IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1031 of 2017
In
R/SPECIAL CIVIL APPLICATION NO. 360 of 2010

With

CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In
R/LETTERS PATENT APPEAL NO. 1031 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE VINEET KOTHARI

and

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**Yes**
2	To be referred to the Reporter or not ?	**Yes**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**Yes**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**Yes**

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1. COLLECTOR OF STAMP

2. STAMP DUTY CONTROL REVENUE OFFICER

3. STATE OF GUJARAT

Versus

TULSI RICE AND PULSE MILLS THROUGH PARTNER

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Appearance:

MR K.M. ANTANI, Assistant Government Pleader for Appellant Nos. 1, 2 & 3

MR D.J. BHATT, counsel for Respondent No. 1

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CORAM: **HONOURABLE DR. JUSTICE VINEET KOTHARI**

and

HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 22/03/2021

ORAL JUDGMENT

(PER : HONOURABLE DR. JUSTICE VINEET KOTHARI)

1. The State of Gujarat has filed present Letters Patent Appeal against the Judgment and Order dated **18.10.2016** passed by the learned Single Judge of this Court (Coram: A.J. Desai, J.), allowing the writ petition filed by the Respondent – **M/s. Tulsi Rice and Pulse Mills vs. Collector of Stamp** and holding that on the Document in question which was described as Deed of Assignment dated **5.8.2000**, the stamp duty could not be demanded by the Stamp Authorities in view of the Full Bench Decision of the Gujarat High Court in the case of ***Velo Industries vs. Collector, Bhavnagar [1971 ITR 291]***. Mr.K.M. Antani, learned Assistant Government Pleader for the Appellate – State submitted that the Document dated **5.8.2000** clearly spelled that one of the seven partners – **Dharmendrasing Dajibhai Gohil** assigned his interest in the leasehold land leased for 99 years by GIDC to the Partnership Firm – **M/s. Tulsi Rice and Pulse Mills** in favour of the continuing six partners and therefore, the

assignment amounted to 'transfer' as defined in the Stamp Law and the Stamp Authority was justified in levying the stamp duty vide order dated **16.4.2008**.

2. The said order dated **16.4.2008** was earlier set aside in the writ petition filed by the Petitioner by the learned Single Judge of this Court in Special Civil Application No.**25057 of 2006** – **Tulsi Rice and Pulse Mills vs. Deputy Collector**, decided on **22.11.2007** and the said Deputy Collector was directed to decide the case afresh, upon which again the said Authority decided on **31.7.2009** again levying the stamp duty on the said Partnership Firm, aggrieved by which the said Partnership Firm again approached this Court by way of Special Civil Application No.**360 of 2010** which came to be allowed by the learned Single Judge by the order impugned before us dated **18.10.2016**, following the Full Bench Decision of this Court in the case of ***Velo Industries (supra)***.

3. Learned Assistant Government Pleader Mr.K.M. Antani relied upon the decision of the Hon'ble Supreme Court in the case of ***Thayyil Mammo & Anr. vs. Kottiath Rmunni & Ors. [AIR 1966 SC 337]***, more particularly in para 9 of the said judgment, wherein the judgment of **Maclean, C.J.** in the case of ***Hemendra***

Nath Mukerji vs. Kumar Nath Roy [12 Cal WN 478] is referred, wherein the said English Judge held that where by a registered deed called a Deed of Disclaimer the executants relinquished all their right, title and interest and claim in the properties in favour of the releasee upon the condition that the releasee would discharge certain debts and the executants would be under no liability to pay those debts, it was observed that though the deed was stamped only as a release and not with *ad valorem* stamp, **Lord Maclean, C. J.** held that on its true construction, it was a transfer. This reliance placed by learned Assistant Government Pleader, with great respect, is misplaced as we will discuss the same hereinbelow.

4. *Per contra*, Mr. D.J. Bhatt, learned counsel for the Respondent submitted and relied upon the Full Bench Decision of the Gujarat High Court in the case of ***Velo Industries (supra)***, in which the Full Bench of this Court held as under:

> "4. *The charging section in the Act is section 3 which provides, inter alia, that, subject to the provisions of the Act and the exemptions contained in Schedule I, every instrument mentioned in that Schedule, which is executed in the State on or after the date of the commencement of the Act, shall be chargeable with*

duty of the amount indicated in that Schedule as the proper duty for the instrument. Article 25 of Schedule I prescribes the amount of duty for "conveyance". It consists of two clauses : (a) and (b). It is not material for our purpose to notice the difference between the two classes since the common requirement in both clauses is that the instrument must be a conveyance and the only question before us is whether the instrument in the present case could be said to be a conveyance. Now, conveyance is defined in section 2(g) to include a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. ***The argument of the revenue was that the present instrument was a conveyance on sale since it transferred the interest of the retiring partners in the partnership assets to the continuing partners for a sum of money and the transaction, therefore, satisfied the essential elements of a sale****. This argument was sought to be supported by reference to a recent Full Bench decision of the Mysore High Court in Venkatachalapathi v. State.* ***But we do not think the argument is well-founded. It ignores the true nature of the transaction embodied in the instrument****. We have already set out the relevant provisions of the instrument and it is clear from those provisions that the* ***instrument is nothing but a simple deed of retirement*** *recording the terms and conditions on which three partners retired from*

the firm. On retirement, the ***three partners undoubtedly ceased to have interest in the partnership assets*** *and the partnership assets continued to belong to the firm consisting of the continuing partners,* ***but there was no transfer of interest from the retiring partners to the continuing partners in consideration of a sum of money. The retiring partners merely took money representing their respective shares*** *in the partnership and went out of the firm. This position becomes very clear if we consider what is the* ***true nature of the interest of a partner in a partnership and what happens when a partner retires from the firm****. The following statement of the law is to be found in Lindley on Partnership, twelfth edition, at page 375, where the learned author describes the nature of the share of a partner in a partnership:*

> *"What is meant by the share of a partner is his proportion of the partnership assets they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives, or to a legatee of his share;..... and which on his bankruptcy passes to his trustee."*

5. He also relied upon the Supreme Court Decision in the case of ***Commissioner of Income-tax, Madhya Pradesh, Nagpur and Bhandara vs. Dewas Cine Corporation [AIR 1968 SC 676]***, in which also the Hon'ble Supreme Court dealing with a case of retirement of partner from a partnership firm under provisions of the Income Tax Act read with provisions of the Partnership Act, 1932, held that upon such retirement Section 48 of the Partnership Act provides for the mode of settlement of accounts between the partners. It prescribes the sequence in which the various outgoing are to be applied and the residue remaining is to be divided between the partners. The distribution of surplus is for the purpose of adjustment of the rights of the partners in the assets of the partnership; it does not amount to transfer of assets. Para 4 of the said decision is quoted below, for ready reference:

> *"4. Under the Partnership Act, 1932, property which is brought into the partnership by the partners when it is formed or which may be acquired in the course of the business becomes the property of the partnership and a partner is, subject to any special agreement between the partners, entitled upon dissolution to a share in the money representing the value of the property. When the two partners brought in the theatres of their respective ownership into the partnership, the theatres* ***must be deemed to have become the property of the***

***partnership**. Under Section 46 of the Partnership Act, 1932, on the dissolution of-the firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.* ***Section 48 of the Partnership Act provides for the mode of settlement of accounts between the partners**. It prescribes the sequence in which the various outgoing are to be applied and the residue remaining is to be divided between the partners. The distribution of surplus is for the purpose of adjustment of the rights of the partners in the assets of the partnership;* ***it does not amount to transfer of assets**."*

6. It was similarly held in the case of ***Addanki Narayanappa & Anr. vs. Bhaskara Krishnappa (Dead) and thereafter his heirs & Ors. [AIR 1966 SC 1300]*** that document recording the previous fact of dissolution of partnership and relinquishment of interest of partner in partnership assets by way of adjustment is not compulsorily registrable document and therefore does not require stamp duty to be paid. The relevant extract of the said decision is quoted below, for ready reference:

"4. We have quoted extensively from this decision

because of the argument that the decision in Rodriguez's case 1919 AC 59 would have been otherwise but for S. 22 of the English Act. Adverting to this Lindley has said:

> *"From the **principle that a share of a partner is nothing more than his proportion of the partnership assets** after they have been turned into money and applied in liquidation of the partnership, whether its property consists of land or not, must, as between the real and personal representatives of a deceased partner, be deemed to be personal and not real estate, unless indeed such conversion is inconsistent with the agreement between the parties. Although the decisions upon this point were conflicting, the authorities which were in favour of the foregoing conclusion certainly preponderated over the others, and all doubt upon the point has been removed by the Partnership Act, 1890, which contains the following section:*
>
> *22. Where land or any heritable interest therein has become partnership, property it shall, unless the contrary intention appears, be treated as between the. partners (including the representative of a deceased partner), and also as between the*

> *heirs of a deceased partner and his executors or administrators, as personal or movable and not real or heritable estate."*

Even in a still earlier case ***Foster v. Hale (1800) 5 Ves 308*** *a person attempted to obtain an account of the profits of a colliery on the ground that it was partnership property and it was objected that there was no signed writing, such as the Statute of Frauds required. Dealing with it the* ***Lord Chancellor*** *observed:*

> *"That was not the question: it was whether there was a partnership. The subject being an agreement for land, the question then is whether there was a resulting trust for that partnership by operation of law. The question of partnership must be tried as a fact, and as if there was an issue upon it. If by facts and circumstances it is established as a fact that these persons were partners in the colliery, in which land was necessary to carry on the trade, the lease goes as an incident. The partnership being established by evidence upon which a partnership may be found, the premises necessary for the purposes of that partnership are by operation of law hold for the purposes of that partnership."*

It is pointed out by Lindley that this principle is carried to its extreme limit by Vice-Chancellor Wigram in ***Dale v. Hamilton(1846) 5 Hare 369*** *on appeal to* ***(1847) 2 Ph 266****. Even so, it is pointed out that it must be treated as a binding authority in the absence of any decision of the Court of Appeal to the contrary.*

5. 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 trading asset 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 s. 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. ...”*

7. We have heard learned counsel at length and perused the aforesaid judgments and order of the learned Single Judge impugned before us.

8. We are of the clear opinion that the Document in question (Draft) Registered Deed of Assignment dated **5.8.2000**, executed in the present case, is, in effect, a retirement of one of the partners of the Partnership Firm – **M/s. Tulsi Rice and Pulse Mills** namely, **Dharmendrasing Dajibhai Gohil** who, upon his retirement from the said Firm, released his right in the leasehold land in question leased by GIDC in favour of the Firm for 99 years, in favour of the continuing six partners and received sum of Rs.30,000/- for the same. Even though the said Document is titled as Deed of Assignment, it could not be an assignment or transfer of asset or property by one of the partners of the

Partnership Firm namely, **Dharmendrasing Dajibhai Gohil** as he had no exclusive right, title or interest in the said leasehold land of the Partnership Firm which was on 99 years' lease given by GIDC to the said Partnership Firm. The case under this Document would squarely fall within the ambit and scope of Section 48 of the Partnership Act, 1932 which provides for the mode of settlement of accounts between the partners. It appears that the Stamp Authority in the present case was misled by title of the Document ignoring the actual event or intention of the Document, by which seven continuing partners assigned the right, title or interest in favour of six continuing partners, except the seventh and the outgoing retiring partner **Dharmendrasing Dajibhai Gohil** and the same was construed as a 'transfer' or 'assignment' by outgoing partner in favour of six continuing partners.

9. In our considered opinion, the matter is squarely covered by the afore-cited Supreme Court Decisions and Full Bench Decision of this Court and the reliance placed by learned Assistant Government Pleader on old Calcutta case cited above, is not applicable to the facts of the present case inasmuch as it was a case of deed of disclaimer by the executants who relinquished

all their right, title and interest and claim in the properties in favour of the releasee upon the condition that the releasee would discharge certain debts and the executants would be under no liability to pay those debts. These are the not the facts available in the present case and therefore, the judgment in the case of ***Hemendra Nath Mukerji*** relied upon by learned Assistant Government Pleader to support his contention, is distinguishable on facts as well as in law. Therefore, the view taken by the learned Single Judge in the impugned order before us is not adversely affected by the said judgment.

10. On the contrary, the aforesaid Supreme Court Judgments and Full Bench Judgment relied upon by learned counsel for the Respondent cover the case on all fours and therefore, the learned Single Judge was right in taking view and holding that the Document in question will not amount to 'transfer' or assignment by the outgoing partner in favour of the six continuing partners and therefore, no stamp duty will be attracted on lease document.

11. Consequently, there is no merit in the present Appeal filed by the State. The present Letters Patent Appeal, therefore, deserves to be dismissed and the same is accordingly dismissed.

No order as costs.

12. Consequently, the Civil Application stands also dismissed.

(DR. VINEET KOTHARI,J)

(BIREN VAISHNAV, J)

Bharat