IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.25719 of 2003
and WMP.No.31578 of 2003

G.S.R.Boomibalagan ...Petitioner

Vs.

1.The District Registrar
Cheranmadevi,
Tirunelveli District.

2. The Chief Controlling Revenue Authority,
& Registrar General (Stamps)
Chennai-28.

3. The Sub Registrar,
Mukkoodal, Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order of the second respondent vide proceedings ref. No.Pa.Mu.NO.45119/P1/2002 dated 05.02.2003 confirming the order of the first respondent vide proceedings in Na.Ka.No.1316/A1/2002 dated 19.04.2002 and quash the same.

For Petitioners : Mr.A.S.Raghul Adhitya
For M/s. P.T.Ramadevi

For Respondents : Mr.Yogesh Kannadasan, SGP

ORDER

This writ petition has been filed seeking to quash the order passed by the second respondent dated 05.02.2003 confirming the order of the first respondent vide proceedings dated 19.04.2002.

2. It is the case of the petitioner that the petitioner was the one of the partner of the firm viz., M/s.South India Tobacco Company which is recently converted into a limited company with the same partners continuing as shareholders. The said firm was carrying on their family business for past several decades. The prime business of the firm is the manufacturing of and selling beedies. Apart from the petitioner, his two sons and his brother's son were the partners of the above said firm. Originally, a firm under the name and style of G.S.Muthiah and Brothers was constituted in the year 1957 with the petitioner's father and his brother as partners with the assets of joint family. The firm was subsequently dissolved by a deed of dissolution dated 27.09.1970 under the terms and conditions set out in the said deed. The assets of the partnership firm were the joint family properties of the petitioner's father and his collateral who were the partners of the firm G.S.Muthiah and Brothers. Under the deed of dissolution, the petitioner's father and his brother as parties of the first part signed in the said document.

All the immovable properties belonged to the firm were also divided among the parties by a separate deed of partition on the same day. Similarly, the movables were also partitioned among the parties by mutual consent.

3. Immediately after the earlier dissolution of the partnership firm on 24.09.1970 a partnership agreement was entered into by a deed of partnership dated 27.09.1970 between the petitioners father and his brother and the petitioner. The petitioner's father and his brother agreed to include the properties to continue in the firm to be established by them, As per recitals of the partnership deed, the properties allotted in favour of the petitioner's father and his brother in the partition in 1970 that took place in contemplation of the dissolution of the firm viz., M/s.G.S.Muthiah & Brothers became the properties of the firm M/s.South India Tobacco Company. Thus, all the ancestal properties of the petitioner's family become the assets of the partnership firm continued to be the assets of the firm M/s.South India Tobacco Company and the said partnership Firm came into existence with effect from 27.09.1970 and the firm was carrying on the business under the name and style of M/s. South India Tobacco Company. Subsequently, the same partnership firm underwent some minor changes by the induction of the family members. Immediately after the death of the

petitioner's father, the petitioner and petitioner's brother became the partner of the partnership firm. Again, vide partnership deed dated 02.05.1991, the petitioner's son were inducted as partners. Again on 26.02.2000, after death of the petitioner's brother, the firm was reconstituted with the continuation of other partners of the firm partners. In terms of the partnership agreement, the firm was continuing its business. Later the partners of the firm wanted to convert the partnership firm into a limited company with the partners become the share holders. In contemplation of such conversion of the partnership firm as a limited company, the partners of the particular partnership firm have decided to divide some of the properties of the firm among themselves. Thus, a partition deed dated 30.03.2001 was executed by the partners of the firm. Inadvertently, some lose expressions are found in the said said deed of partition even though the terms of the document are very clear to the effect that the partners are dividing the properties which are their ancestral properties.

4. It is relevant to point out that there was no clause sugesting dissolution of the firm in any part of the said partition deed. As a matter of record the partnership firm M/s.South India Tobacco Company was carrying on the partnership business as a partnership concern even after the partition

deed dated 30.03.2001. Above all, there are various other properties which were continued to be the properties of the partnership firm, till it was subsequently converted into a limited company in 2002 with the partners continuing as share holders. Since the document viz., partition deed is a simple transaction among the partners, the said document was executed and signed as a partition deed and the stamps were purchased at the rate of 4% of the market value of the divided shares at the advice of authorities though only 2% is payable as per the Stamp Act. The said document was submitted for registration before the first respondent and the same was forwarded to the third respondent. The third respondent. However, the third respondent referred the matter to the second respondent to determine the duty payable to the partition deed submitted by the petitioner for registration. Subsequently, the second respondent herein sent a communication dated 19.04.2002 in the form of a show cause notice calling for the explanation from the partners of the firm as to why a sum of Rs.3,50,916/- along with a sum of Rs.1000/- should not be recovered from the petitioner. In the same communication, the second respondent expressed that the order of demand for a sum of Rs.3,50,916/- was on account of deficit stamp duty at 12% as the document attracts Article 46(B)(i) of the Indian Stamp Act. Since the partition deed is very clear in its terms and proceed that it is a partition of the ancestral joint family properties of the parties to the deed, there is no scope for treating the said document as a document of dissolution as suggested by the second respondent vide communication dated 19.04.2002. Immediately thereafter, all the partners including the petitioner sent a reply to the second respondent stating that the document dated 31.03.2001 is a partition deed attracting Article 45 of Schedule-I of Indian Stamp Act, and that there is no basis for the proposed determination of stamp duty at higher percentage, treating the document as the document of dissolution. However, without assigning any reason, the first respondent herein passed an order on 17.05.2002 stating that the assessment of deficit stamp duty indicated in the communication dated 19.04.2002 was in order. By the said order, the second respondent also directed the partners of the firm to pay the deficit stamp duty of Rs.3,50,916/- along with sum of Rs.1000/- by way of penalty. Aggrieved by the said order of the first respondent, the petitioner preferred revision before the second respondent. The second respondent, vide order dated 05.02.2003, has also confirmed the order passed by the first respondent dated 19.04.2002. Challenging the said order of the second respondent dated 05.02.2003, the present writ petition has been filed.

5. The learned counsel for the petitioner submitted that originally, the

family properties have included in the partnership firm in the name and style of M/s.G.S.Muthiah and brothers. Subsequently, the said firm was reconstituted by inducting other family members on 27.09.1970 in the name and style of M/s.South India Tobacco Company and later, the said partnership firm was converted into limited company. Even according to the second respondent that the partnership firm was dissolved under the partition deed dated 30.03.2001 and the immovable properties have also been divided under the partition deed without involving dissolution of the firm. In such circumstances, the second respondent has no authority to treat the instrument of partition as an instrument of dissolution as per law. Hence, the order passed by the respondents 1& 2 directing the petitioner to pay the deficit stamp duty, which is not sustainable one.

6. The learned counsel further submitted that Article 45 specifically deals with an instrument of partition as defined by Section 2 Sub Section 15 of the Indian Stamp Act.

As per the definition under Section 2(15) of the Act – *the instruments of partition means any instrument whereby co-owners of any property divided or agreed to divide the said property.* In the instant case, the transaction under the partition deed dated 30.03.2001 will not fall under any other Article except Article 45 of the Schedule I of the Indian Stamp Act. Hence, the order passed by the respondents 1 & 2 herein is without jurisdiction and without authorities of law and the same is liable to be set aside.

7. The learned Special Government Pleader filed a counter and in this regard, the relevant paragraphs are extracted hereunder:

"2. With regard to the averments made in pass 2 & 3 of the affidavit, this respondent most respectfully submit that the document in question dated 30.3.2001 labelled "Deed of Partition" was executed between the partnerssons 1.Tr. G.S.R Boomibalagan and his sons 2. Tr.B. Ramesh Ram 3. B. Adhishramand and 1st Person's Brother's son Tr.K. Ramamurthy partitioning the property belonging to the Firm by name M/s South India Tobacco Company and presented the same before the 3rd respondent. The 3rd Respondent has impounded the document under section 33 of the Indian Stamp Act, 1899 and forwarded the same to the 1st respondent who is the Collector under subsection (9) of section 2 of the Indian Stamp Act, 1899. The 1st Respondent after giving an opportunity to the Petitioner has decided the document in question as "Deed of Patition " arose out of dissolution of the firm between non-members of the family and chargeable to duty under Article 46(B)(i) of Schedule

I to the Indian Stamp Act, 1899 and demanded to pay the deficit stamp of Rs 3,50,916/- and penalty of Rs.1000/- under section 40(b) in his proceedings No. 1316/B/2002, dated 19.4.2002. Aggrieved on this the Petitioner filed revision petition before this Respondent. This Respondent after hearing Tr. Muthulingam, Counsel for the Petitioner in person confirmed the order of the 1st respondent and dismissed the revision petition filed by the petitioner. Aggrieved on this, the Petitioner has filed the present writ petition.

3. With regard to the averments made in para 4 of the affidavit, this respondent denies the averments made in this paragraph and most respectfully submit that even though the partner M/s. South Indian Tobacco Company are family members they cannot be construed as family members, in view of the Explanation in Article 46(B) read with "Explanation" under Article 58 of the Schedule I of the Indian Stamp Act, 1899. Further, it is submitted that even though the properties are said to be ancestral, once it is brought into Partnership firm, the property become the property of the firm under section 14 of the Indian Partnership Act, 1932 and losses its ancestral character.

4. With regard to the averment made in para 5 of the affidavit, this respondent denies the averments made in this paragraph and most respectfully submit that the petitioner's contention that the Partnership firm in question has not been dissolved and some of the properties are still in the firm and revenue records also show that the properties are in the names of the firm in question is not acceptable. The Partnership Deed *in question as executed on 30.3.2001 and the 1st respondent issued final orders in his proceedings dated 17.5.2002 confirming his earlier proceedings dated 19.4.2002. Subsequent to the order of the 1st respondent, the declaration in Form No. II A to the effect the partnership firm has been in continuous operation during the financial year 1998-99, 1999-2000, 2000-2001 and 2001-2002 was filed before the Registrar of Firms on 30.7.2002 which is an after thought to substantiate the Petitioner's claim that Firm in question has not been dissolved. The recital of the deed in question clearly shows that the Firm has been dissolved. Hence this respondent confirmed the orders of the 1st respondent and dismissed the revision petition filed by the Petitioner.*

5. With regard to the averments made in "grounds" of the affidavit this Respondent denies the contention of the petitioner and most respectfully submits that :

i. *The order of this Respondent dated 5.2.2003 made in D.Dis. No. 45119/P1/2002 is based on the recital contained in the document in question and other documentary evidence produced by the Petitioner.*
ii. *The Partners of the Firm in question cannot be construed as members of the family in view of explanation provided under Article 46(B) read with Article 58 of the Schedule I to the Indian Stamp Act 1899. The "Explanation" as follows:*

"For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, Grandchild. In the

case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother "son" an adopted son and "daughter" an adopted "daughter"

Since the brother's son has not been included in the "Explanation", the Partition Deed in question cannot be construed as taken place between the members of the family and stamp duty is chargeable under Article 46(B)(i) of the Schedule 1 to the Indian Stamp Act which provides as under :

ARTICLE 46 PARTNERSHIP

A. XX XX XX

B. Dissolution

i.) When such dissolution involves partition of immovable Properties of a firm among partners, who are not family members.

a. Thirteen rupees for every Rs.100 or part thereof of the market value of the immovable property dealt with in such deed of dissolution, when such property is situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirapalli and the City of Tirunelveli.

b. Twelve rupees for every Rs.100 or part there of the market value of the immovable property dealt with in such deed of dissolution when such property is situated in other areas.

ii.) The Partition deed in question cannot be classified as one taken place between the members of the Hindu undivided *family. Section 5 of the Indian Partnership Act, 1932 provides as under Section 5 partnership not created by status. The relation of partnership arises from contact and not from status, and in particular, the members of a Hindu undivided family Carrying on a family business, or a Burmese Buddhist husband and wife carrying on business as such are partner in such business.*

A partnership is not created by status but arises only from voluntary agreement. It is created by the act of parties and not by operation of law. The case of joint ownership in a trading business created through operation of Hindu law between the members of an undivided Hindu family is a typical contradiction from a true partnership, which must arise out of a contract. In the instant case the partnership is entered into persons by executing agreement deed under Section 4 of the Indian Partnership Act, 1932 and the same is the result of a contract or act of the parties This has been stressed by the Petitioner in the subsequent averments.

iii.)The law permits partial partition. Hence some more assets yet to be divided among partners cannot be a ground to show that the Partnership firm has not been dissolved. It has been clearly recited in the instrument in question that the Partnership comes to an end.

iv.)The Petitioner has filed From No.II A before the Register of Firms to the effect that the firm in question has been in continuous operation during the financial year 1998-99 to 2001-02 on 30.7.2002 only after orders issued by the 1st

Respondent which is nothing but an after thought of the Petitioner to suppress the fact that the firm was dissolved.

v.) There is no dispute that the partners are co-owners of the property of the firm and the definition under sub-section (15) of Section 2 apply to them. But as regards chargeability, Article 46(B) (i) of the Schedule 1 to the Indian Stamp Act, 1899 squarely applies and not Article 45 ibid.

vi.)The Petitioner's contention that this Respondent did not hear the representative of the petitioner is repudiated and submit that Thiru R. Muthulingam, counsel for the Petitioner was heard in person on 6.1.2003.

The Partnership in question was dissolved and the assets have been partitioned between the partners of the firm in question through the Partition deed in question, which attracts stamp duty as per Article 46(B)(i) of the Schedule 1 to the Indian Stamp Act, 1899 for the reasons submitted supra."

8. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader and perused the materials available on record.

9. The facts in the present case are not in dispute. Admittedly, the petitioner's family established the tobacco company in the name and style of M/s.G.S.Muthiah and brothers prior to 1970 and the said deed of dissolution

was passed on 27.09.1970. Thereafter, by investing in the very same property, the petitioner's family started new partnership firm in the name of M/s.South India Tobacco Company. It is also not in dispute that subsequently, the petitioner's father, who is the founder of the firm, had retired from the partnership firm and his brother and brother's sons were included as partners in the above said firm on 14.05.1951 and the same was executed in the year 1992 with some changes. It is also equally undisputed fact that the petitioner's firm was converted into a limited company by converting the properties by the very same family members. Thereafter, they decided to partition the properties between the family members. Accordingly, they presented the document on 30.03.2001 before the first respondent which was rejected for the payment of the deficit stamp duty.

10. According to the petitioner, the entire family members decided to divide the family properties which was earlier invested in the petitioners firm. The said properties were family properties and therefore, the stamp duty can be levied in terms of Art. 45 of the Schedule I of the Indian Stamp Act, whereas the respondents claim that if the family members divide the properties between the partners, Art. 45 will come. However, by way of induction of other family members in the partnership firm dated 14.05.1991,

they are not coming under the definition of family members. The petitioner's brother is a family member and the petitioner's brother's son is not a family member.

11. Further the respondents also considered the third employment deed of partition, they specifically mentioned that they have not interested in their family business and they have decided to divide the family properties. Hence, it is clear term that though the deed of dissolution was not presented before the authorities, they decided to discontinue the partnership firm and divide the properties among the joint family members. Whether joint family members has construed a family members. For better appreciation, Art.58 (a) of Schedule I to the Indian Stamp Act, 1899 is as follows:

"58.Settlement--

(a) instrument of (including a deed of a dower)--

Explanation.--

For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter.

12. A perusal of the above said provisions makes it clear that when such dissolution involves, partition of immovable properties of a firm among the partners who are not the family members, then they have to pay the necessary stamp duty in terms of Art. 46(b)(1)(a) of the Act. Further, the petitioner's brothers son is not a family member. This Court hold that the word "family" defined in the Explanation to Article 58(a) of Schedule -I, appended to Indian Stamp Act, 1899, would mean only such of those persons mentioned in the Explanation. Further, the definition to the word "family" found in Article 58(a) of Schedule-I of the Indian Stamp Act, 1899, is exhaustive and not illustrative and it is applicable only to such of those persons indicated therein and it will not extend to other persons who do not form part of the definition "family". In the present case, the petitioners brothers son is not a family member and therefore, the partition was made among the partners not between the family members. Hence, the benefit of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act will not be applicable, Art.45(b)(1a) alone is applicable. Hence, the levy of the stamp duty by the original authority and the appellate authority are in perfectly in order and no interference is called for.

13. For the foregoing reasons, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.07.2022

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Index : Yes / No
Speaking order : Yes / No

To
1.The District Registrar
Cheranmadevi,
Tirunelveli District.

2. The Chief Controlling Revenue Authority,
& Registrar General (Stamps)
Chennai-28.

3. The Sub Registrar,
Mukkoodal, Tirunelveli District.

M.DHANDAPANI, J.

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W.P.No.25719 of 2003

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