

Board of Revenue Vs. Sridhar Advocate

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Court : Allahabad

Decided On : Jan-13-1964

Reported in : AIR1964All537

Judge : V. Bhargava, ;D.S. Mathur, ;G. Kumar, ;S.D. Khare and ;G.C. Mathur, JJ.

Acts : [Stamp Act, 1899](#) - Sections 2(24) and 6 - Schedule - Articles 58 and 64

Appeal No. : Misc. Reference No. 389 of 1962

Appellant : Board of Revenue

Respondent : Sridhar Advocate

Advocate for Def. : S.K. Suri, ;Ashoke Mohiley and ;B.P. Srivastava, Advs.

Advocate for Pet/Ap. : Standing Counsel

Judgement :

V. Bhargava, J.

1. This Reference has been made by the Chief Controlling Revenue Authority under Section 57 of the Indian Stamp Act in respect of a document because that Authority felt a doubt as to whether the stamp duty on the instrument was chargeable as a 'Settlement' or as a 'Trust'. The Following three questions have been drafted by the Authority on which our opinion has been sought:

- (1) Whether the draft deed under reference is a 'Declaration of Trust' chargeable under Article 64, Schedule I-B of the Stamp Act; or
- (2) whether it is a 'Settlement' as defined in Section 2(24)(b) of the Act, chargeable under Article 58, Schedule I-B of the Act, or
- (3) if it is neither, under what other category does it fall under the Stamp Act for purposes of charging stamp duty.

2. We may at the outset mention that it appears to us that in framing the questions for our opinion the Chief Controlling Revenue Authority appears to have proceeded on the incorrect basis that the instrument under the Stamp Act can be either a deed of trust or a deed of settlement only and not both. The word 'Settlement' is defined in Section 2(24) of the Act as follows:

' 'Settlement' means any non-testamentary disposition, in writing, of movable or

immovable property made:

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settlor 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 had not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.' 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 earlier in that definition are satisfied. The question in these circumstances that falls for our opinion is whether this particular instrument, to which this Reference relates, is a 'Settlement' or not, even though it may, on the face of it, be a deed of Trust. Under Section 6 of the Stamp Act, if a deed of Trust also amounts to a Settlement, the stamp duty will be chargeable on it as an instrument of Settlement under Article 58 of the Schedule I-B of the Act, and not as an instrument of Trust under Article 64 of Schedule I-B of the Act.

3. We have heard learned counsel for the parties, and we have come to the conclusion that this instrument, to which this Reference relates, must be held to be a deed of Settlement within the meaning of that word as defined above.

4. The instrument relates to two houses situated in the city of Allahabad. In the instrument the executant has mentioned that he is executing it for the benefit of his three daughters as well as his two sons and other children. The object of executing the instrument is indicated as being the desire of settling on trust the income of the two houses for the purpose of carrying out the wishes of the donor as described. In the main body of the instrument, the donor granted to the trustee for a period of twenty years the two properties mentioned above for him to have and hold the same in trust for the objects of the Trust. The donor specifically relinquished for the time being all claims to any interest in these properties. It was recited that the children of the donor were all minors and the donor was desirous that his children should have some financial security by the time each of them attained majority.

The main provisions contained in the instrument were that from the income of the property the taxes payable to the Municipal Corporation had to be met so as not to exceed one-fourth of the rental income and the trustee was to set apart another one-fourth' of the rental income for the purpose of reconstructing one of the houses which WAS in a very bad condition and for maintaining it in a proper condition in future. Out of the remaining half of the rental income the trustee was enjoined to set apart a sum of Rs. 100/- every month for payment to the children of the donor for their education and other expenses. The balance of the money accruing from the rental income was to be deposited for the benefit of the various children of the donor and in respect of the sum so deposited specific directions were given how that money was to go to the benefit of each one of the children. On the expiry of the period of twenty years, under the terms of the instrument, the Trust was to terminate and the properties were to revert to the executant, whereafter he could deal with the properties as he might please. Provision was also made for action to be taken by the

trustee in the event of the executant's death before the expiry of the period of twenty years.

5. These terms of the instrument in question show that the future income of the two houses from the date of execution of the deed was to be utilised by the trustee for the benefit of the various beneficiaries who were all minor children of the donor. The effect of this deed of Trust was that from the date of its execution the two houses would vest in the trustee and so also would vest in him the rental income accruing from these two houses. This rental income, according to the terms of the instrument was to be divided among the various beneficiaries who were all minor children of the donor. Thus the instrument clearly contained a disposition of the future rental income of the property, initially in favour of the trustee, with a direction to him to utilise that income for the benefit of the minor children of the donor. The method of utilisation was to distribute this income amongst the children of the donor who were all members of his family. In these circumstances this instrument has to be held to be a disposition of the property consisting of the future rental income from these two houses made specifically for the purpose of distributing that property, viz., the future rental income amongst the members of the family of the donor. The instrument is thus a 'settlement' satisfying the requirements laid down in Section 2(24), first part of Sub-clause (b), of the Stamp Act. It is clearly a non-testamentary disposition of the property consisting of the future rental income for the purpose of distributing that property of the donor amongst members of his family. Further, this disposition of the future income also being for the purpose of providing for his own minor children dependent on him, this instrument will also be a settlement under the second part of Sub-clause (b) of Section 2(24) of the Act. This would be so even though the instrument is by way of declaration of trust.

6. In this connection learned counsel for the executant urged before us that the word 'property' as used in the definition of 'settlement' should not be held to include future income from immovable property or the right to receive such future income. We see no reason to limit the meaning of the word 'property' in this manner in the definition of the word 'settlement'. The property mentioned is both movable or immovable property, and even the right to future Income or the future Income itself would clearly be property, capable of being transferred by various kinds of deeds of transfer. The right to future income may be transferred by a deed of conveyance, or, as has been done in this case, by a deed of trust. Being capable of transfer in this manner, we do not see why the future income or the right to future income should be excluded from the scope of the word 'property' as used in this definition.

7. We may also express our opinion on the alternative submission which was made before us, that this instrument contained a disposition of the property consisting of the two houses and since those two houses themselves were not to be distributed amongst the members of the family of the donor, it did not amount to a 'settlement'. Even if this instrument were to be treated as containing solely a disposition of the property consisting 'f the two houses, and not a disposition of the property consisting of the future rental income, the instrument will still be a deed of settlement, because the disposition of the houses in favour or the trustee was clearly for the purpose of providing for the minor children of the donor who were dependent on him.

The recitals in the instrument itself make it clear that all the children were minors and that the deed was being executed so that the children should have financial security and the donor should be relieved of future worries in respect of those

children. Under the second part of Clause (b) of Section 2(24) of the Act, there is no requirement that the instrument must contain a provision for distribution of the property. All that is required is that there should be a disposition of the property for the purpose of providing for some person or persons dependent on the donor, and this requirement is satisfied by the instrument in this case, even if it is treated as containing a disposition of the property consisting of the houses only.

8. In this connection, our attention was drawn by learned counsel to a decision of a Special Bench of this Court in *Narendra Singh Ju Deo v. Junior Secy. Board of Revenue* AIR 1947 All 141. The judgment in that case is a very brief one and does not contain much reasoning. It was held in that case that the instrument taken as a whole was not a deed of settlement. In that case the learned Judges found that the owner had transferred the property to the trustees to manage it on his behalf during his life time and to make certain arrangements in the event of his death and gave certain directions about the manner in which the trustees were to dispose of the income of the property and were to make gifts to his daughters by way of dowry at the time of their marriages. They gave three reasons for holding that the disposition did not amount to a settlement viz., that it was not executed for the purpose of the distribution of the owner's property, that he reserved the right of revocation to himself and that his general intention was that the property should remain in the hands of the trustees for some time 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.

We are unable to agree that these reasons are sufficient to take an instrument out of the category of a settlement contemplated by Section 2(24) of the Act. As to the first reason mentioned above, we are of the view that, even if the disposition of property was not for the purpose of its distribution, the instrument could still be a settlement if the disposition was for the purpose of providing for some persons dependent on the settlor. This aspect of the case does not appear to have been considered by the learned Judges. Further we are unable to hold that reservation of the right of revocation can have any bearing on the question whether a deed of trust amounts to a deed of settlement or not. Lastly, just as there can be a deed of trust in respect of property for a limited period, so also can there be a settlement for a limited period.

9. The result is that the instrument which has been submitted to us by the Chief Controlling Revenue Authority is liable to stamp duty as an instrument of settlement under Article 58 of Schedule I-B of the Stamp Act.

10. Let this opinion be returned to the Chief Controlling Revenue Authority.