who retire and bring in the property) qua partners should have the shared interest, i.e., shedding the individual interest which the retiring partner who owned the property had till then, he should share common interest over that

property with other partners, a right to share the profits of that property and to seek winding up of the partnership including sale of the said property and demand a share in the resultant asset. Relinquishment by the retiring partners in favour of the continuing partners to attract operation of law under Section 14 of the Act and avoid necessity of registration as an instrument under Section 17(1)(b) of the Registration Act should be of their right or interest in the asset of the partnership of which they have only a right to share the profits or ask for winding up of the partnership including sale' of the property and ask for share in the resultant asset. If on the other hand one or more of the retiring partners convey their individual immovable property to the partnership or the continuing partners in their individual capacity, such conveyance cannot attract operation of law under Section 14 of the Act; it will be a conveyance of immovable property which does not come under Section 14 of the Act and would require registration depending on value of the property under Section 17(1)(b) of the Registration Act.

10. The above being the legal position next question is whether in this case the suit property which belonged to the respondent was converted as partnership property and the right of respondent qua partner was relinquished in favour of the late V.V. Joseph (plaintiff in O.S. No. 120 of 1992) and Shri V.J. George (appellant No. 1) who continued as partners of the firm as per Ext.B2, unregistered deed dated 8.9.1967. Shri S.V. Balakrishnan Iyer, learned Senior Advocate appearing for the appellants would contend that Ext.B2 is a composite deed as per which respondent and two other partners retired from the partnership, simultaneously brought in their individual properties into the common stock of the partnership and relinquished their right qua partners in favour of the continuing partners. To decide that question a reference to the relevant clauses in Ext.B2 is necessary. In Ext.B2, the retiring partners including respondent are parties of the first part and continuing partners (the late V.V. Joseph, predecessor-in interest of appellants and Shri V.J. George (appellant No. 1) are parties of the second part. The deed states in Clause (1) that parties of the first part thereby declared that they have retired from the partnership from the 8th day of September, 1967 and that the said partnership shall since then be continued by the parties of the second part including the late V.V. Joseph. Clause (2) states that in consideration of the sum of Rs. 1,00,000/- paid to the parties of the first part (including respondent) and

in consideration of Rs. 2,00,000/- 'agreed to be paid by the parties of the second part' to the parties of the first part in the proportion stated therein on or before the 30th day of June, 1969 (the date, 31st June stated in Ext.B2 is obviously a mistake) with interest at the rate of 9% per annum for which separate promissory notes (Ext.A1 is that promissory note what was later renewed - Ext.A2) are executed by the parties of the second part, parties of the first part confirmed having assigned to the parties of the second part their interest in the partnership property described in Annexure IV to Ext.B2. So far as Annexures I to III, individual immovable properties (which includes the suit property) of the retiring partners (parties of first part) including the respondent is concerned what is stated in Ext.B2 is that parties of the first part 'agreed to execute the deed of conveyance in respect of their individual properties described more particularly in the schedule given in Annexures I to III to this deed at any time when called upon to do so but at the costs and expenses of the parties of the second part'. Clause (2) further states that 'for obtaining such conveyances from the parties of the first part in respect of the said properties, no further amount shall be payable by the parties of the second part and that parties of the first part shall execute the said conveyance as and when called upon by the parties of the second part'. Clause (3) states that parties of the second part are put in possession of immovable properties of retiring partners (Annexures I to III of Ext.B2) who were entitled to 'possess, enjoy, deal with or take income from the said properties mentioned in Annexures I to III in any manner the said parties of the second part may deem fit'. Clause (4) states that 'to enable the parties of the second part to sell or otherwise deal with the properties referred to in Annexures I to III parties of the first part shall also execute Power of Attorney in favour of the parties of the second part if called for to do so by the parties of the second part'. Under Clause (9) parties of the first part agreed that 'parties of the second part shall be entitled on their own and without the junction of the parties of the first part to pledge, hypothecate, mortgage, charge or in any way encumber or alienate any of the properties of the firm or the immovable properties and/or the immovable property described in Annexures I to IV of this deed; for the purpose of raising money for any purpose whatsoever as desired by the parties of the second part. It is however made clear by way of abundant caution that if the parties of the second part required concurrence or authority of the parties of the

first part for any of the purposes aforementioned parties of the first part shall join in such document or act necessary for the above purpose or give letters or execute deeds or other documents expressing their consent to the proposals of the parties of the second part for raising money provided that the parties of the first part shall not be bound to meet any obligation personally in respect of such transaction'.

11. Learned Senior Advocate for appellants would argue that though at the time a change occurred in the partnership by retirement of respondent and two others (parties of the first part in Ext.B2), their individual properties including the suit property were brought into the common stock of the partnership, and their interest in that property of the partnership was relinquished in favour of the parties of the second part. According to the learned Senior Advocate this is evident from the fact that payment of Rs. 2,00,000/- to the retiring partners was made by demand promissory notes which created a chose in action and amounted to payment itself. Reliance is placed on Clauses 2, 3 and 9 of Ext.B2. According to the learned Senior Advocate execution of deed of conveyance as referred to in Clause (2) or Power of Attorney referred to in Clause (4) of Ext.B2 was only optional and as may be desired by parties of the second part. Learned Senior Advocate argued that it is pursuant to the power conferred on parties of the second part that they created equitable mortgage over Annexures I to III properties in Ext.B2 including the suit property in favour of the Bank. In response learned Senior Advocate for respondent would contend that even if Ext.B2 is accepted as such, it would not show that Annexures I to III properties including the suit property were being brought into the common stock of the partnership whereby the only right parties of the first part had, was to claim share in the profits of the said properties or to seek winding up of the partnership including sale of the said properties and claim share in the resultant asset. On the other hand Ext.B2 is only an agreement to convey the said properties in favour of the parties of the second part. Concededly no deed of conveyance was executed in respect of the suit property and the sale consideration agreed to be paid was also was not paid and hence title remained with the respondent. According to the learned Senior Advocate it is accepting the said factual and legal position that the late V.V. Joseph though alternatively claimed protection of Section 53A of the T.P. Act but failed to show that he was ready and willing to perform his part of the contract.

12. It is settled principle regarding interpretation of deeds that the question is not what the parties to the deed may have intended to do by entering into the deed but, what is the meaning of the words used in the deed. Courts are to understand the true intent of the deed by the words used in it. If the terms of the deed are ambiguous extrinsic evidence can be let in to prove the real intention. Ext. A2 is the release deed executed by the parties of the first part including the respondent on 08.09.1967 in favour of parties of the second part including the late V.V. Joseph as per which their right over Annexure IV properties were assigned or relinquished in favour of parties of the second part including the said V.V. Joseph. Clause (2) of Ext.B2 relating to the assets of the partnership dealt with as per Ext.A2 states that parties of the first part 'hereby confirm having assigned to the parties of the second part all that share and interest of the said parties of the first part' in the said properties thereby indicating that there was an outright assignment or relinquishment of right and interest of the parties of the first part in Annexure IV properties which were property of the partnership as per Ext. A2 and which they confirmed as per Ext.B2. But as regards Annexures I to III properties including the suit property which admittedly were individual properties of the retiring partners what is stated in Ext.B2 is that parties of the first part 'agree to execute the deed of conveyance in respect of their individual properties...at any time when called upon to do so' at the cost and expense of the parties of the second part. There is a conscious distinction made so far as the properties of the firm referred to in Annexure IV and the individual properties of parties of the first part referred to in Annexures I to III are concerned in that in the former case parties of the first part assigned or relinquished their right over it as per Ext.A2 and confirmed the same as per Ext.B2 but in the case of their individual properties (Annexures I to III) they agreed to execute deed of conveyance as and when called upon to do so by the parties of the second part. This is further clear from the latter part of Clause (2) of Ext.B2 which states that for the purpose of obtaining such deeds of conveyance executed by parties of the first part, no further amount shall be payable by parties of the second part. Thus parties contemplated execution of a deed of conveyance in respect of Annexures I to III properties including the suit property to convey title. It is true that Annexures I to III properties were put in possession of parties of the second part which is admitted by the respondent also and parties of the second

part were permitted to possess, enjoy, take income or deal with the said properties. Clause (4) of Ext.B2 specifically requires parties of the first part when called upon by parties of the second part to execute Power of Attorney in their favour to enable them sell or otherwise deal with the said properties obviously because of title of the said properties remained with parties of the first part including the respondent. True as per Clause (9) of Ext.B2 right was conferred on parties of the second part to sell, pledge, hypothecate, mortgage the said properties and if parties of the second part required the concurrence or authority of the parties of the first part for any such purpose, the latter were to join such document or act necessary for the said purpose or give letters or execute deeds as is found necessary. According to the appellants provision for execution of deed of conveyance was only as a matter of abundant caution and junction of parties of the first part was only optional as it was open to the parties of the second part to sell, pledge, hypothecate, mortgage, etc., the properties on their own as if it belonged to them. I am afraid; such an interpretation cannot be given to Clause (9) of Ext.B2. That clause alone cannot be culled out of context but has to be read along with Clauses 2 and 4 of Ext. B 2 which required parties of the first part to execute deeds of conveyance as and when required and (in the meantime) execute Power of Attorney in favour of parties of the second part to enable them deal with the said properties including its sale. I must also bear in mind that Ext.B2 was executed on 08.09.1967 and time for payment of consideration of Rs. Two lakhs was till the end of June, 1969. Reading Clauses (2), (4) and (9) together what could be discerned is that parties of the first part were to execute Power of Attorney in favour of the parties of the second part to enable them to sell or otherwise deal with the property and it was open to the parties of second part to enter into transactions including sale on the strength of the Power of Attorney before the deed of conveyance was executed and if for any reason junction of parties of the first part was required (before execution of the deed of conveyance) the latter shall join such document, give consent letter or execute the deeds (in favour of an assignee, in the case of an arranged by parties of the second part).

13. It is not disputed that properties referred to in Annexures I to III of Ext.B2 were subjected to an equitable mortgage in favour of the Bank which in turn filed O.S. No. 120 of 1972 against the partnership, parties of the first and second parts in

Ext.B2 and others for realisation of money by sale of he said properties and obtained a decree. Exhibit A4 is the copy of plaint in that case. According to the appellants equitable mortgage over Annexures I to III was created by parties of the second part in Ext.B2. Respondent would contend that himself and other retiring partners (parties of the first part in Ext.B2) deposited title deeds of their respective properties. In Exhibit A4 what is pleaded by the Bank is that equitable mortgage was created by defendant Nos. 2 to 6 therein (who are parties of the first and second parts in Ext.B2) on 16.10.1968. Thus as per Ext.A4, the parties of first part including the respondent also had joined in creating equitable mortgage over Annexures I to III properties referred to in Ext.B2. There is no contra evidence. On the contrary, it is interesting to see from paragraph 9 of the plaint in O.S. No. 120 of 1992 (filed by the late V.V. Joseph) that what is stated is that 'as can be seen from the terms in the retirement-cum-release deed the defendant joined the memorandum of deposit of title deeds only to show his formal concurrence and not by virtue of any rights'. This statement in paragraph 9 is consistent with the plea of the Bank in O.S. No. 120 of 1972 (See Ext. A4) that equitable mortgage over the immovable properties including suit property referred to in Annexures I to III of Ext.B2 was created by the respondent as well. It is also relevant to note that nowhere in Ext.B2 it is stated that title deeds in respect of the properties in Annexures I to III were handed over to the parties of the second part. Exhibit A6 is the copy of affidavit filed by the respondent in O.S. No. 120 of 1972 filed by the Bank. In paragraph 1 of Ext. A6 he claimed that he deposited title deed of the suit property with the Alappuzha branch of the Bank. Thus going by the evidence on record it is a case where deposit of title deed in respect of the suit property with the Bank was made by or, at any rate with the junction of the respondent which also indicate that title of the suit property remained with the respondent. Reading Ext.B2 and going through the evidence on record I am unable to accept the contention of learned Senior Advocate for the appellants that the suit property was brought into the common stock of the partnership at the time respondent retired from the partnership as per Ext.B2 and right and interest of respondent qua partner in the said property, i.e., a right to share profits of the said property and demand winding up of the partnership including sale of the suit property and claim share in the resulting asset was conveyed to the continuing partners. Exhibit B2

can only be taken as a deed whereby respondent retired from the partnership and in consideration, among other things, of payment of Rs. 3,00,000/- (of which Rs. One lakh was paid and Rs. Two lakhs was to be paid by the last day of June, 1969 in the proportion stated in Ext.B2) agreed to convey his right in the suit property referred to in Annexures I to III in favour of the late V.V. Joseph and his son (appellant No. 1). It is not disputed that respondent has not executed any deed of conveyance in favour of the late V.V. Joseph or anybody else.

14. Assuming that Ext.B2 amounts to a conveyance, next question is whether it required registration. To say that registration is not required, Section 14 of the Act should apply. For Section 14 to apply, property had to be brought into the common stock of partnership with retiring partners foregoing their individual right in the said property and agreeing to share profits of the said property along with the continuing partners qua partners. Here, while parties of the first part retired from the partnership they (as claimed by the appellants) conveyed their right in the property to the late V.V. Joseph and Shri V.J. George (appellant No. 1), the continuing partners of the firm. I do not find any plea either in the plaint in O.S. No. 120 of 1992 or in the written statement in O.S. No. 282 of 1992 that the property was brought into the common stock of the partnership. On the other hand contention throughout is that property was conveyed to the late V.V. Joseph and Shri V.J. George. In paragraph 3 of plaint in O.S. No. 120 of 1992 after referring to Ext.B2, retirement deed dated 8.9.1967 as a composite document executed in relation to the retirement of the parties of the first part from the partnership firm it is stated that retiring partners released all their right, title and interest over their personal properties respectively mentioned in Annexures I to III in Ext.B2 'in favour of the plaintiff and his son. V.J. George'. In paragraph 4 it is stated that respondent (and others) 'relinquished, abandoned and released all his rights, title and interest over the schedule properties unto and in favour of the plaintiff and his son V.J. George'. In paragraph 10 it is pleaded alternatively that 'in any event the plaintiff has perfected his title to the properties by principles of adverse possession and limitation the properties having been in their possession and enjoyment openly, continuously and uninterruptedly for over 12 years and more'. Similar contentions are raised in the written statement filed by the late V.V. Joseph and Shri V.J. George (appellant No. 1) and others in O.S. No. 282 of 1992. There, in paragraph

13 it is contended that Ext.B2 is a composite document as per which the parties of the first part (including respondent) retired from the partnership and 'release by them in respect of the right, title and interest over the personal properties respectively mentioned as Annexures I to III in favour of these defendants'. It is further stated in the same paragraph that as per Ext.B2 'plaintiff and brothers V.V. Job and V.V. Antony relinquished, abandoned and released all their right, title and interest over the properties thereto in favour of these defendants. By virtue thereof these defendants had been in exclusive enjoyment and possession of the properties in their own rights as co-owners thereto'. Similar contentions are raised in paragraph 14 also. Thus going by the pleadings in the plaint in O.S. No. 120 of 1992 and written statement of the late V.V. Joseph and Shri V.J. George (appellant No. 1) in O.S. No. 282 of 1992 it is not a case of the appellants contending that as per Ext.B2 right, title and interest of respondent in the suit property was brought into the common stock of the partnership as understood in Section 14 of the Act. Instead, contention is that the alleged conveyance of suit property was in favour of the late V.V. Joseph and V.J. George (appellant No. 1) personally and accordingly they are co-owners of the said property. The conveyance if any (asper Ext.B2), being in favour of Shri V.V. Josep hand Shri V.J. George (appellant No. 1), Ext.B2 cannot affect the right, title and interest of the respondent over the suit property as that document required registration but has not been registered.

15. The substantial questions of law framed are answered in the above lines.

Resultantly, these appeals fail and are dismissed. But I direct the parties to suffer their respective costs.

Civil Miscellaneous Petition No. 781 of 2001 shall stand dismissed.

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