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Court set aside, and the appeal remanded to that Court for disposal according to law.

The respondent Municipality to pay the costs of this appeal: other respondents to bear their own costs. The other costs will be dealt with by the District Court when the appeal in that Court is disposed of. The Government Pleader to bear his own costs of this appeal.

Appeal allowed.

J. G. R.

REFERENCE UNDER STAMP ACT.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, Mr. Justice Crump, and Mr. Justice Mulla.

1922. *September* 26.

THE SUPERINTENDENT OF STAMPS AND THE CHIEF CONTROLLING REVENUE AUTHORITY, BOMBAY, PETITIONER *v.* CHIMANLAL LALBHAI AND OTHERS, OPPONENTS*.

Indian Stamp Act (II of 1899), Articles 45, 62 (e)—Instruments of partition—Transfer without consideration from trustee to beneficiary.

A Hindu joint family consisting of three brothers jointly owned shares in a limited company, which stood in the name of the eldest brother. The three brothers came to be divided in interest. The shares remained in the name of the eldest brother, though dividends on the shares were divided between the three brothers. This fact was subsequently recorded in a deed of partnership. The eldest brother then executed two deeds under which he transferred to his brothers the number of shares that fell to their share. A question having arisen how the two deeds should be stamped:—

Held, that the deeds in question were chargeable as instruments of partition under Article 45 of the Indian Stamp Act.

THIS was a reference made by B. W. Kissan, Superintendent of Stamps, Bombay, under section 57 of the Indian Stamp Act.

A joint Hindu family consisting of three brothers, owned 2,750 shares in the Raipur Manufacturing Co., Ltd., which stood in the name of the eldest

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brother Chimanbhai. On the 4th November 1918, Chimanbhai and his two brothers became divided. The shares, however, stood in Chimanbhai's name, though the three brothers divided dividends on the shares as well as the agency commission earned on them. The three brothers subsequently executed a deed of partnership in which they recorded the above arrangement.

In March 1922, Chimanbhai executed two documents, one in favour of each of his brothers, transferring to them the shares that fell to their lot. The material portion of the deeds ran thus :—

Whereas two thousand seven hundred and fifty shares of the Raipur Manufacturing Co., Ltd., stand in my name the undermentioned Chimanbhai Lalbhai of Ahmedabad in the books of the said Company and whereas I am not the absolute owner of the said shares but I am only the owner of nine hundred and sixty shares out of the said shares and in respect of the remaining shares, I am only a trustee as a separated co-owner (the separation having been effected by taking the dividends on the said shares in three equal parts) as well as a partner on behalf of the other two partners of the firm of Messrs. Lalbhai Dalpatbhai & Co., which was before the said separation a joint family firm and whereas I am requested to transfer the said one thousand seven hundred and ninety shares to the names of their respective beneficiaries, I, the said Chimanbhai Lalbhai of Ahmedabad do hereby transfer to...one of the said two beneficiaries...out of the said shares.

The deeds in question bore a stamp of Rs. 5 each under Article 62 (*e*) of the Indian Stamp Act.

They came to be forwarded to the Superintendent of Stamps, Bombay, for adjudication of the stamp duty.

The Superintendent referred the question to the High Court under section 57 of the Indian Stamp Act, observing :—

In my opinion each of the instruments of which copies are annexed hereto and marked A and B is an instrument of partition by which the co-owners of the shares in the Raipur Manufacturing Co., Ltd., divide them in severalty and both instruments are chargeable with duty under Article 45 of the first Schedule to the Indian Stamp Act, 1899.

I am advised that Hindu co-parceners may without any writing and by a mere verbal agreement become tenants-in-common, but when, as in this case, they divide up the property in pursuance of such an agreement and actually execute a writing for the purpose, that writing is an instrument of partition.

In this case, when the members of the joint Hindu family arranged to partition some of their joint family property comprising the said 2,750 shares in the Raipur Manufacturing Co., Ltd., it became necessary so far as the shares were concerned, to register transfers of those shares in the books of the company which could only be effected by the execution of deeds of transfer by the transferor and the transferees. If those transfers are not instruments of partition I am of opinion that the two instruments are transfers (whether with or without consideration) of shares in an incorporated company and would be chargeable with duty under Article 62 (*a*) of the first Schedule to the Indian Stamp Act, 1899 (as amended by Act VI of 1910) of one-half of the duty payable on a conveyance for a consideration equal to the value of the shares.

I am of opinion that clause (*e*) of Article 62 does not apply to the two instruments because the 2,750 shares were never "trust property" within the meaning of that clause, but were apparently transferred and registered in the name of Chimanbhai Lalbhai as the Manager of the joint Hindu family.

The reference was heard.

Kanga, Advocate-General, with *J. C. G. Bowen*, Government Solicitor, for the petitioner.

Jinnah, with *Manilal & Kher*, for opponent No. 2.

Thakor, with *Manilal & Kher*, for opponents Nos. 1 and 3.

SHAH, AG. C. J.:—This is a reference under section 57 of the Stamp Act of 1899. The question referred to us is:—With what stamp duty is each of the instruments referred to in paragraph 1 of the reference chargeable? The instruments are Exhibits A and B. They are in form transfers of shares signed by one of the three brothers in favour of each of the other two brothers respectively. Exhibit A is in respect of 960 shares and Exhibit B is in respect of 830 shares. We have heard arguments on this question on behalf of the Crown and on behalf of the parties interested. We are of opinion that these two instruments Exhibits A

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and B are chargeable under Article 45 of Schedule I to the Stamp Act, as instruments of partition.

It appears that a partition among these three brothers was effected in November 1918. There was no need of partition, and the shares in question continued in the name of the eldest brother Chimanbhai. They were in his name before the family was divided in interest, and continued in his name after the severance of interest in 1918. It appears that in 1920 the brothers reduced to writing the terms of the partnership, which apparently was formed soon after this partition, and these shares are referred to in that deed as partnership property.

Thereafter in 1922 by means of the two instruments in question, the eldest brother Chimanbhai, in whose name the shares stood, sought to effect the transfer of the shares assigned to the share of each of the two other brothers. We are not concerned with 130 shares representing the difference between 960 and 830 shares as appearing in these instruments, because it may be that the value of these shares was otherwise made available at the time of the partition to that brother.

On the one hand it is contended that Chimanbhai was in the position of a trustee, and that when he sought to transfer these shares to his brothers, he did so as a trustee to the respective beneficiaries, and that the instruments are liable to be stamped under Article 62, clause (*e*).

On the other hand, it is urged on behalf of the Crown that the position of the three brothers after the oral partition in November 1918 was that of tenants-in-common, that the property with which we are concerned continued in the name of one of the tenants-in-common, that when Chimanbhai executed these instruments with a view to transfer the shares, he really

meant to divide the shares, and that the two instruments are in substance instruments of partition. In the alternative it is argued on behalf of the Crown that the instruments are liable to be charged under Article 62, clause (*a*), as simple transfers of shares in an incorporated company, and not transfers by a trustee in favour of the beneficiaries.

We have come to the conclusion that the theory of Chimanbhai being a trustee for his brothers in respect of these shares cannot be accepted. His position was that of a tenant-in-common holding the property for the benefit of the other tenants-in-common after the partition of 1918. There is nothing to show that these shares were specifically divided at the time of that partition. It is suggested on behalf of the two brothers, Kasturbhai and Narotambhai, that the shares were in fact divided and that their brother Chimanbhai was in effect constituted a trustee in respect of their shares from the date of the partition. This plea is not consistent with the recitals in the instruments themselves. The instruments contain the following recital :—

"Whereas I am not the absolute owner of the said shares but am only the owner of 960 shares out of the said shares and in respect of the remaining shares, I am only a trustee as a separated co-owner (the separation having been effected by taking the dividends on the said shares in three equal parts) as well as a partner on behalf of the other two partners of the firm of Messrs. Lalbhai Dalpatbhai & Co., which was before the said separation a joint family firm."

When we turn to the partnership deed it appears from the schedule attached to that document that there is a list of the shares given which refers to the full number of 2,880 shares ; and in clause 4 of that document there is a provision that the dividends on the shares in question shall be divided in equal shares between the parties. The fact of equal division of the dividends after the partition, is consistent with the theory of tenancy-in-common among the three

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brothers or of their being partners. But these recitals do not support the theory that the shares were in fact divided at the time of the partition. No authority has been cited for the proposition that the position of a co-tenant or a co-partner holding the property in his own name, is that of a trustee for the other co-owners or co-partners. It may be that he has certain obligations in respect of the property so held by him towards his co-owners or co-partners and that the co-owners or co-partners would have the right to enforce in a proper manner their rights of ownership to that property. But I am unable to hold that Chimanbhai held the shares in his name as a trustee and that his two brothers were beneficiaries within the meaning of Article 62, clause (*e*). In spite of the arguments urged in support of the theory of actual partition of the shares at the date of the partition in 1918 and of the creation of trust in favour of Kasturbhai and his brother, I have no hesitation in rejecting that theory on the facts as appearing in the documents themselves, and on the reference. The next question is as to whether these instruments are properly chargeable under Article 62, clause (*a*) or Article 45. It is by no means easy to decide that question. In form they are simple transfers and in substance they have the effect of dividing the property which was first a part of the joint family property and thereafter held as property belonging to the tenants-in-common. Having regard to the facts of the case we can treat these instruments fairly as instruments of partition in respect of the shares which were kept in fact undivided at the time of the oral partition between the three brothers.

CRUMP, J. :—I concur.

MULLA, J. :—I concur.

Answer accordingly.

R. R.