

(1971) 04 AHC CK 0018

Allahabad High Court

Case No: Misc. Stamp Reference No. 16 of 1970

Govind Das and Others

APPELLANT

Vs

The Board of Revenue, U.P.,
Lucknow

RESPONDENT

Date of Decision: April 28, 1971

Acts Referred:

- Stamp Act, 1899 - Section 2(10)

Citation: AIR 1971 All 540

Hon'ble Judges: Satish Chandra, J; C.S.P. Singh, J; A.K. Kirty, J

Bench: Full Bench

Advocate: B.C. Dey and Vinod Swarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Disposed Of

Judgement

C.S.P. Singh, J.

The Board of Revenue as the Chief Revenue Controlling Authority has referred to the Court u/s 57 of the Stamp Act the following questions for answers:--

"(a) Whether the document under reference is a conveyance for Rs. 55,000/-and is chargeable with a duty of Rs. 2,475 under Article 23, Schedule I-B of the U. P. Stamp Act, 1962, and is also liable to an additional duty of Rs. 4.50 under Article 5 (c) read with Section 5 of the Stamp Act in respect of the two distinct agreements regarding the sale of Motor Cycle and Jeep car and exchange of certain property.

(b) Whether the document is a deed of dissolution of partnership and is sufficiently stamped with a duty of Rs. 22.50 under Article 46-B, Schedule I-B, ibid.

(c) Whether the document is a release of the value of Rs. 55,000 and is liable to a duty of Rs. 50 under Article 55, Schedule I-B, ibid.

(d) Whether the document is merely an agreement between the parties and is chargeable with a duty of Rs. 2.25 under Article 5 (c), Schedule I-B, *ibid*.

(e) If the document is not covered by any of the alternatives aforesaid, what stamp duty is payable in respect thereof under the U. P. Stamp Act, 1962."

2. The answers to these questions depend upon the nature of the document executed by Govind Dass Gupta, Manohar Dass Gupta and Gopal Dass Gupta on the 29th October, 1967. The facts necessary for the decision of the questions referred may be shortly stated. Manohar Dass Gupta, Gopal Dass Gupta and Govind Dass Gupta were carrying on a partnership business known as "M/s. Kam Manohardas" Govind Dass Gupta retired from the partnership and executed a deed of retirement on the 29th October, 1967. Apart from the other clauses of the deed, with which we are not concerned in the present reference, Govind Dass Gupta, the retiring partner was to get an amount of Rs. 55,000 from the firm in full and final satisfaction of all his dues and claims in the business and capital of the firm and its assets. There was also a stipulation that a godown belonging to Sri Govind Dass Gupta will be exchanged with a piece of land belonging to Manohar Dass Gupta, the continuing partner, and further that Sri Govind Dass Gupta, the retiring partner, will transfer his Motor Cycle and Jeep car to the firm for a consideration of Rs. 5,000. This document although styled as a deed of retirement was stamped as a dissolution of partnership and a duty of Rs. 22.50 was paid by the executants. On the document being presented before the Collector, Allahabad, for adjudication u/s 31 of the Stamp Act, the matter was referred to the Board for orders u/s 56(2) of the Act. The Board took the view that the deed in question was a conveyance executed by the retiring partner in favour of the two remaining partners for a consideration of Rs. 55,000 and not merely a deed of retirement or relinquishment and as such was chargeable as a conveyance under Article 23 of Schedule I-B of the Stamp Act and further that the agreements relating to the transfer of the Jeep and Motor Cycle and exchange of godown of the retiring partner Govind Dass with the land of the remaining partner Manohar Dass Gupta were chargeable as an exchange transfer deeds and were liable to additional duty. At the instance of the executants, the Board has referred the questions noted above to this Court.

3. Learned counsel for the applicant has not contested the view of the Board in respect of the agreements relating to the sale of the Motor cycle and the Jeep car and the exchange of the immovable properties between the retiring partner Govind Dass Gupta and the remaining partner Manohar Dass Gupta and such, in the present reference, it is not necessary to enter into the second part of the first question which relates to the two agreements relating to the sale of the movable properties and the exchange of immovable properties. In order to decide the controversy it will be useful to reproduce some clauses of the deed of the 29th October, 1967.

"This deed of retirement made this 29th day of October 1967, between Sri Govind Dass Gupta son of Late Ram Dass Gupta resident of Tagore Town Allahabad, hereinafter called the First Party; Sri Manohar Dass Gupta son of late Ramdass Gupta resident of Railway Market, Kharagpur, District Midnapur, West Bengal, hereinafter called the Second Party and Sri Gopal Dass Gupta son of Late Ram Dass Gupta resident of Muthiganj, Allahabad, hereinafter called the Third Party.

Whereas the parties to this deed are partners of the firm named and styled as M/s. Ram Dass Manohar Dass and whereas the said partnership is carrying on his business of Oil Millers and have got their oil mill at Naini and Kharagpur and also their offices at Calcutta and Jabalpur and whereas the business at Allahabad is carried on in the name and style of M/s. Manohar Oil Mill and Engineering Works and Manohar Oil and Flour Mill, Manohar Oil Mill and whereas the head office of the business is situated at Kharagpur is known as Manohar Oil and Flour Mill and whereas the First Party has decided to retire from the said business and from the firm M/s. Ramdass Manohardass and whereas the second and third parties have agreed to the retirement of the first party from the said partnership and whereas the First Party has offered to accept a sum of Rupees 55,000/- (Rupees fifty-five thousand) in full satisfaction of all his claim, right, title or interest in the business and assets of the said firm.....".

"NOW THIS DEED WITNESSETH:

1. That the first party has from this day retired from the firm of M/s. Ram Dass Manohar Dass and thereafter all the assets of the said firm including the moveable assets, Immovable assets, book debts, trade marks, name and goodwill shall hereafter belong to and be owned by the second and the third parties who are herein jointly described as the continuing partners and the first party shall hereafter has no right, title or interest whatsoever left in any of the assets of the firm aforesaid and the first party has no claim, right, title or interest left against the firm or against the continuing partners for and in connection with the business of the firm after the date of retirement and similarly the firm and the second and the third parties have no claims whatsoever of any kind against the first party for and in connection with the business of the firm upto the date of retirement, save except as herein agreed between the parties.

2. That the first party shall receive a sum of Rs. 55,000/- (Rupees fifty five thousand) from the firm in full and final satisfaction of all his dues and claims in the business and capital of the firm and the assets thereof and on the payment of the said amount the first party shall have all his claims and interest in the firm duly satisfied. The first party shall transfer to the firm his motor cycle No. U. P. C. 3703 and Jeep Car No. U. P. C. 9580 and the firm shall pay a sum of Rs. 5,000/- (Rupees five thousand) as the price thereof before the first party retires from the firm."

4. From the recitals in the deed it is clear that the deed is one of retirement by which Govind Dass Gupta went out of the firm and received an amount of Rupees 55,000/- from the firm in full and final satisfaction of all his dues and claims in the business and capital of the firm and the assets thereof. The result of the retirement of Govind Dass Gupta from the firm was an enlargement of the share of the remaining partners. The question, however, is as to whether the deed of retirement can on account of the payment of Rs. 55,000/- from the firm to the retiring partner be termed as a conveyance as defined in Section 2(10) of the Act so as to attract duty under Article 23 of Section 1-B or is a deed of release (as has been contended by learned counsel for the applicant). The executants have given up the contention that the document is chargeable as an agreement or a memorandum of an agreement under Article 5 (c) of Schedule I-B. Before the deed in question can be classified as a conveyance it must be an instrument by which property, moveable or immovable, is transferred inter vivos (Section 2(10) of the Stamp Act). This implies that the executant of the deed must have a transferable interest in the property which is sought to be transferred. It would thus be necessary to see what is the exact nature of the right of a partner in the partnership property. The rights which a partner enjoys in respect of partnership property has been considered by the Supreme Court in the case of [Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others](#), of the report their Lordships observed as follows:--

"From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Clause (a) and Sub-clauses (i), (ii) and (iii) of Clause (b) of Section 48."

5. And then again on Page 1304 their Lordships have laid down that:

"It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. 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 in proportion to their share in the joint venture of the business of 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 a deduction of liabilities 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 assignee would get would be only that which is permitted by Section 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."

6. Further on Page 1306 their Lordships observed as follows:--

"We may also refer to the decision of a Full Bench in *Ajudhia Pershad v. Sham Sunder* AIR 1947 Lab 13 (FB), in which Cornelius, J. has discussed most of the decisions we have earlier referred to, in addition to several others and reached the conclusion that while a partnership is in existence, no partner can point to any part of the assets of the partnership as belonging to him alone. After examining the relevant provisions of the Act, the learned Judge observed:

"These sections require that the debts and liabilities should first be met out of the firm property and thereafter the assets should be applied in rateable payment to each partner of what is due to him firstly on account of advances as distinguished from capital and, secondly on account of capital, the residue, if any, being divided rateable among all the partners. It is obvious that the Act contemplates complete liquidation of the assets of the partnership count between partners upon dissolution of the firm and it will, therefore, be correct to say that, for the purposes of the Indian Partnership Act, and irrespective of any mutual agreement between the partners, the share of each partner is, in the words of Lindley: "his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged." This indeed is the view which has commended itself to us."

7. It would thus appear that no partner can, during subsistence of the partnership, claim any portion of the property as his own. His only right is to obtain such profits, if any, that falls to his share. The property of the partnership is the trading asset of the partnership. It is only on dissolution that the partner gets a right to share in the residue that remains after meeting the liabilities provided for u/s 48 of the Act. If, as has been seen, a partner does not have any transferable interest in the moveable and Immovable properties of the firm it is difficult to understand how a deed of

retirement would be a conveyance as defined in Section 2(10) of the Act. The amount of Rs. 55,000/- which was paid to the retiring partner in the present case was in lieu of "all his claim, right, title and interest in the business and the asset of the firm" and, as has been seen, till such time that the partnership subsists the business and property of the firm belong to the firm and not to any partner individually. In this context, counsel for the appellant has referred us to the ease of [Addanki Narayanappa and Others Vs. Bhaskara Krishtappa and Others,](#) and to three decisions of this Court in the cases of [Peyare Lal Vs. Mt. Misri and Another,](#) [Ram Narain and Brothers Vs. Commissioner of Income Tax,](#) . It is not necessary to refer to these decisions as the law on the nature of the rights of a partner qua partnership property has been authoritatively laid down by the Supreme Court in the decision referred to earlier and these cases do not lay down a principle different from what has been enunciated by the Supreme Court. The position on a consideration of these authorities, is that the deed in dispute cannot be a conveyance as defined u/s 2(10) of the Act.

8. Counsel for the appellant has drawn our attention to two decisions of the Madras High Court in [Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham,](#) , and [Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel,](#) , where the view has been taken that such a deed would be a deed of release. In [Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham,](#) , Rajamannar, C. J., who delivered the judgment of the Full Bench has observed on Page 642 of the report as hereunder:--

"In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be the enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner."

9. The case of [Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel,](#) , dealt with the case of co-owners and not of a partnership firm but the principles laid down in that case are also apposite to the case of the present kind. Article 55 of Schedule I provides for duty leviable on "Release, that is to say, any instrument (not being a release as is provided for by Section 23A) whereby a person renounces a claim upon another person or against any specified property...." Such renouncement need not necessarily be by one co-owner in favour of another co-owner of the other co-owners. A person having a claim may also effect a release by renouncing his claim which may not be founded on co-ownership or may have arisen otherwise. In our opinion the deed in question is a deed of release and is leviable to stamp duty as such.

10. Our answers to the questions referred for our decision are as hereunder:

Q. (a) The document in question is not a conveyance. It is not chargeable to duty under Article 23. It is liable to an additional duty in respect of the two distinct agreements regarding the sale of Motor Cycle and Jeep Car and exchange of certain properties.

Q. (b) The document is not a deed of dissolution.

Q. (c) It is a deed of release and liable to duty of Rs. 50/- under Article 55 Schedule I-B.

Q. (d) & (e) No decision is necessary in view of the decision of question (c).