IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15361 of 2020 (O&M)
Date of Decision.11.01.2023

Sanjeev Gupta ...Petitioner

Vs

State of Punjab and others ...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Punj, Advocate
for the petitioner.

Mr. Deepanjay Sharma, AAG, Punjab.

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<u>JAISHREE THAKUR J. (ORAL)</u>

The petitioner herein seeks to challenge order dated 24.02.2020 (Annexure P-9) and order dated 17.04.2018 (Annexure P-6) passed by respondent No.2 and 3 respectively being illegal, arbitrary, null and void and against the principles of law.

In brief, the facts are that the property measuring 5165 sq. yards was purchased by a partnership firm on 05.09.1972 belonging to four partners namely Radha Kishan son of Gian Chand, Parduman Kumar Gupta, Sagar Gupta and Revti Raman Gupta sons of Radha Kishan. Radha Kishan, partner and father of Parduman Gupta, Sagar Gupta and Revti Raman Gupta expired on 01.10.1978, consequent to which the partnership firm dissolved. The property in question dissolved in favour of three sons by Will dated 4.6.1978 executed by Radha Kishan. The legal representatives of Radha Kishan executed a release deed dated 3.7.2000 (Annexure P-1) and thereby relinquished all their rights being LRs of Radha Kishan in favour of Parduman Gupta. It is thereafter that Parduman Gupta executed a transfer deed in favour of his son Sanjeev Gupta and the transfer deed was registered vide wasika No.1507 on 07.05.2018. Respondent No.3-Sub Registrar referred the issue under Section 47-A of the Indian Stamp Act to the Collector regarding the transfer deed and the deficit stamp duty paid on the same. A show cause notice was issued to the petitioner by respondent No.2 under Section 47-A of the Indian Stamp Act to which a reply was filed stating that no stamp duty was payable considering that Parduman Kumar Gupta transferred the property in question to his son, a blood relative and therefore, no stamp duty was payable. The Collector-respondent No.2 vide order dated 24.02.2020, while admitting that Section 47-A of the Indian Stamp Act is not applicable, opined that as the property was owned by the proprietorship firm, stamp duty would be payable and remanded the matter back to Sub Registrar, Ludhiana (Central) with a direction to reconsider whether the deed is to be charged with stamp duty and if so, same be recovered as arrears of land revenue. Aggrieved against the said order, present writ petition has been filed.

Learned counsel appearing on behalf of the petitioner would argue that after registration of the transfer deed, Sub Registrar himself becomes *functus officio* and would not be competent to impound the transfer deed dated 07.05.2018, apart from reference being made by an authority, which has become *functus officio.* Counsel for the petitioner lays great stress that the Collector erred in remanding the matter back to an authority, which was not even competent to decide the issue. It is argued that the Collector has erred in not taking cognizance of the notification dated 07.05.2014 whereby it has been stated that the stamp duty would not be chargeable on the instrument pertaining to transfer of immovable property by an owner during his life time to any of his blood relation i.e. children, grand children, brothers and sisters.

Per contra, learned counsel appearing on behalf of the respondent-State would argue that the petitioner is liable to pay the stamp duty on the deed registered, as the property was owned by a proprietorship firm and not by Parduman Kumar Gupta in his individual capacity.

I have heard learned counsel for the parties and have gone through the pleadings of the case as well as the case laws cited.

It is an undisputed fact that the property in question initially belonged to a partnership firm, titled M/s Hindustan Steel Industries, 43-R, Industrial Area-B, Ludhiana and purchased vide sale deed wasika No.4500 dated 05.09.1972. The partnership firm comprised of Radha Kishan Aggarwal s/o Sh. Gian Chand and Sh. Parduman Kumar Gupta, Sagar Gupta and Revit Raman Gupta. On the death of Radha Kishan Aggarwal, partnership firm was dissolved and on the basis of the Will, property came to be inherited by three sons. Two sons of late Radha Kishan Aggarwal executed a release deed in favour of their brother Parduman Kumar Gupta vide release deed dated 03.07.2000. Consequent to the release deed, Parduman Kumar Gupta, petitioner herein became the sole owner of the said property. It would be pertinent to note that M/s Hindustan Steel Industries, Ludhiana instead of being a partnership firm continued its existence as a sole proprietorship, its owner being Parduman Kumar Gupta.

The question whether the proprietorship firm is a juristic person on the same footing as a partnership firm or a company or a society has been settled in various judgments namely *M/s Bhagwati Vanaspati Traders versus Senior Superintendent of Post Offices, Meerut (2015) 1 SCC 617,* which further noticed judgment rendered in *Ashok Transport Agency Vs. Awadhesh Kumar and another (1998) 5 SCC 567* wherein it has been held as under:-

> *"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order 30, Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 Order 30 which make applicable the provisions of Order 30 to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 Order 30 have no application to such a suit as by virtue of Order 30, Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business "insofar as the nature of such case permits". This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."*

Similarly in the judgment rendered in CWP No.19796 of 2018 titled as *Association of Property Professionals Vs. State of Haryana and others* decided on 12.12.2022, it has been held as under:-

> *"15. Ordinarily understood, sole proprietorship is an unincorporated business that is just one owner by himself or herself. Creation of a separate business or a trade name is not*

necessary or a prerequisite in a sole proprietorship/sole proprietory business module and even if a separate business name is used for carrying on the business, the same by itself does not give any separate juristic entity or legal existence to the proprietory name separate and distinct from the owner. The said aspect has already been examined in detail by the Hon'ble Supreme Court in the matter of ***M/s Bhagwati Vanspati Traders*** *(supra) extracted above and in the matter of* ***"Ashok Transport Agency versus Awadhesh Kumar and Another"*** *that a proprietor concern is only the business name in which the proprietor of the business carries on the business. A sole proprietorship concern thus allows a fictional use of a trade name on behalf of the individual whereas truthfully only one individual exists and that they can be substituted as each other insofar as their entities are concerned. It makes no difference whether the name of an individual is used or that of the trade name.*

The argument as raised that the property in question belongs to a proprietorship firm and therefore, stamp duty would be payable is not sustainable, in view of the ratio of the judgments referred to above wherein it has been held that the proprietary concern and the proprietor are one and the same and proprietorship has no separate legal identity. The impugned order ought to have taken this factor into account that the proprietorship firm and the individual namely Parduman Kumar Gupta are not distinct from each other and therefore, transfer deed by Parduman Kumar Gupta in favour of petitioner i.e. his son would be exempt from payment of any stamp duty by virtue of the notifications as issued by the Government of Punjab.

Moreover, the law is settled that the Sub Registrar is not clothed with the power to issue notice for recovery of stamp duty, if any, after registration of a document. At best, he can make a reference to the Collector, which he did. The remand order would not be sustainable, in view of the settled proposition that after a document is registered, Sub Registrar ceases to have jurisdiction of the matter. Reference in this regard can be made to the judgment rendered by a Division Bench of this Court in CWP No.12655 of 1992 titled as *M/s Ravindra Pharmaceutical (P) Vs. State of Haryana 1994 (1) PLR 614.*

Consequently, the impugned orders, being unsustainable, are hereby set aside, holding that the transfer of property between father and son is exempt from payment of stamp duty. The writ petition stands allowed.

(JAISHREE THAKUR)
JUDGE

January 11, 2023
Pankaj* Whether speaking/reasoned Yes/No
Whether reportable Yes/No