(1966) 10 BOM CK 0013

Bombay High Court

Case No: Civil Ref. No. 4 of 1964

The Superintendent of Stamps and Chief Controlling Revenue Authority		APPELLANT
	Vs	
Govind Parmeshwar Nair and Others		RESPONDENT

Date of Decision: Oct. 27, 1966

Acts Referred:

- Bombay Stamp Act, 1958 - Section 2, 2(1)

Citation: AIR 1967 Bom 369 : (1967) 69 BOMLR 320 : (1967) MhLj 641

Hon'ble Judges: Kotwal, C.J; Tarkunde, J; Chitale, J

Bench: Full Bench

Advocate: R. Mathalone, instructed by Little and Co, for the Appellant; Y.B. Rege and N.K. Gamadia, instructed by Sabnis, Goregaonkar and Rele Attronerys, for the Respondent

Judgement

Kotwal, C.J.

(1) This is a reference u/s 54(1) of the Bombay Stamp Act made by the Chief Controlling Revenue Authority. The reference arises under the following circumstances. Four persons namely Govind Parmeshwar Nair, his wife Kartika P. Nair and his two daughters Mrs. Prakashini Govind Kutty Menon and Miss Hayashree Parameshwar Nair purchased a building known as "Nair Mahal" at Tulsipipe Road, Mahim, Bombay, on 30th March, 1960, for a sum of Rs, 2,50,000. On the next dau 31st March 1960 they declared a trust of the said property by a document intituled "Declaration of Trust" and executed by the said four settlors. The proper stamp duty payable upon this document is that subject-matter of this reference.

(2) The preamble recites that the settlors had purchased the property with the express desire of declaring a trust thereof subject to the powers and provisions

mentioned in the document. It also recites that the settlors already "stand seized , possessed of the said hereditaments and premises hereunder described" Then follow the precisions of the alleged trust which was to be called "G.P. Nair Family Trust" Clause 2 gave authority to the trustees to recover the rents and profits of the property. Out of it Rs. 6,000 were to be paid annually to the two settlors Govind Nair and his wife Kartiaka Nair and a sum of Rs. 3,000 each per year to the two daughters. The trustees were also directed to pay Rs. 100 per month to "each of the two sons and/or daughters of Mrs. Prakashini Govindan Kutti Menon and Jayashree Parmeshwar Nair" In the event of the amount being insufficient the amount payable to each of the said sons and daughters of the two daughters was to be proportionately reduced. In clause 2(b), 5 per cent of the income from the trust was set apart for "religious charitable and education and medical relief" for the poor and distressed relations of the said Govind Parmeshwar Nair and Kartika Parmeshwar Nair. In clause 2(c) it was provided that after the death of Govind Nair and his wife, the amount coming to their share shall be distributed queerly among their two daughters and their sons and/or daughters in equal proportion for their life Clause 2(d) is important and was as follows:-

"After the death of the said Govind Parameshwar Nair and Mrs. Kartika Parameshwar Nair and on the last son or daughter opf the said Mrs. Prakashini and/or Jayashree the trustees shall sell the trust property and divide the same amongst the children of the said Mrs. Prakashini and Jayashree in equal proportion." The trust was declared to be irrevocable by clause 3 . Clause 5 recites that the trustees shall not have the power to sell, mortgage or otherwise alienate the trust property without the sanction of the Court. Provided howevr, that during the life-time of the said Govind Parmeshwar Nair and Mrs. Kartika Parameshwar Nair they shall have the power with the consent of the other trustees to seel or mortgage the trust property without the order of the Court and hold the proceeds on the trust declared.

(3) When this document was lodged before the Sub-Registrar of Assurances ir was engrossed upon a stamp paper of Rs. 25 and, therefore the Sub- Registrar impounded it and forwarded it to the Assistant Superintendent of Stamps because in his opinion it was a deed of settlement as defined in Section 2(t) and was chargeable under Article 55-A(II) of the first schedule to the Bombay Stamp Act. The Assistant Superintendent has held it to be so chargeable by his order, dated 10th September, 1962. The Chief Controlling Revenue Authority has upheld the decision of the Assistant Superintendent of Stamps, and decided that the s tamp duty should be as on a deed of settlement upon a valuation of Rs. 2,50,000 which was the value of the property.

(4) The settlors having asked for a reference the following questions have been referred for our decision-

(a) Whether the document falls within the definition of the word "settlement" u/s 2(t) of the said Act?

(b) If the answer to the first question is in the affirmative, is the document chargeable with stamp duty under Article 55-A (II) of the Schedule I of the said Act?

(c) If the answer to the first question is in the negative, then under what Article of Schedule I to the said Act would the document be chargeable?

Now "settlement" is defined by Section 2(t) of the Act to mean "any non-testamentary disposition in writing of movable or immovable property, made-

(i) in consideration of marriage,

(ii) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some persons dependent on him, or

(iii) for any religious or charitable purpose, and includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing any instrument recording whether by way of declaration of trust or otherwise, the terms of any such disposition."

The first requirement of the definition is that there shall be a " non-testamentary disposition" On behalf of the settlors trustees it has been urged that having regard to the provisions made in the document. it primarily distributes only the income of the property and in the ultimate provisions distributes the sale proceeds of the property, but it does not distribute the property as such under any of its provisions. Since by the definition "settlement means any non-testamentary disposition of movable or immovable property". etc., it is urged that one cannot enlarge the scope of the definition by incorporating therein any other idea than the strict language of the section implies. When the sub-section says "disposition of movable or immovable property" it means the very property which is the subject of the disposition and neither the income thereof nor the sale proceeds thereof in case it is sold can fall within its ambit. It would be extending the meaning of the definition it was urged if one were to include in the definition the money equivalent of the property when the section speaks of property only. Reliance was placed upon a decision of the Supreme Court in James Anderson, Administrator of The Estate of The Late Henry Gannon, Bombay Vs. The Commissioner of Income Tax, Bombay, .

(5) The words of the opening clause cannot be read in isolation but in conjunction with the subsequent provisions of the definition. It is in the total context of the definition that the true meaning of the opening words alone can appear. The complete provision would run as follows:-

""Settlement " means non-testamentary disposition . . . .of movable or immovable property made for the purpose of distributing property of the settlor. . . . ."

In the first place the disposition contemplated is the disposition of "movable or immovable property" and not the "movable or immovable property" of the settlor. The expression is left indefinite by omitting the definitive "the" obviously in this context the words "movable or immovable property" need not in terms be confined to the property in specie of the settlor. Secondly in stating the purpose also an indefinite expression is used "for the purpose of distributing property of the settlor". There is no specification of property by use of the definite article "the" or any expression such as "the said" before the word "property". Therefore so long as there is disposition of movable or immovable property and it is for the purpose of distributing property of the settlor in any shape or form,. the requirements of the section would be fulfilled.

(6) The further requirement of the section is that the purpose must be of distributing property of the settlor. It was urged that it can hardly be said when immovable property is sold and converted into cash that the each or money equivalent of the property is "property of the settlor" Here again the argument ignores the totality of the words used. The expression used is "for the purpose of distributing property of the settlor among his family" So long as that purpose is there, it is immaterial by what devise or means ir is achieved. For the proper construction of sub-clause (ii) what one has to look to is the nature of the purpose and not the nature of the property. In the present case though the property may be converted from immovable property into cash, the purpose would still remain the same viz. of distributing property of the settlor.

(7) Thus in the present case even though a provision is that immovable property shall be sold and the proceeds thereof distributed, it can still be said that it is a disposition of immovable property for the purpose of distributing property of the settlor. The other clauses of sub-clause (ii) "for whom he desires to provide or for the purpose of providing for some person dependent on him" also do not militate against the above construction.

(8) So far as the decision in James Anderson, Administrator of The Estate of The Late Henry Gannon, Bombay Vs. The Commissioner of Income Tax, Bombay, , is concerned, Mr. Rege relied upon the observations of the Supreme Court at pages 174-175 (of SCR): (at p. 755 of AIR) where Their Lordships in construing the expression "distribution of capital assets" occurring in the third proviso to Section 12B(1) of the Income Tax Act held that it would be wrong to read into that expression any additional words such as distribution of sale proceeds of capital assets. By analogy, therefore, Mr. Rege urged that in the Stamp Act in construing the words "immovable property" we should not read proceeds of immovable property.

(9) The argument illustrates the danger of applying the principle of construction of one statute to another which is not in pari materia. It seems to us that there can be hardly any analogy between the Indian Income Tax Act and the Bombay Stamp Act

so far as the principle of construction is concerned. The construction which Their Lordships gave to the expression "distributioin of capital assets" was induced by the definition of "capital assests" in the Act. There is no comparable definition here. But apart from that we have already indicated that read in the context of the definition of "settlement" in Section 2(t) of the Bombay Act it is clear that the emphasis is on the "purpose" and not on the "property". The purpose must be of distributing property of the settlor though the movable or immovable property disposed of may not even stand in the name of the settlor. The word "capital assets" in the Income Tax Act were used under completely different circumstances in an Act which is not in pari materia with the Bombay Stamp Act and in a completely different context. We therefore, do not see any analogy between the construction of that statute and the construction of the Bombay Stamp Act.

(10) Then we turn to the second part of the argument namely that the document shows that the property which was being already held by the four owners was declared to be in trust for themselves, and, therefore, there could not be any transfer of that propery. The document would therefore be a simple trust deed falling under Article 61 and not a "settlement" falling within Article 55 of the Schedule Reliance was placed upon a decision in Bai Mahakore Vs. Bai Mangla, and on a Full bench decision of the Allahabad High Court in Narendra Singh Ju Deo v. Board of Revenue,. AIR 1947 All 141 and reference was made to Sections 5 and 6 of the Trusts Act. Section 5 of the Trust Act merely says that no trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. So far as movable property is concerned no trust is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trustee. Section 6 provides "subject to the provision of Section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust (c) the beneficiary and (d) the trust- property and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee. It is the words in the brackets "unless the author of the trust is himself to be the trustee" that Mr. Rege has relied upon. He urged that where the author of the trust is himself to be the trustee, a transfer of the trust property to the trustee, is not necessary and cannot strictly speaking be made. In the present case he urged that all that happened was that the trust property which was in the possession and ownership of the four owners was merely declared as trust property and held by themselves as trustees for their own benefit. Therefore, no disposition of the trust property was made nor was it at all necessary. That is also what was pointed out in the case in Bai Mahakore Vs. Bai Mangla, where the argument was thus put by Mr. Justice Chandavarkar:

"Where a mean creates a trust and constitutes himself its trustee how can there be a transfer? Hence, I apprehend, the exception was made in Section 6 that in such a

case there need be no transfer Section 5, clause 2, lays down a general rule, Section 6 creates an exception, in the case of a trust of movable property."

In the first place, the word used in Section 2(t) is "disposition" of property and not "transfer" A transaction may amount to a disposition of property though it may not amount to a transfer of property. Disposition is a word of must wider connotation than transfer. when a man creates a trust and constitutes himself a trustee he undoubtedly disposes of his property though he is not transferring it. That consideration serves to distinguish Bai Mahakore Vs. Bai Mangla, . from the case before us. Secondly, from the document before us it is clear beyond doubt that the disposition in the present case was not merely a disposition where the author of the trust was making a provision for himself. In clause 2(a) there is a clear provision made for payment of Rs. 100 per month to each of the sons and daughters of the two daughters of Mr. and Mrs. Nair. In clause 2(d) which we have reproduced above (though the text of the clause is somewhat mutilated and difficult to understand) the provision was that the trustees shall sell the trust property and divide the same amongst the children of Mrs. Prakashini and Jayashree in equal proportion. these are provisions which were not for the benefit of the settlors themselves, but provisions which enure beyond the life time of the settlors. It cannot, therefore, be said that there was no disposition in the present case. The case before the Full bench of the Allahabad High Court turned upon its own special facts. In that case the Court found as a fact that the deed taken as a whole could not be regarded as one executed for the purpose of the distribution of the property. Secondly, and that is important the settlor had reserved a right of revocation to himself . In the context of such a reservation it could hardly have been held that there was a settlement . The Allahabad case is clearly distinguishable.

(11) We have said above that the word used in the definition is "disposition" and not "transfer" and the word "disposition" is of much wider connotation than the word "transfer". In the decision in the Civil Reference No. 24 ofc 1956 Chief Justice Chagla defined "disposition" as follows:-

"Disposition" means any plan or arrangement for the disposal of the property, and undoubtedly by this document the plan or arrangement which was given effect to was that the property should no longer belong absolutely to the settlors. but while the settlors continued to be the legal owners of the property the beneficial interest in the property should belong to the beneficiary . But even if we were prepared to accept Mr. Gupte''s contention that we must read "disposition" as meaning transfer or conveyance even so in our opinion on a clear reading of this document there is a transfer or conveyance by the settlers as "absolute owners of the property to themselves as trustees of the property". Mr. Gupte has emphasised the fact that there are no words of conveyance in the document . But when the settlors declare that henceforth they are going to hold this property as trustees for the sole benefit of their son Sorab, it clearly means that they wish to transfer the property from

themselves as owners to themselves as trustees.

It seems to us that that is precisely what has happened in the present case. Upon the declaration of the trusts in the document before us the property "Nair Mahal" ceased to belong absolutely to the settlors thereafter, but while the settlors still continued to be the legal owners of the property the beneficial ownership of the property did not, as hitherto, wholly remain with them. The beneficial ownership passed to several other persons including unborn children of their two daughters. To that extent the totality of the rights which originally belonged to the four owners of the trust not longer belonged to them but only a part of it . In that view we are satisfied that there was here a clear disposition of immovable property within the meaning of the definition.

(12) We may also point out that the word "disposition" is defined in the Chambers Dictionary as "arrangement or plan" for disposal of one''s property and in a Reference by the Collector and Superintendent of Stamps Bombay in ILR (1896) 20 Bom 210, and in an earlier case of this Court reported in Printed Judgments (being Civil Reference No. 18 of 1887 at page 243). In the last mentioned case the disposition was for the benefit of a single member of the family who was given only a right of residence therein, and it was held that the instrument would fall within the definition of a settlement. The present is a stronger case where the document provides for annuities to be paid to the unborn children of the two daughters of the settlors and in a certain contingency for sale of the property and distribution of the sale proceeds among the children of the two daughters in equal proportion.

(13) We are satisfied that the document in question was a settlement and correctly assessed to stamp duty by the Chief Controlling Revenue Authority. The questions referred are accordingly answered as follows:-

(a) Yes.

(b) Yes.

(c) Doest not arise.

A copy of this judgment shall be forwarded to the Chief Controlling Revenue Authority. The settlors shall pay the costs of the Chief Controlling Revenue Authority.

(14) Answered accordingly.