

COMMISSIONER OF INCOME-TAX, WEST BENGAL,
CALCUTTA

v.

JUGGILAL KAMALAPAT

October 7, 1966

[J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

*Income-tax Act (11 of 1922), ss. 26A and 66—Registration of firm—
Legal validity of existence of firm—Question of law referable to High
Court.*

Three brothers and J entered into a partnership business. The firm owned both movable and immovable properties. Later, the three brothers created a Trust, with themselves as the first three trustees. They also executed an unregistered deed of relinquishment by which they relinquished their rights in and claims to all the properties and assets of the firm, in favour of J. and of themselves in the capacity of trustees. A new partnership firm was constituted between J. and the Trust by means of a partnership deed which specified the shares of the two partners in the profits and losses. The Trust introduced a sum of Rs. 50,000 as its capital in the new firm. For the assessment year 1943-44 the new firm applied for registration under s. 26A of the Indian Income-tax Act, 1922 but the Income-tax Officer, Appellate Assistant Commissioner and the Appellate Tribunal rejected the application. The Tribunal relied mainly on the ground that the deed of relinquishment being unregistered could not legally transfer the rights and the title to the immovable properties owned by the original firm, to the Trust and that as the immovable properties were not separable from the other business assets there was no legal transfer of any portion of the business assets of the original firm in favour of the Trust. On a reference to the High Court, as to whether the new partnership legally came into existence and, as such, should be registered, it was contended on behalf of the Commissioner that the Tribunal had recorded a finding of fact that the firm seeking registration was not a genuine one and had never come into existence. The High Court, after calling for further statements, held that the Tribunal had not recorded any such finding of fact, that the firm did in fact come into existence, and that there was no impediment to its registration.

In appeal to this Court,

HELD : (i) The existence of a firm could be challenged on two alternative grounds; (a) that a firm had not come into existence at all, and (b) that though it came into existence in fact, its existence was not valid in law. In the present case it was only the second question that was referred to the High Court. The first could not at all be referred to the High Court as it would be a pure question of fact; and if the Appellate Tribunal had in fact recorded a finding of fact that the firm had not come into existence, the question of law referred to the High Court, would not arise at all. Therefore, the new firm did in fact come into existence. [788 E-H]

(ii) The new partnership between the Trust and J. was constituted under a deed which was properly executed, was valid in law, and so the firm should be registered. [791 C-D]

A The deed of relinquishment was in respect of the individual interests of the three brothers in the assets of the original firm, in favour of the Trust, and consequently, did not require registration, even though the assets of that firm included immovable property. The deed was therefore valid without registration. [790 F]

Addanki Narayanappa v. Bhakara Krishnappa, [1966] 3 S.C.R., 400 followed.

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Even if the deed of relinquishment required registration, it could only be invalid insofar as it affected immovable properties, but to the extent that it purported to transfer movable assets of the original firm, it would be valid. A deed of relinquishment is in the nature of a deed of gift where the various properties dealt with are separable. In the present case, therefore, the deed of relinquishment was valid at least in respect of movable properties, and the partnership seeking registration thus became owner of all the movable assets of the first partnership in addition to the Rs. 50,000 contributed as a capital investment by the Trust. [790 G; 791 A, C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 127 of 1966

Appeal from the judgment and order dated December 11, 1962 of the Calcutta High Court in Income-tax Reference No. 47 of 1962.

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S. T. Desai, A. N. Kirpal and R. N. Sachthey, for the appellant.

A. K. Sen and B. P. Maheshwari, for the respondent.

The Judgment of the Court was delivered by

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Bhargava, J. This appeal arises out of proceedings for registration of the firm, Juggilal Kamalapat, Calcutta, under section 26A of the Income Tax Act (hereinafter referred to as "the Act") for the assessment year 1943-44. Prior to this assessment year, the three Singhania brothers, Sir Padampat Singhania, Kamalapat Singhania and Lakshmiapat Singhania, were carrying on a hosiery business in the name of Messrs. Juggilal Kamalapat with Head Office at Kanpur and a branch at Calcutta. On November 29, 1939, these three brothers executed a deed of partnership, by which one Jhabbarmal Saraf was taken in as a partner, and under this deed, all the four partners had equal shares. On October 27, 1941, the three brothers executed a trust deed known as the Kamla Town Trust, the principal object of which was the welfare of the employees of Juggilal Kamalapat Cotton Spinning and Weaving Mills Ltd. Under this deed, the three brothers became the first trustees. On December 2, 1942, a Deed of Relinquishment was executed by the three brothers, relinquishing their rights and claims to all the properties and assets of the firm, Juggilal Kamalapat, in favour of Jhabbarmal Saraf and of themselves in the capacity of the three first trustees of the Kamla Town Trust. This relinquishment deed purported to recognise an earlier oral relinquishment which was stated as having been operative with

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effect from March 26, 1942. On December 1, 1942, a Partnership Deed was executed between Jhabbarmal Saraf and the three trustees, by which they purported to constitute a partnership firm taking effect from March 27, 1942, the two partners in the firm being Jhabbarmal Saraf and the Kamla Town Trust represented by these three trustees. The shares of the two partners in this partnership were: Kamla Town Trust... As. /12/-, and Jhabbarmal Saraf... As. /4/-. The firm, Juggilal Kamalapat, which had been carrying on the business of hosiery, owned both movable and immovable properties at Belur near Calcutta. The immovable properties consisted of lands and buildings constructed for the use of the factory for manufacturing hosiery, and they were shown in their balance-sheet as properties belonging to the firm. The firm had also been showing expenses incurred for maintaining or making additions or alterations to these buildings in their accounts and had been claiming depreciation in respect of them. It was in these circumstances that the new partnership, purporting to consist of the Kamla Town Trust and Jhabbarmal Saraf, applied for registration under s. 26A of the Act for the assessment year 1943-44.

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The Income-tax Officer rejected this claim and, in doing so, also took notice of the fact that a sum of Rs. 50,000/- had been introduced into this partnership firm by the Trust. The reason given by the Income-tax Officer for not accepting the registration need not be mentioned here, because that reason was not accepted by the Tribunal and was not urged before the High Court or before this Court on behalf of the Commissioner. On appeal, the Appellate Assistant Commissioner upheld the order of the Income-tax Officer for reasons given by him which were different from those given by the Income-tax Officer. Those reasons are again immaterial because those reasons were not accepted by the Tribunal or the High Court and have not been relied upon before us.

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The Income-tax Appellate Tribunal upheld the order rejecting the application for registration under s. 26A on the main ground that the Relinquishment Deed dated 2nd December 1942, being an unregistered document, could not legally transfer rights and title to the immovables owned by the firm in favour of the Kamla Town Trust, and that the transfer of the immovable properties being thus legally ineffective and they being not separable from the other business assets, the entire business of the firm was not legally transferred in favour of the Kamla Town Trust. Two other reasons were also given that the constitution of the new firm was not notified to any of the Banks with which the old firm was dealing, and the new partnership was not got registered with the Registrar of Firms till May, 1946. On these facts, at the request of the respondent firm, Juggilal Kamalapat, the following question was referred by the Tribunal or opinion to the Calcutta High Court:—

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A “Whether on the above facts and in the circumstances of this case, the partnership, as evidenced by the Deed of 1st December 1942, legally came into existence and as such should be registered?”

B When this reference came up before the High Court on two different occasions, the High Court sent back the case for submission of further statements of the case to the Tribunal, because the High Court felt that facts, necessary to hold whether the respondent firm claiming registration was a genuine firm or not, had not been properly found by the Tribunal in its appellate order. On the first occasion, when submitting the supplementary statement of the case, the Tribunal purported to submit two different questions in lieu of the question which had been already submitted for opinion to the High Court. The two questions thus newly suggested were:—

C “(1) Whether in the facts and circumstances of this case, can the non-registration of Relinquishment Deed invalidate the transfer of the business assets to the new partnership?, and

D “(2) Can the registration application be rejected merely on the ground that the business assets were not legally transferred to the new partnership?”

The High Court disposed of the reference by giving the following answer:—

E “Regard being had to the admissions made on behalf of the department, the facts and circumstances mentioned in paragraph 6 of the statement of case dated 13th March, 1952 do not show that there was any legal flaw in the constitution of the partnership firm as evidenced by the deed of 1st December, 1942. Upon such evidence, it must be concluded that it did come into existence and there is no impediment to its registration under Section 26A of the Income-tax Act. It is made clear that the question itself postulates the facts and circumstances and therefore, the conclusion is based upon them. In view of the facts in this case, there will be no order as to costs.”

F This appeal has been brought up by the Commissioner of Income-tax against this answer returned by the High Court on certificate under section 66A(2) of the Act.

G It appears from the judgment delivered by the High Court that when the reference came up before it, an argument was raised on behalf of the Commissioner of Income-tax that the Tribunal had recorded a finding of fact that the firm seeking registration, consisting of the Kamla Town Trust and Jhabbarmal Saraf, was not a genuine firm and that this should be the answer returned by the

High Court to the Tribunal. It was in view of this point raised before the High Court that the High Court considered it necessary to remand the case twice to the Tribunal to ask for supplementary statements of the case under s. 66(4) of the Act. At the final hearing, however, the High Court held that it could not be accepted that the Tribunal had, as a question of fact, recorded the finding that this firm seeking registration was not genuine and had never come into existence, and, thereupon, proceeded to deal with the question referred as a question of law so as to determine whether the firm had come into existence as a legally valid firm.

In this appeal before us, again, it was urged by Mr. S. T. Desai on behalf of the Commissioner that the High Court was wrong in holding that it was not bound to return the answer to the Tribunal that the partnership seeking registration was not genuine in fact. In our opinion, the question sought to be raised on behalf of the Commissioner should not have been allowed to be raised by the High Court even at the earliest stage, and that it was the error committed by the High Court in entertaining this question that has resulted in unnecessary proceedings and consequent delay. When the case first came up before the High Court, the question that was referred in the statement of the case was, as we have mentioned above, whether the partnership legally came into existence and, as such, should be registered. The existence of a firm could be challenged on two alternative grounds. One was that, in fact, on the evidence, it could not be held that such a firm had at all been constituted and had come into existence. The other was that even though it purported to come into existence as a fact, it could not claim to be a valid partnership because of some legal defect, or, in other words, whether its existence was valid in law. On the face of it, the question that was referred to the High Court for opinion was the second question and not the first one. The first question, in fact, could not have been referred to the High Court at all for opinion, because that would be a pure question of fact on which the decision of the Tribunal would be final and no reference to the High Court would lie under s. 66. A reference to the High Court lies only on a question of law. The High Court, when requested to answer the question referred in the first statement of the case, should, therefore, have confined itself to the legal aspect of the existence of the partnership and should not have entered at all into the question whether the partnership had come into existence in fact or not. The Tribunal which had passed the appellate order in these proceedings consisted of two Members, and the first statement of the case was submitted by those very Members. It is clear that they themselves, when making the reference to the High Court, were of the view that they had not anywhere recorded a finding that the firm had not come into existence in fact, because, if they had come to such a finding, no question of law could possibly have been

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- A referred by them to the High Court. The existence in law of a firm, which does not exist in fact, could not possibly be found by the High Court on the question referred. Consequently, we must reject the submission made on behalf of the Commissioner that, in this case, the High Court should have gone into the question of existence of the respondent firm as a question of fact; and in this
- B appeal also, we must proceed on the basis that the respondent firm did in fact come into existence, and that all that the High Court was called upon to decide was whether it also came into existence in law.

- C It appears to us that, in this case, the submissions that were made on behalf of the Commissioner before the High Court and which have been made before us have ignored the effect of the important relevant documents and have unnecessarily placed too much reliance on the Deed of Relinquishment. The Tribunal found that a Kamla Town Trust had been constituted of which the three Singhania Brothers were the Trustees. The Tribunal also found that a deed of partnership was executed so as to constitute the firm Juggilal
- D Kamalapat, consisting of two partners, the Kamala Town Trust, represented by the three trustees, and Jhabbarmal Saraf. Their shares in the profits and losses were also specified in the deed of partnership. There was the further finding by the Income-Tax Officer that the Kamla Town Trust, which entered into the partnership, actually introduced a sum of Rs. 50,000/- as its capital in this partnership firm. On these facts by themselves, it should have
- E been held that a valid partnership had come into existence.

- F So far as the deed of relinquishment is concerned, learned counsel appearing on behalf of the Commissioner has not been able to show to us any provision of law, or any decision of a Court laying down that a deed of relinquishment executed by partners of a firm in respect of their share and interest in a firm required registration, in case the firm owned immovable properties. In this connection, learned counsel for the respondent firm brought to our notice a recent decision of this Court in *Addanki Narayanappa and Another v. Bhaskara Krishnappa (dead) and thereafter his heirs, and Others*,⁽¹⁾ where the question that came up for consideration
- G was whether the interest of a partner in partnership assets comprising of movable as well as immovable property should be treated as movable or immovable property for the purposes of s. 17(1) of the Registration Act, 1908. The Court upheld the view of the Full Bench of the Andhra Pradesh High Court in *Addanki Narayanappa & Anr. v. Bhaskara Krishnappa & Ors.*⁽²⁾ Mudholkar, J., speaking for this Court held: "It seems to us that looking to the scheme of the Indian Act, no other view can reasonably be
- H taken. The whole concept of partnership is to embark upon a

(1) [1966] 3 S.C.R. 400.

(2) I.L.R. 1959 A.P.p. 387

joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges." On this basis, the ultimate decision was that a deed, evidencing the transfer of an interest of a partner in partnership assets, does not require registration even though the partnership assets are comprised of movable as well as immovable property.

A Full Bench of the Lahore High Court in *Ajudhia Pershad Ram Pershad v. Sham Sunder and Others*(¹) held that the interest in a partnership of a partner is to be regarded as movable property when it is sought to be dealt with under O-21 r. 49, Civil Procedure Code, notwithstanding that at the time when it is charged or sold, the partnership assets include immovable property.

The Deed of Relinquishment, in this case, was in respect of the individual interest of the three Singhania Brothers in the assets of the partnership firm in favour of the Kamla Town Trust, and consequently, did not require registration, even though the assets of the partnership firm included immovable property, and was valid without registration. As a result of this deed, all the assets of the partnership vested in the new partners of the firm.

In the alternative, we think that, even if it had been accepted that this deed of relinquishment required registration, that would not lead to the conclusion that the partnership seeking registration was not valid and had not come into existence in law. The deed of relinquishment could, at best, be held to be invalid in so far as it affected the immovable properties included in the assets of the firm; but to the extent that it purported to transfer movable assets of the firm, the document would remain valid. The deed could clearly be divided into two separate parts, one relating to immovable properties, and the other to movable assets; and the part of the deed dealing with movable assets could not be held invalid for want

(1) I.L.R. 28 Lah. 417.

- A of registration. A deed of relinquishment is in the nature of a deed of gift, where the various properties dealt with are always separable, and the invalidity of the deed of gift in respect of one item cannot affect its validity in respect of another. This view was expressed by the Madras High Court in *Perumal Ammal v. Perumal Naicker & Anr.*⁽¹⁾ A deed of relinquishment, or a deed of gift, differs from a deed of partition in which it is not possible to hold that the partition is valid in respect of some properties and not in respect of others, because rights of persons being partitioned are adjusted with reference to the properties subject to partition as a whole. In the case before us, therefore, the deed of relinquishment was valid at least in respect of movable properties, and the partnership seeking registration, thus, became owner of all the movable assets of the partnership in addition to having contributed a sum of Rs. 50,000/- as capital investment in it. The Kamla Town Trust and Jhabbarmal Saraf constituted the partnership under a deed of partnership, which was properly executed, and in these circumstances, the partnership that came into existence was clearly valid in law. There is, therefore, no force in this appeal and it is dismissed with costs.

D V. P. S.

Appeal dismissed.

(1) I.L.R 44 Mad. 196.