

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B.Civil Writ Petition No. 4354 / 2005

State of Rajasthan through Sub-Registrar, Bundi (Rajasthan)

----Petitioner

Versus

1. Shri Arun Kumar Mittal son of Shri Devaki Nandan Mittal sole proprietor of M/s Rajasthan Hume Pipes Manufacturing Company, Plot No.13 A-1 and 4 A-16, Nainwa Road Industrial Area, Bundi (Rajasthan).

2. The Board of Revenue, Rajasthan, Ajmer

---Respondents

For Petitioner(s) : Mr. Dheeraj Tripathi Dy.G.C.

For Respondent(s) : Mr. Manish Kumwat

JUSTICE DINESH MEHTA

Jugment

Reportable

18/01/2017

The present writ petition filed by the State of Rajasthan; under Article 226/227 of the Constitution of India is directed against the order dated 18th February, 2005, passed by the Revenue Board, Ajmer whereby the Board of Revenue has allowed the Revision filed by the respondent Mr.Arun Kumar Mittal, holding that the document in question does not fall within the definition of transfer of lease by way of assignment.

The facts giving rise to the filing of the present writ petition are that a firm M/S Rajasthan Hume Pipes Manufacturing Company (hereinafter referred to as RHPMC or the firm) having three partners, namely Shri Devaki Nandan having 50% share,

Shri Hari Om Mittal having 25% share and Smt. Bina Mittal having 25% share, were having lease hold rights of 5409 square meters land in the RIICO, Industrial Area, Bundi, in relation whereof, a registered lease agreement dt.26.9.79 came to be executed.

Shri Hari Om Mittal retired from the firm on 31.3.91 leaving behind two partners; namely Smt. Bina Mittal & Shri. Devaki Nandan, however on the very next date i.e. 1/4/1991, Mr. Arun Kumar Mittal and Ms. Dipika Mittal were inducted in the partnership firm and partnership thus became a firm of four partners namely Shri Devaki Nandan, Smt. Bina Mittal, Shri. Arun Kumar Mittal and Dipika Mittal. On 31.3.92, the firm consisting of above referred four partners, stood dissolved and Arun Kumar Mittal became the sole Proprietor of the said firm 'RHPMC' and acquired all assets & liabilities of the Firm.

The respondent, sole proprietor of RHPMC in the year 2004 approached RIICO and requested to execute a supplementary lease deed in his favour (Mr.Arun Kumar Mittal) being the sole Proprietor of the concern namely M/S Rajasthan Hume Pipes Manufacturing Company.

RIICO, vide office Order No.1 dt.15-4-2004 gave approval for such change of name of the partners and pursuant thereto an amendment lease dt.19-4-2004 came to be executed, whereby in place of name of three partners of the firm name of Arun Kumar Mittal, the respondent, was substituted..

When the supplementary lease deed dt. 19th April, 2004 was produced for registration, the Sub-Registrar referred it to the

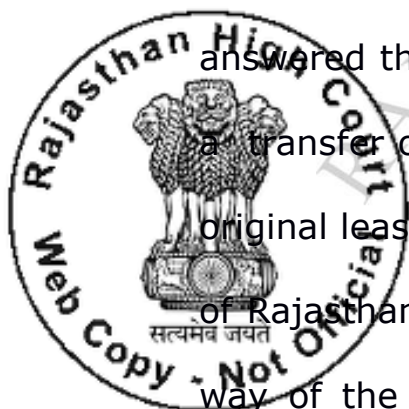


Collector(Stamp) for determining its correct nature as contemplated under section 47A of Indian Stamp Act, read with Rajasthan Stamp (Adaption) Act, 1952 which the proceedings continued under Section 53 of Rajasthan Stamp Act, 1998, brought in force w.e.f 27.5.2004.

The Collector (Stamp) vide order dated 25-8-2004, answered the reference and held that the document in question is a transfer of lease by way of assignment, interalia observing that original lease deed executed by RIICO on 26.9.79 was in the name of Rajasthan Hume Pipe consisting of three partners, whereas by way of the alleged supplementary/amendment lease deed, the property is being conveyed/transferred in favour of Mr. Arun Kumar Mittal, who was not even a partner in the firm.

The respondent preferred a Revision petition before Board of Revenue, Ajmer, which came to be allowed by the Board vide an order dated 18th February, 2005. While allowing the Revision petition filed by the respondent No.1, the Board of Revenue observed in para 6 & 7 as under:

सन् 1991 में मैसर्स राजस्थान ह्यूम पाईप्स मैन्यूफैक्चरिंग कम्पनी, नैनवा रोड, बून्दी के चार भागीदार देवकी नन्दन मित्तल, श्रीमति बीना मित्तल, कु0 दीपिका मित्तल तथा अरुण कुमार मित्तल थे। प्रार्थी के विद्वान अधिवक्ता के अनुसार इनमें से तीन पारिवारिक सदस्यों ने देवकीनन्दन-पिता, बीना मित्तल-चाची, दीपिका-बहिन ने अपना हक अरुण कुमार मित्तल को दे दिया था तथा अरुण कुमार मित्तल दिनांक 31-3-92 से उपरोक्त फर्म के एकमात्र मालिक हो गये व रीको ने दिनांक 26-9-79 को लिखी लीजडीड का



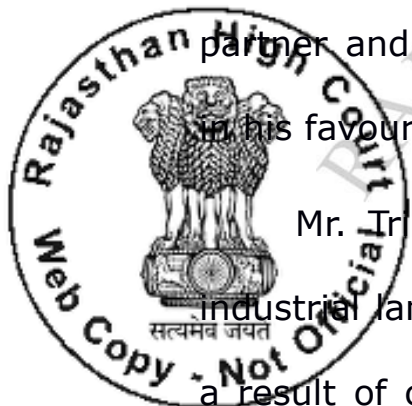


संशोधित डीड मानकर दिनांक 15-4-2004 को निष्पादित कर दिया, जिसे रजिस्ट्री के लिये पेश किया गया। उक्त लीजडीड तय की गई थी, वह बदली नहीं गई। लीज की तारीख भी बदली नहीं गई। लीजडीड की शर्तें भी वही रही, सिर्फ लैसी का नाम बदला गया, जो मूल भागीदार देवकीनन्दन का लडका है। मुद्रांक अधिनियम के तहत दस्तावेज की प्रकृति तय करने के लिए उसी दस्तावेज को देखा जाना चाहिए, जो रजिस्ट्री के लिए पेश किया गया। इस दस्तावेज से जो लीज पहले तीन भागीदारों व बाद में 4 भागीदारों को लैसी की हैसियत मानी गई थी वह संयुक्त मिल्कीयत थी और बाद में एक ही व्यक्ति की मिल्कीयत मान ली गई। उपरोक्त दस्तावेज को लीज का ट्रांसफर माना जाना उचित नहीं है। रीको का उद्देश्य इण्डस्ट्री का उत्थान है, अतः जो मैनेजमेंट जनरल पॉवर ऑफ अटोर्नी के माध्यम से देवकीनन्दन के पास था, वह अरुण कुमार के पास आ जाने से रीको ने इसे विद्यमान लीज डीड का अमेण्डेड डीड माना है। दोनों पक्षकारों ने दस्तावेज की प्रकृति में कोई संशोधन नहीं किया है। अतः मेरी सुविचारित राय में प्रश्नगत दस्तावेज ट्रांसफर ऑफ लीजडीड बाय वे ऑफ असाइमेंट की श्रेणी में नहीं आता है।

उपरोक्त विवेचन के आधार पर प्रार्थी द्वारा प्रस्तुत निगरानी स्वीकार की जाती है एवं उप महानिरीक्षक पंजीयन एवं पदेन कलेक्टर (मुद्रांक), कोटा, वृत्त कोटा का निर्णय दिनांक 25-8-2004 निरस्त किया जाता है।

Learned counsel for the petitioner-State, submitted that the change in the constitution of the partnership firm and the supplementary/amendment lease deed in question; is nothing but assignment of lease hold rights. He submitted that the property in question earlier belonged to a partnership firm consisting of three

partners namely Shri Devaki Nandan, Smt. Bina Mittal & Shri. Hari Om Mittal, which after changing hands twice, has ultimately come in the hands of the Shri Arun Kumar Mittal being a sole Proprietor of the firm. Learned counsel for the petitioner further submitted that Shri Arun Kumar Mittal became sole proprietor of the concern on 1.4.1992 of which firm, he was not even an original partner and therefore lease hold rights were never conferred by him in his favour, by the lessor i.e. RIICO.



Mr. Tripathi submitted that the conferment of right in the industrial land by way of amendment lease deed dt.19.4.2004, as a result of change in the constitution of the firm is nothing; but transfer of lease by way of assignment in relation to the industrial plots No.13,14 &15 of RIICO industrial Area. He further contended that amended lease deed in question which was executed by RIICO in favour of Shri Arun Kumar Mittal is clearly an assignment of lease hold rights of the three partners of the firm in favour of Shri Arun Kumar Mittal.

Learned counsel for the respondent Mr.Manish Kumawat submitted that the entire exercise of change of partners has been done in pursuance of family settlement and the persons involved therein belong to one family. Learned counsel for the respondent referred to a circular No.8/2004, which is being reproduced in the latter part of this judgment.

By reading the said circular, learned counsel for the respondent contended that the property in question has come to his hands by way of family settlement, of which there is no document/evidence and it is not as a result of the dissolution

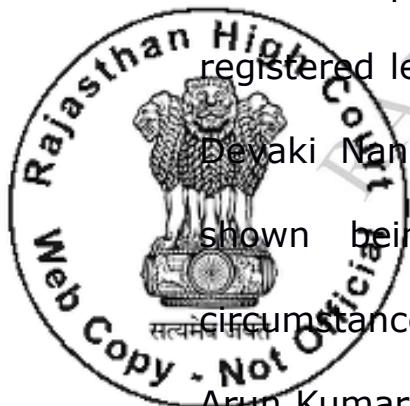
partnership.

I have heard the arguments of learned counsel for the parties and perused the record.

There is no dispute about the fact that firstly the lease agreement was executed by RIICO in favour of the firm 'RHPMC' on 26th September, 1979. At the time of execution of the said registered lease deed, names of the three partners, namely, Shri Devaki Nandan, Shri Hair Om Mittal & Smt. Bina Mittal, were shown being the partners of the firm. In the changed circumstances, as stated in factual narration, respondent Shri Arun Kumar Mittal became the sole proprietor of the said concern, for which RIICO was persuaded to execute a lease deed, labelled as 'Amendment Deed'. As the subject amendment deed (as it was projected) relates to an immovable property, it was thought appropriate to get it registered.

On examination of series of events relating to the constitution of the firm 'RHPMC' it is clear that it was originally having three partners namely Shri Devaki Nandan, Smt. Bina Mittal & Shri. Hari Om Mittal and ultimately on 1.4.92, Shri Arun Kumar Mittal became the sole proprietor. The name of the firm remained the same, however the respondent became sole proprietor, who asked RIICO to execute the requisite document named as amendment deed.

A perusal of the amendment deed under scrutiny, it is clear that the permission to accept Arun Kumar Mittal as proprietor of M/s Rajasthan Hume Pipe Manufacturing Co., has been granted vide office order No.1 dated 15-4-2004. It is a result of such



officer order that the amendment deed dated 15-4-2004, came into being with following stipulation:

"Whereas the plot was allotted in the name of M/s Rajasthan Hume Pipe Manufacturing Co., but on request of the lessee firm the (1) Devki Nandan father of Mr. Arun Kumar Mittal (2) Hari Om Mittal (3) Smt. Beena Mittal, Uncle & Aunty of Mr. Arun Kumar Mittal who were the partners of the firm and blood relation of the Mr. Arun Kumar Mittal was transferred the lease hold rights of plot against Mr. Arun Kumar Mittal and now Mr. Arun Kumar Mittal shall be the sole proprietor of the firm M/s Rajasthan Hume Pipe Manufacturing Co., **which permission has been granted vide office order no.1 dated 15.4.2004.**

NOW THIS AMENDMENT WITNESS AS FOLLOWS:-

"That the said lease deed dated executed on 26.09.1979 registered on 05.10.1979 shall be Read in line no. 15 page no. 1 as Arun Kumar Mittal S/o Sh. Devkinandan Mittal, Age 33 Yrs., R/o Plot No. 13, 14, 15, Nainwa Bundi in the place of (1) Devkinandan (2) Sh. Hari Om Mittal and (3) Smt. Beena Mittal partners or the firm M/s Rajasthan Hume pipe Manufacturing Co. and rest of clauses and material of the lease deed shall remain to the same.

In witness hereof the parties here to have signed this deed of Amendment on 19 day of April 2004."

सत्यमेव जयते

It is pertinent to note that though Shri Arun Kumar Mittal became the sole proprietor of the concern w.e.f 1.4.92 however lessor i.e. RIICO has recognized this fact and accepted him as a lessee vide office order No.1 dt.15-4-2004. It is equally relevant to note that the document in questions seeks to amend line no.15 page No.1 of the lease agreement and in place of 3 partners, seeks to substitute name of Shri Arun Kumar Mittal, without showing its date of effectiveness. If the amendment deed in question; as written; is read, its meaning would be as if Shri Arun

Kumar Mittal was a sole proprietor w.e.f 26-09-1979 itself. Such substitution and consequential reading of the lease deed 26.9.1979 would be ridiculous and impermissible being contrary to the soul of the original lease deed. The amendment deed has to be made effective from the date of execution i.e. 19th day of April and if that be so, Shri Arun Kumar Mittal would be recognized or treated as lessee only from 19-4-2004, for the remaining period of lease out of the total 99 years, as stipulated in para 1 of the lease agreement at 7-6-1979.

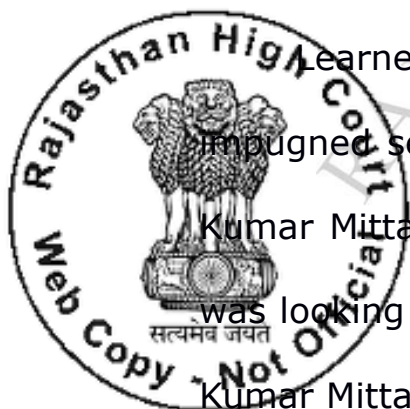


As such contentious document dt.19-4-2004 labelled as amendment deed is a camouflage or cloak created to conceal, the factum of assignment. The nature of the document is required to be determined not by the name or title given to it, but by the contents thereof and the context in which it has been drawn.

The effect of this document is: RIICO has assigned the lease hold rights or has acknowledged the transfer of rights of the partnership firm consisting of three partners, to Shri Arun Kumar Mittal. Needless to iterate that Arun Kumar Mittal was not even a partner on the date of execution of first lease deed on 26th September, 1979 executed by RIICO. The fact that Arun Kumar Mittal-Respondent is having blood relation with the original three partners is of little avail.

In this view of the matter, the Collector (Stamp) was perfectly justified in treating the amendment deed as "Transfer of lease by way of assignment", inasmuch as the document in question namely amendment lease dt.19-4-2004 is a consequence or acknowledgment of the office order No.1 dt.15-4-2004,

granting permission or recognizing Shri Arun Kumar Mittal as lessee of the subject property. The property in question as a matter of fact and law has been transferred from three partners to Shri Arun Kumar Mittal, as a result of the office order No.1 dt.15.4.2004 and the contentious amendment deed is a document witnessing such recognition.



learned Board of Revenue, while passing the order impugned seems to have been swayed by the fact that Shri Arun Kumar Mittal, son of original partner, Shri Devaki Nandan Mittal, was looking after the business of the firm and that said Shri Arun Kumar Mittal was managing the affairs of the firm as the power of attorney, who later became the sole proprietor of the firm. These facts in opinion of this Court are not germane and rather they are irrelevant.

Board has also observed that RIICO which has been established for augmentation of industrialization, and the Collector(Stamp) should not have treated such document to be transfer of lease by way of assignment. In considered opinion of this Court such fact has no bearing on the issue in question. It is true that the object of RIICO is to ensure augmentation of industrialization, but it is equally true that the State Government cannot be deprived of its legitimate revenue in the form of stamp duty. Sub-Registrar was thus justified in making a reference to the Collector(Stamps).

The amendment deed dated 15-4-2004 executed in favour of Shri Arun Kumar Mittal, pursuant to office order no.1 dt.15-4-2004 is therefore, in the nature of transfer of lease by way of

assignment and squarely fall within the ambit of Article 55 of the second Schedule attached with the Rajasthan Stamp Act, 1998.

It is the **instrument** and not the **incident** of transfer which is exigible to duty under the stamp act. The series of transactions clearly depicts that the property being held by the partners, on 1.4.1992 has devolved to Arun Kumar, who was an alien in the original firm and a stranger to the lease deed dt.26.9.1979. According to this Court, the instrument of transfer or assignment of lease hold rights, is the office order No.1 dated 15.4.2004, vide which RICO has permitted the lease hold rights to be conveyed in favour of Arun Kumar. The amendment deed dated 19th April is only a document giving effect to such assignment of lease hold rights.

Learned counsel for the respondents Mr.Manish Kumawat has relied upon the Circular No.8/2004, particularly proviso thereof to contend that since the property in question has vested in respondent Shri Arun Kumar Mittal by virtue of family settlement, it would not fall in the ambit of Article 55 of the Second Schedule appended to Stamp Act. It will not be out of place to reproduce Clause 11 of the Circular No.8/2004.

"11.ट्रांसफर ऑफ लीज बाई वे ऑफ असाईनमेन्ट :

जिस दस्तावेज के द्वारा पट्टादाता लीज पर दी गयी सम्पत्ति का हस्तान्तरण लीज की शेष अवधि के लिये अन्य व्यक्ति को कराता है तो वह दस्तावेज उक्त श्रेणी में आता है, इसके लिए आवश्यक तत्व है :

- (क) सम्पत्ति लीज पर दी गयी हो।
- (ख) लीज का हस्तान्तरण लीज की बची हुई अवधि के लिये किया गया हो।
- (ग) लीज का हस्तान्तरण पट्टागृहिता से भिन्न व्यक्ति को किया गया हो।

यदि किसी विधि के तहत या विधिक दस्तावेज के जैसे लेसी की मृत्यु के बाद उसके व्यक्तिगत कानून के तहत उत्तराधिकारियों के



नाम लीज हस्तान्तरण या विभाजन पत्र, कोर्ट की डिक्री, वसीयत, पारिवारिक समझौता पत्र आदि के आधार पर लीज का हस्तान्तरण होता है तो वह ट्रांसफर ऑफ लीज बाई वे ऑफ असाईनमेन्ट की श्रेणी में नहीं आयेगा, किन्तु फर्म या कम्पनी का विधिक स्वरूप बदलने या भागीदार बदलने या भागीदार विघटन होने पर जो पूरक दस्तावेज या संशोधित लीज आदि के नाम से दस्तावेज निष्पादित करवाया जाता है तो वह ट्रांसफर ऑफ लीज बाई वे ऑफ असाईनमेन्ट की श्रेणी में आयेगा।”

A bare reading of the above, circular unravels that it is applicable only in the event of vesting of the property by way of transmission to the legal heirs, family distribution, decree of the Court etc. The said circular does not take into its fold transaction like the one in hand, where the property has come under the ownership and possession of the respondent by virtue of dissolution of firm and dissolution deed, particularly when the respondent was not the original lessee in the original lease agreement dated 26.9.79.

There is yet another aspect of the matter, a close reading of the lease deed dt.26.9.79 reveals that the three persons namely Shri. Devaki Nandan, Shri Hari Om Mittal & Smt. Bina Mittal being the partners of the firm and not the firm itself has been recorded as lessee. In other words the lease hold rights have been conferred upon three partners in their individual capacities, irrespective of the firm, as such merely because Shri Arun Kumar Mittal has become the sole proprietor of the firm RHPMC, it is difficult to digest that property has legally vested in him merely as a result of two or three dissolution deed and new partnership deeds.

The writ petition is therefore allowed. The impugned order dated 18th February, 2004 passed by Board of Revenue, Ajmer in



revision petition No.515/2004, is quashed and set aside. The order dated 25.8.2004 of the Collector (Stamp) is restored with a modification that, the amendment lease deed read with the office order No.1 dt.15-4-2004 is a conveyance, falling within the definition and sweep of "transfer of lease by way of assignment" as described in Article 55 of the Second Schedule to the Rajasthan Stamp Act, 1998.

A copy of the office order No.1 dt. 15-4-2004 shall be attached with the amendment lease dt.19-4-2004 and the same shall be treated as integral part thereof.

Petition allowed, cost made easy.

(DINESH MEHTA)J.

Anu/49



सत्यमेव जयते