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PROCEEDINGS OF THE CHIEF CONTROLLING REVENUE AUTHORITY
& INSPECTOR GENERAL OF REGISTRATION
CHENNAI-600 028

Present: Thiru. S.MURUGAIA, I.A.S.,

D.Dis.No. 1416/P1/2014

Date: 17.9.2014

Sub:	Revision Petition- Document No.P15/2012 of Joint II Sub Registrar office, Chennai Central Revision Petition filed under Section 56(1) of the Indian Stamp Act,1899 - final orders issued - regarding.
Ref:	1. District Registrar, Chennai Central Proceedings No.9686/B1/2013 Dt.27.12.2013 2. Revision Petition dated 9.1.2014 filed by M/s. Work Force represented by its partners Thiru Easwar Janardhanan, Mumbai and Thiru R.Kannan, Chennai - 600 041

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ORDER :

The Revision Petition 2nd cited has been filed before the Chief Controlling Revenue Authority, under Section 56(1) of the Indian Stamp Act 1899, against the order 1st cited, passed by the District Registrar, Chennai Central, thereby demanding payment of deficit stamp duty of Rs. 13,42,895/- together with penalty of Rs.1,105/- in respect of the instrument in question.

2) Facts of the Case :-

Document No.	P15/2012
Office	Joint II SRO Chennai Central
Date of Execution	7.3.2012
Title	SETTLEMENT DEED
Settlors	1. Mr. Easwar Janadhanan S/o Mr. K.S. Janardhanan, 2. Mr. R. Kannan S/o Late. T.M. Ramachandran.
Settlee	Mrs. Lalitha kannan W/o R.Kannan
Stamp Borne by the deed	Rs.10,000 /-

Settlee is the sister of first Settlor and wife of the Second Settlor. As per recitals, the settlors are the only continuing partners and are carrying on the partnership business under the name and style M/s. Work

Force Services. Further, the property comprised in the subject document is in the possession and enjoyment of the said Firm ever since the date of contribution made by M/s. Assess People Pvt. Ltd. towards the contribution of its share capital for the partnership. During the subsistence of the said firm, the settlors are now settling the said property in favour of the settee out of natural love and affection.

3) On examining the subject document the District Registrar has classified the same as a Settlement in favour of non-family member chargeable to stamp duty as prescribed under Article 58(a)(ii) of Indian Stamp Act, 1899 and adduced the following reasons in support of his said decision :-

"The property does not belong to the Settlers. In fact, the property is owned by "Firm". Though settee is related to settlors, she cannot be construed as a relative of the "Firm". Therefore, this document is chargeable to stamp duty as the one applicable for Settlement in favour of non-family member – Article 58(a)(ii) of the said Act."

4) In the revision petition, the order passed by the District Registrar, Chennai Central was challenged on the following grounds :-

a) In a similar case Inspector General of Registration, vide order No.16332/C3/2001 dated 1.10.2002 has held that the connected Settlement deed should be treated as a Settlement in favour of family member.

b) Since all the three parties to the settlement come under the definition of "family" provided under Article 58, as per specific Government orders, the document is correctly stamped and therefore orders may be passed and the document be released without any further levy of stamp duty.

c) The Government in Letter No 7226/J1-99-2 Dated 21.06.1999 and the Government in letter no 4860/J1/98-A dated 01.03.1999 and in Letter no MS 85(CT of Registration Department) dated 10.08.06, have clarified that the term "brothers and sisters" come under the definition in the explanation to Article 58 of the Stamp Act stating that the term

family in explanatory note under Article 58(a)(i) was intended to benefit the family members and therefore included brothers and sisters and the same decision of the Government has been reiterated in its letter No. 85, Commercial Taxes and Registration Department dated 10.08.2006, the latter order clarifies that the order dated 21.06.1999 which lays down that stamp concession allowed to partition deeds (irrespective of the nature of property transacted) will apply to release and settlements. Whereas we request you to examine our appeal and to pass similar orders.

6) During the course of personal enquiry conducted on 10.9.2014, the counsel of the revision petitioners appeared before me and submitted written statement, wherein the following arguments were advanced :-

i) In the final analysis the judgement in W.P.No.21781 of 2011 expressed the decision that a partnership property cannot be settled even in favour of a member falling under the definition of family availing stamp concession under Article 58 (a)(i). We have elaborately explained that the decision is not sustainable in the face of numerous decisions of Supreme Court and High Courts, which had held that partnership was not a legal entity and that the property was enjoyed by the partners by "Tenancy in common."

ii) Article 55D dealing with releases among partners prescribes two rates of stamp duty for documents by partners, who are family members at lesser rate and partners who are not family members a higher rate. The article does not make any stipulation regarding partnership property or otherwise.

iii) A careful study of both these articles reveals that the rate fixed for documents among family members is high. Both do not speak about the nature of property in allowing different rates of stamp duty. The criterion is the relationship of the executant and claimants. We submit that the suit document is legally drawn and correctly stamped.

As elaborately explained, a partnership is not a legal entity, it cannot of its own take part in any transaction. (AIR 1964-Kerala144).

iv) The property of a partnership is solely the asset of the partners. They have absolute right over it to transact in any way they please, if all the partners agree even during the currency of the firm.

a) Choturam Vs Ganesh -3 Bom L.R.132

b) Chief Controlling Revenue Authority Vs Abdullah -A.I.R.1970 Mad-3 F.B

c) Hiralal Navalram WRC(1908)Ilr -32 Bom 505 (Full Bench)

d) Madras Chief Controlling Revenue Authority has decided in many such documents that partners are entitled to settle partnership properties as per their discretion

v) All Chief Controlling Revenue Authority decisions were based on Supreme Court and High Court orders. We have quoted a few cases in our representation.

7)The contents of the revision petition, arguments advanced by the counsel of revision petitioners during the course of personal enquiry, copy of document relating to this case, and the reasons adduced by the District Registrar towards levy of deficit duty have been carefully examined by me.

a)In a similar case, where a partner settled a portion of his right, title and interest in respect of an item of immovable property owned by a Firm to and in favour of his family member, The Hon'ble High Court, Madras in the judgment dated 30.9.2011 delivered in W.P.No.21871/2008 (S.A. Kovil Nadar -vs- Inspector General of Registration) have held as under :-

"The language of Section 2(24)(b) is clear as it uses the expression "property of the settlor". Therefore, to bring a document within the definition of Section 2(24) (b) of the Act, it is essential that the property shall be the property of the settlor and in my view an absolute property of the settlor."

"However it was seen that the sale deed was executed in the name of the firm represented by its four partners and undoubtedly the distribution of the partnership asset shall be in accordance with the terms contained in the partnership agreement and the provisions of the Indian Partnership Act. Therefore, the claim made by the petitioner that he is the absolute owner of 1/4th undivided share in the property in question is factually incorrect."

In the light of the above verdict, a share in the property belonging to a partnership firm cannot be regarded as the absolute property of a partner unless and until severance of interest takes place among the existing partners through an instrument.

b) Further, the Hon'ble Allahabad High Court in the case law Ramnarain and Brothers – Vs Commissioner of Income Tax (1969 73 ITR 423 All) drew the Contrast between the property of the Firm and the property of an individual and have held as Under:-

"Para 8: As already noted, the property in question was acquired by the firm through Sri Ram Narain, one of its seven partners, and the sum of Rs. 27,000/- being the price of the property was paid out of the funds of the firm. It was contended on behalf of the assessee that, in view of the decision of the Supreme Court in Dulichand Laxminarayan v. Commissioner of Income-tax, [1956] 29 I.T.R. 535 (S.C.), it must be held that a firm is not a legal entity but a compendious name for the partners who constitute it and, therefore, it is the partners who are really the owners of the property. The firm, it was contended, is not capable of owning property, movable or immovable. The contention that a firm cannot own property, even for the purpose of its business, is hardly tenable. Such ownership is clearly postulated in Section 14 of the Indian Partnership Act 1932, which runs thus:

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm or acquired, by purchase or otherwise, by or for the firm or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

"Para 9: Section 15 of the said Act, however, circumscribes the purpose for which the property of the firm can be used. This section says that such property can be used only for the purpose of its business and no other. It states: "15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business."

"Para 10: The law in England is also the same."

"Para 11: The provisions of sections 14 and 15 of the Indian Partnership Act relating to partnership property are almost identical in terms with those of Sections 20(1) and Section 21 of the English Partnership Act, 1890. It is clear that, although, as laid down by the Supreme Court in the case of Dulichand Laxminarayan v. Commissioner of Income-tax, a firm is not, strictly speaking, a juristic entity, both the English as well as the Indian law relating to partnership concedes to the firm a degree of personality and it is deemed to be capable of owning and holding property, both movable and immovable."

"Para 12: Now, the material question for decision in this case is whether immovable property of "the firm can be transferred by the partners and, if so, when such transfer is made by the partners in favour of themselves, whether it can be effected by adjustment of entries in the books of the firm relating to the investments made on the property. The Indian Partnership Act lays down that a partner is not authorised, by reason of his implied authority, as an agent of the firm, to transfer immovable property of the firm in the absence of any usage or custom of trade to the contrary, Section 19 runs as follows :

19. (1) Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his ' implied authority '.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to ...

(g) transfer immovable property belonging to the firm, or ..."

"Para 13: Sub-section (1) lays down that a partner has the implied authority, subject to the provisions of Section 22, to do any act to carry on in the usual way, business of the kind carried on by the firm. Sub-section (2) imposes certain limitations on the implied authority of a partner. In particular, Clause (g) of Sub-section (2) provides that such implied authority of a partner does not empower him to transfer immovable property belonging to the firm, in the absence of any usage or custom of trade to the contrary. This clause clearly postulates that where there is no usage or custom of trade to the contrary, a partner has the implied authority to transfer immovable property of the firm. It is indisputable that all the partners, conjointly, can transfer immovable property belonging to the firm even though any one of the partners, individually, may not be competent to do so. Such transfer must, as laid down in Sub-section (1), be subject to the provisions of Section 22 which runs as follows: " 22. Mode of doing act to bind firm.--In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm."

"Para 14: This section contemplates that, in order to bind the firm, an act may be done or an instrument may be executed in the firm name, by a partner or partners, on behalf of the firm, expressing or implying an intention to bind the firm. Quite obviously, an instrument will have to be executed by a partner or partners where such execution is necessary in law. Under Section 54 of the Transfer of Property Act, transfer of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. It is manifest, therefore, that if tangible immovable property belonging to the firm worth more than rupees one hundred has to be transferred, the transfer can be effected only by a registered instrument."

"Para 15: In England, Section 22 of the Partnership Act, 1890, introduces a legal fiction whereby partnership realty is to be treated as movable property as between the partners inter se. That section is quoted below : " 22. Conversion into personal estate of land held as partnership property.--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 representatives 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."

"Para 16: In spite of the provisions of this section, it has been held that when partnership property is converted into separate property of the partners a deed is necessary where the property consists of land.

Lindley observed as follows in his book on Partnership (12th edition, at page 370): " It is competent for partners by mutual agreement amongst themselves to convert that which was partnership property into the separate property of an individual, or vice versa. And the nature of the property may be thus altered by an agreement to that effect : for neither a deed nor (save where the property consists of land) even a writing is absolutely necessary;..."

"Para 17: At pages 394-395 of the same treatise the learned author deals with the manner in which the share of a partner in partnership can be transferred:

" Form of transfer.--In so far as the share of a partner consists of a right, on dissolution, to a proportionate part of all the assets, the nature of the assets must be considered and the transfer effected in such form as the nature of the assets requires. Where the assets consist of chattels and legal (as opposed to equitable) chooses-in-action for which no special form is prescribed by statute, the transfer may be effected informally by word of mouth. Where, however, such assets include an equitable interest in land or, it seems, in personalty, then by Section 53(1)(c) of the Law of Property Act, 1925, dispositions of such an equitable interest must be in writing signed by the person disposing of the same. Where land forms part of the partnership assets, the beneficial interest of the partners therein will, in all cases, consist of an equitable interest under a trust for sale, but since such an interest is an 'equitable interest' for the purposes of Section 53(1)(c) of the Law of Property Act, 1925, dispositions thereof must be in writing. Notwithstanding Section 22 of the Partnership Act, 1890, it is conceived that the position is as stated above whether the transfer is to a stranger or to another partner."

"Para 18: We have underlined the above few lines for the sake of emphasis."

"Para 19: It would thus appear that in England transfer of the share of a partner who has right, on dissolution of the partnership, to a proportionate part of the assets thereof must be effected in such form as the nature of the assets requires. If the assets consist entirely of chattels or movable property, the transfer may be effected orally but where such assets include immovable property or land, the transfer may be effected only by a written instrument. When, therefore, a partner transfers his share in a partnership of which the assets include land, it is necessary to execute a deed of conveyance in spite of the clear provision of Section 22, quoted above, under which the partnership realty is to be treated as personality or movable estate as between the partners themselves. It follows, therefore, that when a

particular item of immovable property, being part of the partnership assets, is sought by the partners to be converted into their personal property such conversion may be effected only by means of a written instrument according to the English authorities cited by Lindley."

"Para 20: As already noted, there is no Indian authority bearing directly on the question of such conversion ; at least, none has been cited at the Bar. The provisions of the Indian Partnership Act, 1932, are based mainly on the English Partnership Act, 1890, and the wordings of the principal sections of the English enactment have been maintained in the Indian enactment without substantial change. Prior to the enactment of the Indian Partner-ship Act, 1932, the law relating to partnership was contained in Chapter XI of the Indian Contract Act, 1872, It would appear from the report of the Special Committee appointed in 1930 by the Government of India to consider the Bill to define or amend the law relating to partnership in India, that it was considered expedient to incorporate the language of the English enactment in the important provisions of the Indian Partnership Act with a view to " attract to difficult cases in India the benefits of English judicial experience. " It is well settled that where the basis of the Indian legislation on a particular subject is the English law, the courts would be justified in seeking guidance and help from the decision of the English courts. In State of Punjab v. Sodhi Sukhdeo Singh, A.I.R. 1961 S.C. 493, the Supreme Court has observed that in such cases the correct way of looking at the Indian statute is to interpret it in the manner which is in accord with the English law."

"Para 21: If the principles of the English law are to be followed it would appear that the partners of a firm can convert immovable property belonging to the firm into their personal property only by means of an instrument in writing. It may be mentioned here that there is no provision in the Indian Partnership Act corresponding to Section 22 of the English Partnership Act, 1890. That being so the legal fiction which permits partnership realty being treated as personality as between partners infer se is not available here and the need for execution of an instrument of conveyance as contemplated in Section 22 of the Indian Partnership Act, quoted above, becomes imperative. In point of fact, conversion of firm's property into personal property of the partners involves a declaration that the interest of the firm in the property is extinguished and that thenceforward the property would belong to the partners in their individual capacity according to their shares in the firm. Such a declaration falls within the purview of Section 17(1)(b) of the Indian Registration Act and the instrument of conversion must be registered....."

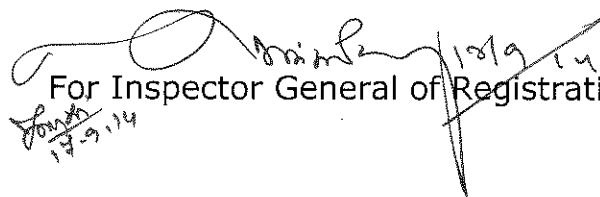
c) The above verdict undoubtedly makes it clear that when partnership property is covered into separate property of the partners, execution of a deed is necessary amongst such partners, where the property consists of land. Hence, in the absence of such deed, an interest in the property held by the partnership can never be regarded as absolute property of a partner.

d) In the light of the above reasons, this document has to be treated only as a Settlement in favour of non – family member, attracting stamp duty as prescribed under Article 58(a)(ii) of Schedule I to the Indian Stamp Act, 1899.

Based on the above decision, by upholding the order of District Registrar, Chennai(Central), the revision petition is hereby dismissed.

Sdxxxxx S. Murugaia/17.9.2014
Inspector General of Registration-cum
Chief Controlling Revenue Authority

/By order/


For Inspector General of Registration
17.9.14

To

1. Mr. R. Kannan
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Copy to : District Registrar, Chennai Central (along with original file)
" : P2-Stock file.