M. P. Davis

Vs

Commissioner of Agricultural Income-Tax

Civil Appeal No. 387 of 1957

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

24.11.58

JUDGMENT

GAJENDRAGADKAR, J. -

This is an appeal by special leave against the decision of the High Court of Mysore holding that the document relied upon by the appellant does not create a relation of partnership between the appellant, M. P. Davis and his brother, P. W. Davis. It appears that prior to the assessment year 1952-53 the appellant who was the registered owner of the Kaimabetta Coffee Estate was assessed as an individual; but for the assessment year 1952-53 he claimed a change of status and pleaded that he and his brother had agreed to become partners under a partnership deed (exhibit 12) and asked for the registration of the said firm under section 26 of the Coorg Agricultural Income-tax Act (1 of 1951). According to the appellant the partnership in question had been constituted for the purposes inter alia of the joint working of the said estate as also for transacting generally the business or business of coffee, citrus and pepper and other businesses as specified in the document. The relevant provisions of the Coorg Act correspond to the provisions of the Indian Income-tax Act; section 26 of the said Act provides for the registration of firms for the purpose of the Act. The Agricultural Income-tax Officer, Coorg, refused to register the firm on the ground that the document did not created the relationship of partners between the two executants of the documents and that the appellant's brother was no more than his servant under the said document. This order was confirmed by the Deputy Commissioner of Agricultural Income-tax, Coorg. The appellant then applied to the Commissioner of Agricultural Income-tax, Coorg, under section 54(2) of the Act to draw up and refer his case to the Mysore High Court. The question thus referred to the High Court was : "Whether, upon the materials produced by the assessee, the Agricultural Income-tax Officer is justified in rejecting the deed of partnership as not creating the relation of partnership ?" This question has been answered by the High Court against the appellant. The appellant then applied for and obtained special leave to appeal to this court. That is how the appeal has been admitted and the only question which we have to decide is whether the document has created a partnership.

It is necessary to refer to certain facts before considering the terms of the purported partnership deed for as provided in section 6 of the Partnership Act, "In determining whether a group of persons is or is not a firm.... regard shall be had to the real relation between the parties, as shown by all relevant facts taken together." Now it appears that before the deed was executed the appellant's estate was being managed by his brother a his agent; and this was on the basis of principal and agent or master and servant. In the assessment proceedings under the Coorg Agricultural Income-tax Act for the year 1951-52, P. W. Davis appeared as the agent of the appellant. Similarly, for the assessment year 1952-53, a claim for change of status was made by P. W. Davis who produced the partnership did. That is why the question which the tax authorities considered was whether the execution of the

document really brought about any change in the relationship between the two brothers. They held that despite the document the relations between the two brothers continued the same as before and the High Court has agreed with this view. This view receives some support from two other facts which have been found by the tax authorities. Even after change of status was pleaded for the assessment year 1952-53, " the appellant claims loss of the previous year and full expenses of the accounting year against what he actually received during the accounting year 1951-52" and so far ask the books of account were concerned "they did not show change in the management of the estate in spire of the agreement". These are findings of fact and though, in the absence of the account books and the other relevant material, it would be difficult for us to assess precisely the full significance of these findings, it cannot be denied that they are relevant for the purpose of ascertaining the real intention of the parties and their effect would be to a large extent against the appellant's case and in favour of the view taken by the High Court.

In the light of the facts stated in the preceding paragraph we proceed to examine the document. It is naturally described as an agreement of partnership, but it does not in our opinion contain any decisive term to show that the relationship created by it was one of partnership. The capital of the firm has been stated to be the Kaimabetta Estate, the property of the appellant. But express provision has been made in it that the appellant's brother, the other purported partner, would not be entitled to contribute anything towards capital and that he would have no power to charge or encumber or, in any other manner, deal with, that estate. It has been provided that on dissolution, the capital, that is, the estate, would go back to the appellant. This would indicate that it was not intended that the appellant's brother would have any interest in the estate, and the use of the word "capital" is not, in our opinion, enough on the facts of this case to create an interest in the estate in the appellant's brother. Then again the document provides that the appellant's brother would employ himself diligently in carrying on the business. No provision has been made whether the appellant himself would be bound to do any work for to work or not to work, as he liked. This would indicate that the appellant was the master and his brother, the servant. The same inference follows from another term in the deed which requires the appellant's brother to maintain the accounts and expressly gives the appellant a privilege to look into them and ask questions relating thereto. The appellant's brother is specifically prevented from advancing any moneys to the partnership though a partner would normally have the right to advance money to the partnership if the situation required it. Another very important term is that which provides that the appellant's brother would submit the annual estimates of expenditure to be incurred in the business and that the appellant would pass it. This would show that the control was in the appellant and the brother had no real hand in the management of the business. We think that these provisions taken along with the conduct of the parties to the instrument earlier mentioned, clearly indicate that it was not the intention of the parties to bring about the relationship of partners but only to continue under the cloak of a partnership the pre-existing and real relationship, namely, that between a master and his servant. The powers that are given by the document to the appellant's brother are such as a master would give to his servant in connection with his business or a principal to his agent. The remuneration provided for the appellant's brother was out of the profits and none was payable if there was a loss and the High Court was wrong in thinking that the appellant's brother was entitled to his remuneration whether there was profit or not. But as stated in section 6 of the Act earlier mentioned, the sharing of profits or the provision for payment of remuneration contingent upon the making of profits or varying with the profits, does not itself create a partnership. It is possible to provide for remuneration of a servant contingent upon the making of, and varying with profits. Then, again the instrument makes no provision as to how losses are to be dealt with, and the complicated manner in which the profits are to be shared under its terms would seem to make it impossible for the losses to

be shared in the same manner. If it was intended to create a real partnership, one would have thought that some provision would have been made for the sharing of the loss, especially as the share of the profit going to the appellant is immensely large compared with the share going to his brother. In our view, taking all the circumstances of the case, especially the conduct of the parties, together with the important terms of the document, it cannot be said that it was intended to bring about the relation of partnership.

Mr. Rajagopala Sastri has referred us to some decisions in support of his argument that even if some special powers are conferred on one of the partners that does not necessarily negative the existence of the relationship of partnership of partners between them. We would, therefore, refer briefly to these decisions. In In re Ambalal Sarabhai the High Court of Bombay has held "that the fact that the control of the business is kept with one partner and that he has certain extra rights as a major partner does not in any sense negative the partnership according to law. It is open to two partners to allow the business of partnership to be conducted by one of the partners." This was a case in which Ambalal Sarabhai and his wife had agreed to become partners; and the case of the Department was that the agreement between the parties did not satisfy the requirements of section 239 of the Indian Contract Act. The court rejected this contention though it observed that the document produced by the parties was as unusual document between husband and wife and that it was difficult to accept the idea that they may have become the partners in law. Even so, on the construction of the relevant clauses of the document, the court upheld the assessee's plea. Similarly, in Raghunandan Nanu Kothare v. Hormasjee Bezonjee Bamjee, after construing an agreement of partnership between two solicitors the High Court reversed the trial court's finding that the defendant was not a partner but was an agent of the plaintiff, and came to the conclusion that the agreement made the defendant a partner of the plaintiff. Under this agreement, in lieu of his share of profits the defendant was entitled to receive Rs. 500 per month and was not to be responsible for any losses or liabilities of the firm. The main reason which appears to have weighed with the High Court in upholding the plea of partnership was that it was "almost absurd to think that two experienced solicitors of our High Court should enter into a formal agreement to become partners, and then so far as the outside world goes and so far as the correspondence between them goes, act as partners for some six years and give the usual notices of dissolution and yet be told at the end that they were entirely mistaken as to their true legal position and that they did not know the elementary principles which go to constitute a partnership, although that was a matter on which they would be presumably advising their clients frequently." It was thus an extreme case where the status and profession of the parties and their conduct spread over a long period were wholly inconsistent with the plea raised by the defendant that he was not a partner of the plaintiff. Besides, the usefulness of precedents which only construe documents is naturally limited.

One of the reasons given by the High Court in support of its conclusion is that the junior partner had no proprietary interest in the estate which has been contributed by the senior partner as capital of the firm. Mr. Rajagopala Sastri challenges the correctness of this view. He contends that the estate belonging to the senior partner has become the capital of the firm and whatever liabilities can be enforced against the capital of a firm would be enforceable in law against the asset in question. In support of this contention, reference has been made to the decision of Robinson v. Ashton where it has been held that in the absence of any special agreement the mill which belonged to R, one of the partners, and the value of which was credited in the books of the partnership as capital of the firm was an asset of the partnership. But the main point which impressed the High Court was the distinctly inferior position assigned to the junior partner in the management of the estate which has been contributed by the senior partner as the capital of the firm; and that, in our opinion, lends strong support to the final conclusion of the High Court. We would also point out, as we have earlier

stated, that the Kaimabetta Estate never became the capital of the partnership.

We have carefully considered all the relevant clauses in the agreement and we are unable to hold that the High Court was in error in holding that the two brothers did not become partners in the true legal sense of the term.

The result is that the appeal fails and must be dismissed. There will be no order as to costs.

Appeal dismissed. Appeal dismissed.

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