

10 SCOB [2018] AD

APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain, Chief Justice.

Mr. Justice Hasan Foez Siddique.

Mr. Justice Mirza Hussain Haider.

CIVIL REVIEW PETITION NO.315 OF 2017.

(From the judgment and order dated 24.05.2016 passed by the High Court Division in Civil Appeal No.01 of 2010)

**Bangladesh Rubber Industries, a registered :Petitioners.
Partnership Firm, represented by its Managing
Partner, Mr. Iftaker Hussain of 278, Tejgaon
Industrial Area, Dhaka and another.**

Versus

Dine Ara Begum and others. :Respondents.

For the Petitioners. : Mr. Farid Ahmed, Senior Advocate,
instructed by Mr. Md. Taufique Hossain,
Advocate-on-Record.

For Respondent No.1. : Mr. Mohsin Rashid, Advocate (Mrs.
Nazneen Nahar, Advocate with him),
instructed by Mr. Syed Mahbubur
Rahman, Advocate-on-Record.

Respondent Nos.2-13. : Not represented.

Date of Hearing. : 17th May,2018.

Dissolution of partnership:

A deed of dissolution of partnership is not required to be registered under section 17 of the Registration Act because the share of a partner in a partnership is essentially moveable property notwithstanding that a part of the partnership property may be immovable. ...(Para 20)

J U D G M E N T

SYED MAHMUD HOSSAIN, C.J.:

1. This petition for review arises out of the judgment and order dated 24.05.2016 passed by this Division in Civil Appeal No.01 of 2010 allowing the appeal and setting aside the judgment and order dated 07.08.2008 passed by the High Court Division in Writ Petition No.9268 of 2007 making the Rule absolute.

2. The facts, leading to the filing of this review petition, in nutshell, are:

Review-petitioner No.1 brought the writ petition on the averment, *inter alia*, that three full brothers, namely, Noor Hossain, Mosharraf Hossain and Tozammal Hossain and one Saghir Ahmed initially formed a partnership firm under the name and style of Messers East Pakistan Rubber Industries in terms of an agreement of a partnership dated 07.05.1957 (that another brother Iqbal Hussain was admitted to the said partnership as a minor). The Government of erstwhile East Pakistan allotted a piece of land measuring 1 (one) acre appertaining to an industrial Plot No.278 at Tejgaon Industrial Area, Dhaka in the name of the said partnership firm on 26.08.1960. The partner, Noor Hussain died on 23.07.1968 leaving behind his two sons, namely, Anwar Husain and Iftekhar Husain, four daughters, Jinnat Husain (Zinat Husain), Jesmin Husain (minor), Israt Husain (minor), Sharmin Husain (minor), a widow Rowshan Ara Hussain and mother Zohra Khatun. They became partners of the said firm as Noor Hossain's legal heirs. Meanwhile, minor Iqbal Husain having attained majority became a full-fledged partner along with others under a reconstituted deed of partnership dated 24.07.1968. A standard lease deed for a period of 99 years in respect of the said industrial plot was executed on 20.01.1970 and registered on 17.02.1971 between the Government of erstwhile East Pakistan and the said partnership firm. On 31.08.1970, another partner Mosharraf Husain resigned from the partnership business in term of a compromise decree passed in Title Suit No.65 of 1970 in the Third Court of the then learned Subordinate Judge, Dhaka. After liberation war, the name of the firm was changed as Bangladesh Rubber Industries by a deed of rectification. In consequence thereof the change was recorded with the Registrar of Firms. Thereafter, a deed of agreement for dissolution of the firm was executed on 31.12.1975 by the remaining partners, namely, Mrs. Rawshan Ara Hossain, Mr. Iftekhar Hussain, Mr. Anwar Hossain and Miss Zeenat Hossain (heirs of late Noor Hossain) on the one hand and Mr. Tofazammel Hossain, Mr. Iqbal Hossain, Mrs. Zohra Khatun and Mr. Sagir Ahmed, on the other hand, vide Annexure-D under the terms and conditions stated therein. After dissolution of the aforesaid partnership, late Noor Hossain's heirs, namely, Anwar Hussain and Iftekhar Husain, four daughters, Zinat Hussain, Jesmin Hussain (minor), Ishrat Hussain (minor) and Sharmin Hussain (minor) and widow Rowshan Ara Hussain, executed a fresh partnership deed dated 01.01.1976 (admitting the minors to the benefit of partnership) to run and continue a partnership business vide Annexure-E and they got it registered with the Registrar of Joint Stock Companies and Firms under the Partnership Act being Registration No.P.F./22285 (wrongly written P.R.33385) dated 09.11.1976. Thereafter, the heirs of late Tozammel Hussain (i.e. the present respondents) filed an application in the office of writ-respondent No.1 for getting their names mutated in place of Bangladesh Rubber Industries as per their share (i.e. two bighas of land in term of the deed of dissolution, vide Annexure-D). The Senior Assistant Secretary (respondent No.3 in writ petition) on the basis of the aforesaid application served notices upon the parties concerned on 06.02.2005 and 20.02.2007 to appear before the Joint Secretary (respondent No.2 in writ petition) with their respective documents. On hearing both the sides, he rejected the prayer for mutation, vide his letter dated 12.06.2007 (Annexure-I) expressing that the Ministry had no scope to interfere with the matter of mutation since a civil suit was pending in this regard, but nevertheless directed the parties concerned to inform the Government of the fate of the pending suit or the result

of the compromise, if made, in the meantime. The further case of the writ-petitioner is that after issuance of letter dated 12.06.2007, the present respondent Nos.1 to 3 (respondent Nos.7-9 in writ petition) did not follow the directive of the said notice and beyond the knowledge of present review-petitioner No.1 (petitioner in writ petition) and in collusion with the officials of the Government got the impugned order dated 13.09.2007 (Annexure-J) allowing mutation of their names in respect of two bighas of land without serving any notice whatsoever to them and simultaneously communicated the said order to the Assistant commissioner Land, Tejgaon Circle, Dhaka and other concerned officials for compliance.

3. Being aggrieved by and dissatisfied with the letter dated 13.09.2007 issued by writ-respondent No.1, the writ-petitioners filed a writ petition before the High Court Division and obtained Rule Nisi in Writ Petition No.9268 of 2007.

4. Writ-respondent Nos.7-9 contested Rule by filing affidavit-in-opposition controverting the material statements made in the writ petition. Their case, in short, is that they accepted the material facts as reproduced in paragraph-2 about the formation of partnership firm on 7th May,1957 under the name of East Pakistan Rubber Industries, subsequent reconstitution of the said firm and ultimate dissolution on 31st December 1975 under the terms of the deed of dissolution (vide Annexure-D). The said deed of dissolution narrates (in recitation portion) about the formation of the partnership firm on 14.05.1957 and its subsequent reconstitutions and ultimate dissolution of the said partnership firm on 1st December 1975 on apportions of the shares among the existing partners in the form of land, cash money and good-will of the said firm.

5. The learned Judges of the High Court Division, upon hearing the parties, by the judgment and order dated 07.08.2008 made the Rule absolute.

6. Being aggrieved by and dissatisfied with judgment and order passed by the High Court Division, the writ-respondents as the leave-petitioners moved this Division by filing Civil Petition for Leave to Appeal Nos.2237 of 2008, on which, leave was granted on 06.01.2009, resulting in Civil Appeal No.01 of 2010. This Division upon hearing the appeal by the judgment and order dated 24.05.2016 allowed the appeal.

7. Feeling aggrieved by and dissatisfied with the judgment and order dated 24.05.2016 passed by this Division, the writ-petitioner-respondents as the review-petitioners filed Review Petition No.315 of 2017 before this Division.

8. Mr. Farid Ahmed, learned Senior Advocate, appearing on behalf of the petitioners, submits that Bangladesh Rubber Industries is a registered partnership firm constituted under the provision of Partnership Act,1932 and as such, it is capable of holding immovable property in its own name and to have the title vested in it. Accordingly, the immovable property measuring one acre of land, comprised Industrial Plot No.278 of Tejgaon Industrial Area, Dhaka, having been allotted and transferred by way of perpetual lease deed, it becomes the owner and possessor of the said immovable property, holding the title of the said land and as such, to divest the title of the said immovable property from the partnership firm, a registered deed of transfer is required. Since admittedly, no such deed of transfer was executed and registered by the

partnership firm relinquishing its title in the said property in favour of the individual partners, the mutation of names in respect of the said property in the individual names of the partners are palpably illegal and as such, the judgment passed by this Division may be reviewed.

9. Mr. Mohosin Rashid, learned Advocate (Mrs. Nazneen Nahar, Advocate with him), appearing on behalf of respondent No.1, on the other hand, supports the judgment delivered by the High Court Division.

10. We have considered the submissions of the learned Senior Advocate for the petitioners and the learned Advocate for respondent No.1, perused the impugned judgment and the materials on record.

11. It is admitted that as the disputed property belongs exclusively to the firm, no partner can claim any part of the property as his own and what a partner is entitled to his share of profits only, so long the partnership continues. Upon dissolution of the partnership, his share is his proportion of money representing the firm's asset including immovable property after liquidation of the partnership debts and liabilities.

12. On dissolution of firm each of the partners is entitled to receive his share of assets of the firm to which he was entitled. Section 32 of the Partnership Act provides for retirement of a partner from the partnership but it makes no provision of separation of share of the retired partner but this matter has been left to be determined by agreement between the partners. *In the case of Ajudhia Pershad Ram Pershad Vs. Sham Sunder and others, AIR 1947 Lahore,13 Cornelius J.* elaborately discussed this provision of the law and held as under:

“There would thus appear to be no doubt that the share of a partner in an existing partnership is essentially movable property, notwithstanding that a part of the partnership property may be immovable.”

13. In the case of *Addanki Narayanappa Vs. Bhaskara Krishnappa, AIR 1966 SC 1300*, Indian Supreme Court held that “the interest of the partners of Addadki family in the partnership assets was movable property and the document evidencing the relinquishment of that interest was not compulsorily registerable under section 17(1) of the Registration Act.”

14. In this case reliance may be placed on the case of *Lui Ying Ping vs. Leon Fang AI.(1984) 36 DLR (AD)273*, the Court held as under:

“In the instant case, the respondent by the agreement Ext.2(a), with her partner retired from the partnership and relinquished all her interests including her share in the land and building at Motijheel on consideration of cash payment of Tk.20,000/-. This document was not required to be registered under the Registration Act. Consequently, her interest in the land and building stood transferred to the appellant who thereupon converted all his assets into a proprietorship and mutated his name accordingly in all relevant public documents.”

15. In the case of *N. Khandervali Saheb (dead) by LRS and another vs. N. Gudu Sahib (dead) and others (2003) 3 SCC 229*, the question arose whether an award by which residue assets of a partnership firm are distributed amongst the partners on dissolution of the partnership firm requires registration under section 17 of the Registration Act,1908. On dissolution of the partnership firm, accounts are settled amongst the partners and the assets of the partnership are distributed amongst the partners as per their respective shares in the

partnership firm. Thus, on dissolution of a partnership firm, the allotment of assets to individual partners is not a case of transfer of any assets of the firm. The assets which hereinbefore belonged to each partner will after dissolution of the firm stand allotted to the partners individually. There is no transfer or assignment of ownership in any of the assets. This is the legal consequence of distribution of assets on dissolution of a partnership firm. The distribution of assets may be done either by way of an arbitration award or by mutual settlement between the partners themselves. The document which records the settlement in this case is an award which does not require registration under section 17 of the Registration Act since the document does not transfer or assign interest in any asset.

16. In the case of *S.V. Chandra Pandian vs. S. V. Sivalinga Nadar (1993) 1 SCC 589*, the Indian Supreme Court held that “the property falling to the share of the partner on distribution of the residue would naturally belong to him exclusively but since in the eye of law it is money and not immovable property there is no question of registration under section 17 of the Registration Act.”

17. In the above case, the Indian Supreme Court further held that if one looks at the award as allocating certain immovable property since there is no transfer, no partition or extinguishment of any right therein, there is no question of application of section 17(1) of the Registration Act.

18. This Division also relied upon the case of *Commissioner of Income Tax, West Bengal, Calcutta Vs. Juggilal Kamalapat, AIR 1967 (SC)401*. The question arose whether non-registration of the relinquishment deed invalidates the transfer of the business assets to the new partnership.

19. The Supreme Court of India in the above case held as under:

“The Deed of Relinquishment, in this case, was in respect of the individual interest of the three Singhanian 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.”

20. Having considered the cases cited above, we find that a deed of dissolution of partnership is not required to be registered under section 17 of the Registration Act because the share of a partner in a partnership is essentially moveable property notwithstanding that a part of the partnership property may be immovable.

21. The learned Counsel for the petitioners could not make out any case as contemplated under Order XLVII Rule 1 of the Code of Civil Procedure and as such, we do not find any ground for interference. Accordingly, this civil review petition is dismissed.