

APPELLATE CIVIL.

Before Chief Justice Scott, Mr. Justice Batchelor
and Mr. Justice Charbal.

IN THE MATTER OF HIRALAL NAVALRAM, APPLICANT.*

1908.

June 20.

Stamp Act (II of 1899), Article 23—Pressing factory—Partnership—Transfer of a share in consideration of a certain sum—Document—Release—Conveyance on sale of property.

Where by a document, the executing party, purporting to be entitled to a share in a going Pressing Factory, transfers absolutely the whole of that share to the other person interested in the factory in consideration of a certain sum, the document is a conveyance on sale of property.

CIVIL reference by W. Doderet, Commissioner, C. D., under section 57 of the Stamp Act (II of 1899).

There was a factory for pressing cotton bales at Dharangaum in the East Khândesh District. The factory was styled Chatrubhuj Durgaldas Pressing Factory and it belonged in partnership to Hiralal Navalram, Nandram Omkar and Ramchandra Shivnarayan. Hiralal Navalram had a twelve annas share in the partnership and Nandram Omkar and Ramchandra Shivnarayan had together a four annas share therein. The heirs of the owners of the four annas share sold it to one, Ramchand Hukumichand, and Ramchand having died, his adopted son, Bhagirath, relinquished all his claims over the four annas share for Rs. 17,841 in favour of Hiralal Navalram, who already owned the twelve annas share in the partnership, under a deed called *bedavapatra* (release), dated the 16th December 1906. The deed was engrossed on a stamp paper of rupees five. The following are the material portions of the deed :—

In consideration of all the rights which I have acquired * * (namely) in the profits in respect of the press described above and the press machines and other machinery and the things and dividend, etc., I have this day received from you Rs. 17,841 in the lump. Now nothing remains due to me by you in respect of any of the aforesaid things.

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By this writing, I have relinquished all my right, title and claim to my share * *. Now I have no manner of right, title or interest left in me as regards the ownership of the press or in connection with its liabilities and outstandings.

I am not liable for any responsibilities that may have arisen in connection with the said press * *. For the said responsibilities you are liable. I have duly given this release (in writing) of my free will and pleasure.

When the deed was presented for registration, the Sub-Registrar being of opinion that it was not a release, but was a conveyance and ought to have been stamped as such, impounded the document and forwarded it to the Collector under section 38 of the Stamp Act (II of 1899).

The Collector held that the Sub-Registrar had taken a correct view of the nature of the document. He, therefore, ordered payment of Rs. 175 for the deficient stamp duty and Rs. 1,750 for fine under section 40 (b) of the Stamp Act (II of 1899). His reasons were as follows:—

The Sub-Registrar reports that Bhagirath has not only relinquished his rights over the property, but he has taken Rs. 17,841 for the bargain. The deed though worded as a “release” is really a conveyance and a stamp of Rs. 180 instead of Rs. 5 should have been used. He has quoted two cases: (1) *Christie v. Commissioners of Inland Revenue* (L. R. 2 Ex. 46) and (2) *Phillips v. Commissioners of Inland Revenue* (L. R. 2 Ex. 309), page 17 of Desai's Stamp Act. Though the instrument is worded as a “release” still the interest of the parties concerned must be considered. A mis-description of the instrument by the framers thereof does not affect the stamp duty (*vide* page 15 of Desai's Stamp Act). In my opinion the Sub-Registrar is right. The parties seem to be merely endeavouring to evade payment of lawful duty.

The amounts demanded by the Collector for the deficient stamp duty and penalty were paid by Hiralal Navalram and then he applied to the Commissioner, C. D., for the refund of the said amounts under section 45 of the Stamp Act (II of 1899).

The Commissioner, C. D., being doubtful as to whether the deed was a release or a conveyance referred the following question to the High Court under section 57 of the Stamp Act (II of 1899):—

Whether a deed which is styled as a release under article 55, schedule I of the Stamp Act and under which the executant not only relinquishes his rights over a certain portion of his property, but receives a sum of Rs. 17,841 for the bargain, is not a conveyance under article 23 and chargeable as such, though worded as a release?

S. R. Bakhle (with *S. S. Patkar*) for the applicant :—Owing to the death of the partners, Nandram and Ramchandra, the partnership was dissolved by operation of law, see Contract Act, section 253 (10). The heirs of the deceased partners had only a right to recover the monies advanced by the deceased and they had no subsisting share in the partnership.

When the heirs transferred their interest to Ramchandra Hukumichand, he did not get a share in the partnership, but only a right to recover the amount which, at the best, would be a charge on the partnership property. Such interest, not being a share in the partnership, could be passed by a release. It falls under clause 55 of the Stamp Act. Stamp duty of Rs. 5 was therefore sufficient for the document. The cases relied on by the Sub-Registrar are cases in which the partnership had not been dissolved and the transfer was of a share in a continuing partnership. These cases, therefore, do not apply.

R. W. Desai for the Government of Bombay :—The document itself should be looked to in order to determine what it is—whether it is a conveyance of property or a release of any rights or interests of a deceased partner's share in the partnership. The executant starts with a statement in the document that he is the owner of the moveable and immovable property and the whole document purports to convey in the clearest language that property to the purchaser.

The case made out for the applicant that the partnership was dissolved by the death of the partners is altogether a new one and apparently an after thought. For two years at least after the partners' death the factory was working, otherwise how could the vendor, who is the heir of the deceased partners, say, in 1906, that he was the owner of the moveable and immovable property of the factory, if the partnership had been dissolved in 1904 by the death of the partners. The correct view would be to treat them as co-owners of the factory : see section 239, illustrations (b), (d) and (e) of the Contract Act.

Even if the correct view were that there was a partnership within the meaning of section 239 of the Contract Act, a presumption would naturally arise that the partners had agreed that

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on the death of a partner his legal representatives shall be entitled to take his place. It is only on this assumption that the recitals in the deed as to the ownership of the vendor can be reconciled. If necessary it may be definitely ascertained whether there was any such agreement, and if there was, then the two English cases cited by the Sub-Registrar will clearly cover the present case, and the document shall be liable to the payment of *ad valorem* stamp duty under article 23 of the Stamp Act.

According to section 263 of the Contract Act, after the dissolution of partnership, the rights and obligations of partners continue in all things necessary for winding up the business of partnership.

Bakke in reply.

SCOTT, C. J. :—By the document, which has been referred to us for consideration in this case, the executing party, purporting to be entitled to a four annas share in a going Pressing Factory, transfers the whole of that share to the other person interested in the factory for the sum of Rs. 17,841. The terms of the transfer are that “in consideration for all his rights he has received Rs. 17,841, and nothing remains due to him in respect of the aforesaid things.”

We are of opinion that the document is a conveyance on sale of property, namely, the quarter share in the Pressing Factory.

Order accordingly.

G. B. R.