AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3662 OF 2022

Vinod Premchand Chandwani & Anr. … Petitioners
V/s.
The Chief Controlling Revenue Authority & Inspector General of Registration & Anr. … Respondents

Mr. Mayur Khandeparkar with Ms. Meenal Chandnani and Mr. Sahil A. Tejwani for the petitioners.

Mr. P.G. Sawant, AGP for the respondents/State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2024

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. The challenge in this writ petition is to the order passed by the Sub-Registrar dated 11 December 2018 and order dated 13 September 2021 passed in Appeal No.121 of 2020.

3. By the impugned order, respondent No.1 has held that the document in question is covered by Article 47(1)(a) of Schedule-I of the Maharashtra Stamp Act, 1958.

4. According to the petitioners, the petitioners are the partners of a partnership firm having name M/s. G.K. BUILD-CON. According to the petitioners, to enable them to efficiently sell the units of subject property and to distribute the profit, they presented a document dated 12 June 2018 in the Office of Sub-Registrar, Haveli-Pune entitled 'Agreement for Division of Area'. The relevant terms of the said Agreement are as under:

> "M/S. G. K. BUILD-CON acquired right to sell the below tabled property and appropriate the consideration there from without any objection from M/s. Bojwani Developers and Mr. Sunil Manohar Gaikwad and others.

WING/ BUILDING	OCCUPATION TYPE	NUMBER OF FLOORS	TOTAL NUMBER OF UNITS IN THE BUILDING/ WING
A	Commercial	28 + G + 5	131 (Shop)

> **WHEREAS** now the partners of M/s. G.K. Buildcon are desirous of dividing the area of WING-A amongst themselves in the ratio of their capital holding in the firm M/s. G.K. Buildcom that is in the ratio of -

Partner	Holding
Mr. Vinod Premchand Chandwani	56%
Mr. Hari Nichaldas Jeswani	25%
Mr. Manohar Jiwatram Rajwani	19%

> 9. **<u>WITHDRAWAL OF AMOUTN FROM SALE</u>**:
>
> That the parties shall be entitled to withdraw the amount received from the sale of their share of shops/units from the account without any objection from the other parties."

5. The Sub-Registrar considered the document having been covered by Article 47(2) of the Maharashtra Stamp Act, 1958.

Aggrieved thereby, the petitioners filed Appeal No.121 of 2020. The respondent No.1 by the impugned order dismissed the appeal. Hence, present writ petition.

6. Learned advocate for the petitioners invited my attention to the relevant recitals in the document in question. He, particularly, invited my attention to clauses 3 and 9 of the said Agreement to urge that the document does not amount to dissolution of partnership.

7. Per contra, learned AGP invited my attention to the affidavit in reply filed by one Mr. Prakash Ghamaji Khomane, Joint District Registrar (Class-I), Pune City, Pune. He invited my attention to paragraph 43. According to learned AGP, the document is nothing but liquidation of project in terms of money. The individual partners have acquired right to sell individual flats as per clause 3 of the said Agreement. Such assignment of immovable property mentioned in paragraph 3 amounts to reconstitution of partnership firm and, therefore, redistribution of such shares amount to dissolution of partnership.

8. For the purpose of considering the issue involved, it is necessary to set out relevant provisions. Article 47(2)(a) and (b) read as under:

Description of Instrument	***Proper Stamp Duty***
47. PARTNERSHIP-	
(1) ---	
(2) Dissolution of partnership or retirement of	

partner inclusive of Limited Liability Partnership and Joint Venture to run a business, earn profits and to share profits, whether in cash or in kind —	
(a) where on dissolution of the partnership of on retirement of a partner any property is taken as his share by a partner other than a partner who brought in that property as his share of contribution in the partnership.	The same duty as is leviable on a Conveyance under clause (a), (b) or (c) as the case may be, of Article 25, on the market value of such property, subject to a minimum of rupees one hundred.
(b) in any other case	Five hundred rupees.

9. On careful consideration of clause (2) of Article 47, it is evident that clause (a) of said Article contemplates taking of share by partners other than a partner who brought such property after dissolution of partnership or on retirement of a partner. To attract Article 47(2)(a), dissolution of partnership is the first ingredient and thereafter a partner taking his share other than a partner would come into play.

10. The dissolution and reconstitution of partnership are two different legal concepts. The dissolution puts an end to the partnership, but reconstitution keeps it subsisting, though in another form. A reconstitution of a firm necessarily imples that the firm never became extinct. What reconstitution denotes is a structural alteration of the membership of firm, by addition or reduction of members and an incidental redistribution of the shares of the partners.

11. In the facts of the case, even if it is assumed for the sake of convenience that the second part of Article 47(2)(a) is fulfilled, such eventuality would be applicable only on dissolution of partnership. On perusal of the document, it is clear that dissolution of partnership or retirement of a partner was not brought about by the document in question. Therefore, merely because partner other than a partner who had brought his share towards contribution in the partnership gets redistributed share, same would not amount to deed of dissolution of partnership. Therefore, the Authorities were not justified in directing the petitioners to pay stamp duty by holding the instrument to be covered under Article 47(2)(a). Hence, following order

12. Rule is made absolute in terms of prayer clauses (a) and (a-1).

13. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)