

SUPREME COURT OF INDIA

S.N.Mathur

Vs.

Board of Revenue

C.A.No.4916 of 2003

(R.V.Raveendran and J M Panchal JJ.)

18.02.2009

JUDGMENT

R.V.Raveendran, J.

This appeal relates to the stamp duty payable in regard to a deed of trust dated 9.8.1991 executed by the appellant and his two brothers. The executants paid a stamp duty of Rs. 1,325/ thereon, under Article 64 of Schedule I-B to the *Indian Stamp Act, 1899* as amended in U.P. ('Act' for short). The registering authority being of the view that it was not duly stamped, impounded it and referred it to the adjudicating authority. The said Authority made an order that the deed also answered the definition of "settlement" as defined under section 2(24) of the Act, and therefore stamp duty was payable under Article 58 of Schedule I-B of the Act on the declared value of the trust property (Rs.2,10,000/-). He directed recovery of deficit stamp duty of Rs.10,225/- and an equal amount as penalty. The said order was challenged by the appellant by filing a revision before the Chief Controller (Board of Revenue), Allahabad. The revisional authority dismissed the revision by order dated 21.5.1996. The appellant challenged the said order in Writ Petition No.54 of 2002. The High Court dismissed the writ petition holding that the authority under the Stamp Act did not commit any error in construing the instrument to be a "settlement" as defined under section 2(24) of the Act and that stamp duty was payable under Article 58. The said order is challenged in this appeal.

2. The title part of the instrument reads thus : "This deed of Private Trust is made on 9.8.1991 by (names of three Donor Trustees) in order to preserve, protect and manage the property known as 'Mathur Atithi Shala' situated at Chitrakoot, on the following terms and conditions : " The preamble to the instrument recites that the said property was the self-acquired property of their father and he had constructed the Atithi Shala therein for housing the pilgrims, and the said property is being used for the said purpose ever since then; that they (the three donor Trustees) had inherited the said property from their father and they possess and own the said 'Mathur Atithi Shala' and have full disposing power; that as they were no longer able to manage the property, they decided to form a private trust consisting of the member of the family to look after the said property and have accordingly created the

said trust to be known as 'Shri Jamuna Janki Mathur Trust' for the due preservation, protection and management of the said property. The operative portion of the said deed states:

"The Donor Trustees in pursuance of their wish and desire as aforesaid do hereby grant, convey and transfer all that property i.e. 'Mathur Atithishala' described in the Schedule hereto, unto and to the use of the Trustees to HAVE AND TO HOLD the same in trust for the said donor trustees subject to such powers and limitations as are hereinafter specified. It is made clear that the Trust shall own, possess and manage the Trust Property once and for all."

The deed thereafter proceeded to set down the objects of the Trust which are charitable and religious in nature. It also constituted a Board of Trustees consisting of the three donors and two other family members and an Executive Committee consisting of ten members. It also provided the eligibility criteria for being appointed as a trustee, the term of office of the trustees, the circumstances in which the trustees will cease to hold the office and the powers and duties of the trustees.

3. The appellant submitted that the terms of the instrument clearly make out that it was a deed of trust and not a deed of settlement. Reliance is placed on three Full Bench decisions, namely, *Narendra Singh Ju Deo v. Junior Secretary, Board of Revenue*¹, *The Chief Controlling Revenue Authority, Board of Revenue v. T Ranganathan Pillai*² and *Sardar Deorao Jadhav v. State of Madhya Pradesh*³.

4. On the other hand, learned counsel for the State and the authorities under the Stamp Act (respondents 1 to 4) submitted that the instrument in question came within two descriptions in Schedule I-B to the Act, that is "Deed of Settlement" chargeable under Article 58 and "Deed of Trust" chargeable under Article 64; that where an instrument comes within more than one description in Schedule I-B, and the duties chargeable thereunder are different, the instrument should be charged with the highest of such duties; and that as the stamp duty under Article 58 was higher than the stamp duty payable under Article 64, the instrument was chargeable with the stamp duty provided under Article 58. In support of his contention that the instrument also came within the definition of "settlement" as defined under section 2(24) of the Act, he relied upon two full Bench judgments of *Allahabad and Delhi High Courts in Board of Revenue, U.P. v. Sridhar, Advocate*⁴ and *The Chief Controlling Revenue Authority v. Banarsi Dass Ahluwalia*⁵.

5. The question for consideration is not whether the instrument is a deed of trust or not. The fact that the instrument falls within the description of Trust deed is not in doubt. In fact that is not challenged by the State. The question is whether the instrument answers the definition of 'settlement' and therefore would also come under the description of 'settlement deed' in Article 58. The appellant contends that it will not, and for that purpose relies on the recitals of the trust deed that the Trust is created for preserving, protecting and managing the trust property known as 'Mathur Atithishala' in Chitrakoot. The state contends that it will, and for that purpose relies on the operative portion of the instrument which shows that the three

owners conveyed and transferred their property to the Trustees, to have and to hold the same and to own, possess and manage it as Trust Property. On the contentions raised, the question that arises for consideration is whether the instrument in question which answers the description of 'Trust deed', will also answer the description of "settlement deed", and if so whether stamp duty is payable on the instrument, under Article 58 of Schedule I-B to the Act.

6. Reference to the relevant provisions of the *Indian Stamp Act, 1899* (as amended in Uttar Pradesh) will be necessary to answer the question raised. Section 2(24) of the Act defines settlement thus :

"settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property made- (a) in consideration of marriage, (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or (c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition;"

Section 3 provides that subject to the provisions of the Act and the exemptions contained in Schedule I, every instrument mentioned in the Schedule to the Act shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor. Section 6 provides that subject to the provisions of section 5, an instrument so framed as to come within two or more of the descriptions in Schedule I, (or Schedule IA or IB, as the case may be) shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. Schedule IB (as amended in Uttar Pradesh) enumerates the stamp duty on instruments under the Act in its application to Uttar Pradesh. Relevant portions of Articles 58 and 64 of the said schedule are extracted below :

Description of Instrument	Property Stamp Duty
"58. SETTLEMENT	The same duty as a Bond (No.15) for a sum equal to the amount or value of the property

--A.--Instrument of (including a deed of settled dower).

"64. TRUST--

A.--DECLARATION OF -- of or concerning, any property when made by any writing not being a Will.

(a) where the amount of value does not exceed Rs.10,000; The same duty as on a Bond (No.15).

(b) where such amount exceeds Rupees On ten thousand rupees the duty payable 10,000; under clause (a) and on the remainder, Three rupees for every additional one thousand rupees or part thereof."

7. The principles relating to charging stamp duty are well settled. They are:

“(i) The object of the Stamp Act is generation of revenue. It is therefore a fiscal enactment and has to be interpreted accordingly.

(ii) Stamp duty is levied with reference to the instrument and not in regard to the transaction, unless otherwise specifically provided in the Act.

(iii) Stamp duty is determined with reference to the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument.

(iv) For classification of an instrument, that is to determine whether an instrument comes within a particular description in an article in the Schedule to the Act, the instrument should be read and construed as whole.

(v) Where an instrument falls under two or more descriptions in the Schedule to the Act, the instrument shall be chargeable with only one duty, that is the highest of the duties applicable to the different description. But where an instrument relates to several distinct matters, it shall be chargeable with the aggregate amount of duties to which separate instruments would be chargeable.

Merely because an instrument answers the definition of a trust deed it does not cease to be a settlement deed for the purpose of stamp duty, if it answers the definition of 'settlement' also. It is well settled that all trusts are not settlements, and all settlements are not trusts, but a deed of trust can also be a deed of settlement.”

8. It is evident from the definition of "settlement" in section 2(24) that any non-testamentary disposition in writing, either of moveable or immovable property made for any religious or charitable purpose is a settlement. The definition also makes it clear that even where there is no such disposition in writing, any instrument recording whether by way of declaration of trust or otherwise, the terms of any of such disposition will also be a settlement. It is thus evident that not only instruments which are non-testamentary dispositions of property for any religious or charitable purpose, but also declarations of trust which record the terms of such disposition, are settlements. 'Disposition' is a term of wide import which encompasses any devise or mode by which property can pass and includes giving away or giving up by a person of something which was his own (see : *The Commissioner of Gift Tax Madras vs. N.S. Getty Chettiar*⁶ and *The Collector of Estate Duty Andhra Pradesh vs. Kancharla Kesava Rao*⁷). This Court has also held that the word "disposition" refers to a bilateral or multilateral act of transfer and will not apply to a unilateral act as, for example, when a person treats his individual property as a joint family property. (See : *Goli Eswariah vs. Commissioner of Gift*

*Tax*⁸). Black's Law Dictionary defines "disposition" as the act of transferring something to the care or possession of another; or relinquishment or giving up of property". In this case, the instrument is not termed as a "Settlement". It is clearly a declaration of trust and is described as a 'deed of Trust'. But it records the terms of disposition of an immovable property for religious and charitable purposes. The operative portion of the instrument clearly recites that the three donors/Founders grant, convey and transfer their property 'Mathur Atithishala' unto the trustees (that is the three founders and two others) and also declares that the Trust shall own, possess and manage the same as the absolute owner. The three executants of the Trust deed divested themselves of ownership of the property which was transferred to the Trust represented by five trustees. Thus there was a disposition for religious and charitable purposes. It is thus clear that the instrument answers the definition of "settlement" under section 2(24) of the Act. As the stamp duty leviable under a deed of settlement under Article 58 is more than the stamp duty leviable in regard to a deed of trust under Article 64, the authorities under the Stamp Act have rightly held that the instrument is chargeable with the higher duty prescribed under Article 58 applicable to a settlement.

9. We will now examine whether the three decisions relied on by the appellant is of any assistance.

9.1 In *Narendra Singh Ju Deo* (supra), the Chief Controlling Revenue Authority made a reference to the High Court under section 57 of the Act, expressing the opinion that the instrument was a trust and not a settlement, but had some doubt about it. A Full Bench of the Allahabad High Court held that the instrument was not a settlement in view of the following circumstances: (a) Though the owner of the property transferred the property to three trustees who were to manage the property on his behalf during his life-time and to make certain arrangements in the event of his death, there was nothing to show that the deed could be regarded as one executed for the purpose of distribution of owner's property. (b) The owner of the property had reserved a right of revocation of the trust to himself and it seemed that the general intention of the owner was that the property should remain in the hands of the trustees for sometime and that they should deal with it in the manner in which he would have dealt with it, if he had not created a deed of trust. The said decision was not supported by any reasoning or principle. In fact, the said decision was not accepted by a larger Bench of that High Court in *Board of Revenue, UP vs. Sridhar* (supra), wherein a Special Bench of five Judges examined whether a draft deed in respect of which a reference was made under section 57 of the Act, was a declaration of trust or settlement. They examined the terms of the deed and found that there was a disposition of property. The Court held :

"This definition of the word "Settlement" itself makes it clear that even instruments which are executed containing a declaration of trust can be settlements provided the conditions laid down in the earlier part of the definition are satisfied. The question in these circumstances that falls for own opinion is whether this particular instrument, to which this instrument relates, is a "settlement" or not, even though it may on the face of it, be a deed of Trust".

We respectfully agree with the said observations. Referring to the earlier decision in Narendra Singh Ju Deo, the Special Bench held that the reasons given therein to hold that the disposition did not amount to a settlement were not sufficient to take the instrument out of the category of a `settlement' as defined under section 2(24). It was held that the instrument would be a settlement, even if the disposition was not for the purpose of distribution of the owner's property if the disposition was for the purpose of providing for some persons depending on the settler. It was also observed that the reservation of the right of revocation had no bearing on the question whether a deed of trust amounted to a settlement or not. The Bench concluded that deed of trust as also a deed of settlement, can be for a limited period.

9.2) In T. Ranganathan Pillai (supra), a Full Bench of the Madras High Court was dealing with a reference in respect of a deed purporting to be a Trust deed under which a Trust was created by the founder of the Trust in respect of his properties for the benefit of his family and himself. During the arguments, it was conceded on behalf of the State that the deed did not fall within the definition of `Settlement' either under clauses (a) and (c) of section 2(24). The High Court also noted that ultimately the learned counsel for the State conceded that even clause (b) of section 2(24) did not apply. Consequently the High Court held that it was not a deed of settlement but only a declaration of Trust. The High Court on an examination of the terms of the instrument, also held that it was not made for any of the three purposes mentioned in clauses (a), (b) and (c) of Section 2(24), and therefore, it was not a settlement. The said decision is therefore of no assistance.

9.3) In Sardar Deohao Jadhav (supra), the MP High Court was considering the question whether the instrument before it was a trust deed or a settlement deed. In that case the properties had already been dedicated to the family deities by the forefathers of the executant of the trust deed and the executant was only having custody of the properties which was in the ownership of the deities. By the deed of trust, the executant merely purported to make proper provision in respect of the discharge of duties of his office of Shebait of the family deities and declared a trust in respect of the properties mentioned therein. There was no disposition, but merely a declaration or assertion that the properties belonged to the deities. In those circumstances, the High Court found, reading the deed as a whole, that the executant was executing a trust deed in respect of the properties of family deities of which he was the Shebait and the essence of the document was to provide for the custody of the properties, and not to make any `disposition'. By executing the deed of trust, the executant neither transferred nor parted with any property. He `lost' nothing by executing the deed. The High Court therefore held that the instrument was liable to be stamped under Article 64, as a Trust deed. The decision, on the facts, is inapplicable.

9.4) Neither of the three decisions relied on by Appellant is therefore of any assistance. In Banarsi Dass Ahluwalia (supra), relied on by the respondents, a Special Bench of the Delhi High Court was considering an instrument whereby the founder

created a public charitable trust and appointed himself as the first trustee and dedicated and endowed upon trust his various assets and properties and declared that the business and properties described thereunder, shall no longer be the personal business and properties of the founder but shall be held in Trust. The Delhi High Court held that the term 'settlement' had a larger ambit than 'trust' having regard to the definition of settlement in section 2(24). It also held that while a trust made for the purposes specified in section 2(24) would always be a settlement, the converse may not be true. The Court therefore held that the deed of trust also answered the definition of 'settlement' and having regard to section 6, when an instrument is covered by both Articles 64 and 58 of the Act, it shall be chargeable to duty under Article 58 as the duty thereunder was higher than the duty under Article 64. This decision reiterates the principle enunciated by the Allahabad High Court in Sridhar (supra). Be that as it may.

10. We therefore uphold the decision to subject the deed to stamp duty under Article 58 of the Act. We are however of the view that the case does not warrant levy of penalty equal to the deficit stamp duty. On the facts and circumstances, we reduce the penalty to Rs.5/-. The appeal is allowed in part accordingly.

¹[AIR 1947 Allahabad 141]

²[AIR 1981 Mad. 193]

³[AIR 1991 MP 247]

⁴[AIR 1964 All. 537]

⁵[AIR 1972 Delhi 128]

⁶AIR 1971 SC 240

⁷AIR 1973 SC 2485

⁸AIR 1970 SC 1722