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PRASAD TECHNOLOGY PARK PVT. LTD.

v.

SUB-REGISTRAR AND ORS.

DECEMBER 8, 2005

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[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

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Karnataka Stamp Act, 1957—Section 2(1)(j); Articles 5(d), 5(f)(i) of the schedule appended thereto—Change in the name of lessee company—Period of lease, quantum of premium paid and other terms remaining unaltered—Document seeking substitution of changed name in the original lease deed—Liability to pay stamp duty—Held: Stamp duty on such document would not be payable on the original lease amount as no fresh transaction had taken place—Stamp duty payable in terms of Article 5(f)(i) and not Article 5(d)—Transfer of Property Act, 1882—Sections 105, 54.

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The earlier name of the appellant-Company was P Garment Pvt. Ltd. It had been engaged in the manufacture of garments. It entered into lease agreement of land with the third respondent. Subsequently, P Garment was permitted to establish a software park. It changed its name to P Technology Park. On account of change of name, a supplementary agreement was executed. Appellant presented the said agreement for registration on stamp duty of Rs. 100. Registrar was of the opinion that the stamp duty was insufficient and was payable on the original lease amount. Aggrieved Appellant filed Writ Petition before the High Court, which was dismissed. Writ Appeal also stood dismissed. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: 1. By reason of the supplementary agreement, the Appellant was permitted to carry on the business of a Technology Park instead of manufacture of readymade garments. Only because the name of the company was changed, the same would not mean that a fresh transaction took place. Having regard to the change in the name of the company, the Appellant's name was sought to be substituted in the original agreement. The period of the lease, the quantum of the premium paid and other terms and conditions remained unaltered. By reason of mere change of user from carrying on one business

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to another, a fresh transaction does not take place. The terms and conditions of the lease can be changed by mutual consent. Unless the essential ingredients thereof as contained in Section 105 of the Transfer of Property Act are not altered, it cannot be said that the parties to the contract entered into a fresh transaction. The Third Respondent merely reserved unto itself a right of reentry on expiry of the said period of eleven years. It could in terms of the covenant of the lease also extend the period of tenancy or terminate the same. Unless the lease itself came to an end, the third respondent did not have any right to re-convey the property. By reason of mere change in the name of the company " P Garments Pvt. Ltd." the erstwhile lessee also cannot be held to have transferred its leasehold interest in favour of the Appellant.

[647-F-H; 648-A-C]

2. Execution of an instrument which would attract payment of stamp duty in terms of Article 5(d) of the Karnataka Stamp Act, 1957 must involve transfer of the property or otherwise a right or liability may *inter alia* be created, transferred etc., as envisaged in Section 3 thereof. Once it is held that the supplementary agreement is neither a deed of lease nor a deed of sale within the meaning of Section 105 or Section 54 of the Transfer of Property Act, as the case may be, Article 5(d) of the Schedule to the Act will have no application. If Article 5(d) has no application, indisputably the residuary clause contained in Article 5(f)(i) would have. The Appellant admittedly paid the stamp duty in terms thereof. [648-D-F]

3. It is now well settled that for the purpose of levy of stamp duty, the real and true meaning of the instrument must be ascertained.

The Madras Refineries Ltd. v. The Chief Controlling Revenue Authority, Board of Revenue, Madras [1977] 2 SCC 308, relied on.

4. The High Court held that 'the supplementary lease agreement cannot be said to be an instrument whereunder the Appellant-Company claims certain leasehold from the Board'; but having did so, the High Court was not correct in holding that it is liable to pay the stamp duty. Having regard to the fact that the entity of the Appellant cannot be said to be totally different from P Garments Pvt. Ltd. and as by reason of the supplementary agreement, no fresh transaction has been entered into, the impugned judgment cannot be sustained.

[648-G; 649-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7305 of 2005.

From the Judgment and Order dated 10.3.2004 of the Karnataka High

A Court in W.A. No. 8087 of 2003 (GM-ST/RN).

S.K. Kulkarni, G. Gireesh Kumar and Vijay Kumar for the Appellant.

Ms. Kiran Suri, Sanjay R. Hegde, Anil K. Mishra, A. Rohen Singh and Ms. Kirti Mishra for the Respondents.

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The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

C Whether execution of a supplementary agreement entered into by and between the Appellant and the Third Respondent herein would amount to a transfer so as to attract stamp duty payable in terms of Article 5(d) of the Schedule appended to the Karnataka Stamp Act, 1957, consequent upon the change of the name of the erstwhile company to the Appellant Company is the question involved in this appeal.

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The basic fact of the matter is not in dispute. One "Prasad Garments Pvt. Ltd." was a company registered under the Companies Act, 1956. On or about 05.03.1999, it entered into a lease-cum-sale agreement with the Third Respondent herein upon payment of premium of a sum of Rs.14,49,453, which amounted to 99% of the tentative cost of the land and one yearly rent of 966/- for a period of eleven years computed from 25.06.1997. The name of the said company, however, was changed to "Prasad Technology Park Pvt. Ltd."

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The Appellant presented the said instrument for registration before the First Respondent herein on a stamp paper of Rs.100/-. The First Respondent, however, was of the opinion that the stamp duty on the total amount of the original lease deed as mentioned in the lease deed dated 05.03.1999 was required to be paid. In response to a notice served in this behalf on the Appellant, a show cause was filed contenting that the supplementary agreement is merely a deed of rectification. The said contention was, however, rejected by the Deputy Commissioner of Stamps by an order dated 26.10.2000, holding:

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"As per the above said amendment, the original document, since the changes in the legal effect of the instrument and hence the Supplementary agreement document in question subjected to the entire material alteration. In this regard, it held in the similar cases in AIR 1939 Cal. 181, AIR 1936 Rang. 136, 50 LW 746 (1939) 2 MLJ 683, the honourable courts held (recorded in the Krishnamurthy's Indian Stamp

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Act, or VII Edition's page 133 in Note 9). Therefore, in the present "Amendment or Supplementary Agreement", it is opined that the Fixed Deposit and annual rent as per Appendix 5(d), it is required to pay entire stamp fee. Hence, the following order :

ORDER

No.DR.1/47/00-01

Dated 26.10.2000

Taken into consideration of all the above said points, I the Deputy Commissioner of Stamps, exercising my power vested under Section 39 of the Karnataka Stamps Act, 1957, the present Document of "Supplementary Agreement" vide P.24/2000-01 dated 5.3.99 original document of Lease-cum-Sale Agreement mentioned Fixed Deposit of Rs.14,49,593.00 and Annual rent of Rs.966-00 totaling to Rs.14,50,559.00 as per the Appendix 5(d) has to pay Stamp fee of Rs.1,45,100.00 along with fine of Rs.5.00, totaling to Rs.1,45,105.00 hereby directed to make payment."

Aggrieved by and dissatisfied therewith, a writ petition was filed by the Appellant before the Karnataka High Court, which came to be dismissed by reason of an order dated 11.08.2003 passed by a learned Single Judge opining:

"...But unfortunately for the petitioner the supplementary agreement sought to be registered as entered into between the 3rd respondent Lessor and the petitioner Lessee with the terms of the lease being the same as had been in the earlier lease deed that had come to be executed in favour of the petitioner-company in its earlier name as evidenced by the agreement dated 5th March 1999. These terms are sought to be incorporated into the subsequent agreement which is known as supplementary agreement dated 24th April, 2000"

The Appellant herein preferred an intra court appeal there-against, which was also dismissed by the impugned judgment, stating :

"In the instant case, earlier the name of the appellant-Company was Prasad Garments Pvt. Ltd., which is now changed to Prasad Technology Park Pvt. Ltd. On account of change of name of the Company, a supplementary agreement was entered into between the M/s Karnataka Industrial Areas Development Board and the appellant-Company. So far as the argument of non-payment of stamp duty is

A concerned, the same is not acceptable. It cannot be said that the
 supplementary lease agreement is also an instrument under which the
 appellant-Company claims certain leasehold rights from the Board,
 and therefore, it is liable to pay the stamp duty and cannot escape
 B payment of stamp duty. The learned Single Judge having found no
 illegality in the order of the 2nd respondent, considering the material
 on record and case laws relied on, by a detailed order, has dismissed
 the writ petition.

C In our view, the appellant-Company cannot escape its liability to
 pay the stamp duty under the supplementary agreement since there
 is transfer of interest in the Company, which the appellant-Company
 can claim under the 3rd respondent....”

D Mr. S.K. Kulkarni, the learned counsel appearing on behalf of the
 Appellant, at the outset, drew our attention to the definition of instrument as
 contained in Section 2(1)(j) of the Karnataka Stamp Act, 1957 and would
 submit that having regard to the fact that no element of transfer was involved
 in execution of the said supplementary agreement, Article 5(f)(i) of the Appendix
 appended thereto would be attracted and not Article 5(d) thereof as has been
 held by the Deputy Commissioner of Stamps.

E Mr. Sanjay R. Hegde, the learned counsel appearing on behalf of the
 First and Second Respondents, on the other hand, would submit that having
 regard to the fact that the nature of business of the company was also altered
 inasmuch as whereas by the earlier instrument the demise of the premises was
 made only for the purpose of manufacture of readymade garments and leather
 F garments, the lessee now has been permitted to establish a software park; the
 instrument in question must be held to be one of lease. Our attention, in this
 behalf, has been drawn to clauses 2(n) and 2(q) of the original deed of lease,
 which are as under :

G “2(n) To use the demised premises only for the purpose of
 Manufacture of Ready Made Garments or Leather Garments factory/
 industry and not to use the demised premises or any part thereof for
 any other purpose nor for the purposes of any factory which may be
 obnoxious, or offensive by reason of emission of odour, liquid
 ‘effluvia’, dust, smoke, gas, noise vibrations or fire hazards.

H 2(q) The Lessee shall not alienate the demised premises or any
 part thereof or the building, that may be constructed thereon during

the period of lease. The Lessee may mortgage the right, title and interest in the demised premises in favour the Government of Karnataka or the Central Government or Corporate bodies like Life Insurance Corporation of India, Karnataka State Industrial Investment and Development Corporation, Karnataka State Financial Corporation, Industrial Finance Corporation of India, Industrial Development Bank of India, Industrial Credit and Investment Corporation of India, Unit Trust of India, Trustees of Debenture Stock of Banks to secure moneys advanced by such Government or bodies for the erection of building, plant and machinery. However, the Lessee shall obtain the No Objection Certificate from the Lessor in writing for creation of second and subsequent charges.”

Change of the name of a company can be allowed by the Registrar of the Companies in terms of Section 21 of the Companies Act. Once such a name is permitted to be changed, a certificate is issued in terms of Section 23 thereof.

The Appellant indisputably was permitted by the Third Respondent herein to establish a software park. The execution of supplementary agreement, it has categorically been stated, became necessary consequent upon the change in the name of the company. By reason of such supplementary agreement although it was permitted to establish a software park but by reason thereof no fresh transaction was entered into. We have noticed hereinbefore that in terms of the aforementioned agreement dated 05.03.1999, the land in question was demised for a period of eleven years with effect from 25.06.1997 on payment of premium fixed thereunder as also on yearly lease rent stipulated thereby.

The said lease indisputably was governed by Section 105 of the Transfer of Property Act. By reason of the supplementary agreement, a restrictive covenant has been amended in terms whereof the Appellant herein was permitted to carry on the business of a Technology Park instead of manufacture of readymade garments/leather garments. Only because the name of the company was changed, the same would not mean that a fresh transaction took place. Having regard to the change in the name of the company, the Appellant's name was sought to be substituted in the original agreement. The period of the lease, the quantum of the premium paid and other terms and conditions remained unaltered except the restriction contained in clause 2(q) of the said deed, was removed. By reason of mere change of user from

- A carrying on one business to another, it is trite, a fresh transaction does not take place. The terms and conditions of the lease can be changed by mutual consent. Unless the essential ingredients thereof as contained in Section 105 of the Transfer of Property Act are not altered, it cannot be said that the parties to the contract entered into a fresh transaction. The Third Respondent merely reserved unto itself a right of reentry on expiry of the said period of
- B eleven years. It could in terms of the covenant of the lease also extend the period of tenancy or terminate the same. Unless the lease itself came to an end, the third respondent did not have any right to re-convey the property. By reason of mere change in the name of the company "Prasad Garments Pvt. Ltd." the erstwhile lessee also cannot be held to have transferred its leasehold
- C interest in favour of the Appellant herein.

Section 2(i)(j) of the Act, defines 'instrument', to mean :

- D "2(1)(j) "Instrument" includes every document and record created or maintained in or by an electronic storage and retrieval device or media by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;"

- E Execution of an instrument which would attract payment of stamp duty in terms of Article 5(d) of the Act must involve transfer of the property or otherwise a right or liability may *inter alia* be created, transferred etc., as envisaged in Section 3 thereof. Once it is held that the supplementary agreement is neither a deed of lease nor a deed of sale within the meaning of Section 105 or Section 54 of the Transfer of Property Act, as the case may be, Article 5(d) of the schedule to the Act will have no application. If Article 5(d) has no application, indisputably the residuary clause contained in Article
- F 5(f)(i) would have. The Appellant admittedly paid the stamp duty in terms thereof.

- G It is now well settled that for the purpose of levy of stamp duty, the real and true meaning of the instrument must be ascertained. [See *The Madras Refineries Ltd. v. The Chief Controlling Revenue Authority, Board of Revenue, Madras* [1977] 2 SCC 308].

- H The High Court held that 'the supplementary lease agreement cannot be said to be an instrument whereunder the Appellant-Company claims certain leasehold from the Board'; but having done so, the High Court was not correct in holding that it is liable to pay the stamp duty.

Having regard to the fact that the entity of the Appellant cannot be said to be totally different from Prasad Garments Pvt. Ltd. and as by reason of the supplementary agreement, no fresh transaction has been entered into, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The Appellant shall be entitled to costs.

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D.G.

Appeal allowed.