

HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE
(SINGLE BENCH:)
HON'BLE SHRI JUSTICE VIVEK RUSIA
WRIT PETITION NO.8888 OF 2011

Trustees of H.C. Dhanda Trust

V E R S U S

State of Madhya Pradesh & 3 others

Shri A.K. Chitle, learned Senior counsel with Shri Vivek Phadke, learned counsel for the petitioner.

Shri Rohit Mangal, learned Government Advocate for Respondent Nos.1 to 3.

Shri R.S. Chhabra, learned counsel for respondent No.4.

ORDER

(Passed on this 30th day of March, 2017)

THE petitioner has filed the present writ petition being aggrieved by order dated 25/10/2011, passed by Board of Revenue, by which, the revision has been dismissed and the order of the Collector dated 22/09/2008 has been affirmed.

[2] Brief facts of the case are that the petitioner is a Private Trust, constituted by way of the "Will" dated 26/10/2002, executed by Late Shri S.C. Dhanda (died on 05/07/2003). Shri S.C. Dhanda created a Trust by appointing his elder son Yogesh Dhanda as Chairman and two other trustees, who are other than the family members. Later on, two more

trustees were inducted in the trust. Copy of the 'Will' dated 26/10/2002 is filed in the writ petition as Annexure-P/3. Later on, Board of Trustees in its meeting held on 06/04/2005, has passed the resolution to transfer the interest of deceased in Lantern Hotel property in favour of Yogesh Dhanda and Ishan Dhanda i.e. sons of late Shri S.C. Dhanda. To implement the aforesaid resolution, 'Deed of Assent' was executed on 21/04/2005, by which, the trustee/ executor gave assent to complete the title to the legatees and vested absolutely forever in their favour the properties of Lantern Hotel and Jahaz Mahal.

[3] Respondent No.3, who was not related to functioning of the trust and the properties but under the garb of social worker, made a complaint to the Collector of Stamp that 'Deed of Assent' was executed without payment of proper stamp duties. On the basis of said complaint, the Collector of Stamp, Indore registered a Case No.77/46(B)/47(A)(3) and issued notice under Section 48-B of Indian Stamp Act,1899 to the petitioner through Yogesh Dhanda and other trustees. The petitioner filed a detailed reply along with preliminary objection before the Collector of Stamp, Indore.

[4] By order dated 22/09/2008, the Collector of Stamp has held that the trustee has acted contrary to the intention of executor – Late Shri S.C. Dhanda and transferred to Yogesh Dhanda and Ishan Dhanda. This is not a 'Deed of Assent' but is a 'Gift' because no consideration has been paid in lieu of the transfer, therefore, under Schedule 1-A of Article 31

of the Indian Stamp Act, 1899 the duty @ 8% is liable to be paid on the market value of the property. On the basis of the market guideline of the year 2005-06, value of the properties was assessed as Rs.12,80,99,000/- and the total stamp duty payable was assessed Rs.1,28,09,900/-. The Collector has also imposed 10 times penalty to the tune of Rs.12,80,97,000/- and directed the petitioner to pay within 30 days in the Government Treasury. Being aggrieved by the order of Collector, the petitioner preferred a reference before the Board of Revenue under Section 56 (4) of Indian Stamp Act, 1899. The reference was argued on the ground that the 'Deed of Assent' is not notified in the Schedule No.1-A of Indian Stamp Act, therefore, no stamp duty is liable to be paid by the petitioner. Under Sections 332 and 332 of Indian Succession Act, that assent of executor of a 'Will' does not require or to pay advalorem stamp duty. The executor appointed under a 'Will' has no title to the property bequeathed. Therefore, there is no question of transferring of title. The imposition of penalty @ 10 times was also challenged by way of reference. The petitioner has prayed that this matter be referred to the High Court by way of reference, as important issue of imposition of tax and penalty are involved. By order dated 25/10/2011, the Board of Revenue has dismissed the reference. Hence, the present writ petition before this Court.

[5] Vide order dated 10/11/2011, notices were issued to the Respondents and vide order dated 08/12/2011,

interim relief was granted to the petitioner that they shall not create third party right and shall not alienate the property and the Respondents shall not take coercive action for recovery of the stamp duty and penalty. Vide order dated 13/07/2012, the petition was admitted for final hearing. Respondent No.4 filed an application for dismissal of the writ petition. Vide order dated 23/02/2012, the stay application filed by Respondent No.4 was dismissed.

[6] State Government has filed the return in support of the order passed by the Collector and the Board of Revenue and submitted that Late S.C. Dhanda has created a private trust of his properties and has vested the property in the trust. By clearly mentioning in Clause 8 and 21 of the 'Will' that the Board of Trustees shall not aim to sale the properties and shall manage the properties from the income there from. It has been further clarified that the properties bequeathed in particular interested to the trustees, shall not be sold. As per conditions of the 'Will' of Late S.C. Dhanda, the Trustees have no right to desolve and transfer the properties vested in the Trust. The trustees had no right to transfer the said property by way of 'Deed of Assent'. The Collector and Board of Revenue has rightly termed as "Gift" as all the ingredients of the "Gift" is there. The petitioner cannot avoid to pay stamp duty by making it as "Deed of Assent". The impugned order Annexure-P/1 and P/2 have been passed as per the provision laid down in Indian Stamp Act and prays for dismissal of the writ petition.

[7] Shri A.K.Chitale, learned Senior Counsel emphasised that the learned Collector as well as the Board of Revenue has committed grave error of law as well as on facts by treating Deed of Assent as Gift deed. Late H.C.Dhanda executed a Will dated 26.10.2002. The Will was in two parts. The Part-II of the Will is the subject matter of this petition by which a private trust was created for the moveable and immoveable properties and by which his elder son Jogesh Dhanda was made Chairman of the Trust; D.J.Dave Chartered Accountant and Chhaganlal Nagar Chief Accountant made as trustee as well as executor of the Will. The trustees were also directed to function as Board of Director as well as executors and the management to look after maintain, develop and control of the specified properties. The Board of Director/Trustees in its meeting dated 6th April, 2005 has passed the resolution to transfer and West area belonging to Jogesh Dhanda and Ishan Dhanda in Lantern Hotel and Jahajmahal by meets and bounds by way of a deed of transfer. After the aforesaid resolution, a deed of transfer was prepared by which area 20595 sq.ft. transferred to Jogesh Dhanda and another area 9153 sq.ft. in favour of second beneficiary i.e. Ishan Dhanda. Likewise, the property of Jahajmahal area 23750 sq.ft. was directed to be held jointly in equal share between Jogesh Dhanda and Ishan Dhanda. By way of this Deed of Assent, the title of the legatees has been completed absolutely and forever. It is further submitted that only question arises in this petition is about the

nature of transaction by the document of Deed of Assent is a Gift or not? He further argued that under Article 56 (d) of Indian Stamp Act if trust property is transferred without consideration from one trustee to another trustee or from trustee to beneficiary, the deed is to be executed in the stamp paper of Rs.200-00. Under the Will – Trust, the legatee became the owner of the property bequeathed to him but their title has been completed by way of Deed of Assent as provided in Sections 332 and 336 of Indian Succession Act. He further submits that the Deed of Assent can be oral and even if the deed is executed, it does not require its registration or stamps as the Deed of Assent is not defined or in the Schedule of Indian Stamp Act, 1899.

[8] He further emphasised that the Gift is defined under Sections 122 and 123 of the Transfer of Property Act and according to which when the certain moveable and immoveable property made voluntarily transferred without any consideration by one person and accepted by another person would called as a Gift. Section 123 mandates the execution of registered instruments for parties of making a Gift of immoveable property. He submits that the Gift can only be made by owner of the property. The trustee cannot become owner of the property and if they transferred the properties to complete the legatee that would not come under the category of gift. Here the trustee/executor has carried out the intention of Will by executing Deed of Assent and they did not receive any

consideration for such transfer. Under the Will – Trust Jogesh Dhanda and other beneficiaries/legatees were already owner of the properties of the Will-Trust. No fresh ownership or other title were created by the executor. Therefore, the learned authority has committed error while holding that the deed is a Gift Deed.

[9] Shri Chitale, learned Senior Counsel further stressed that there was no justification for imposing maximum penalty up to the 10 times. Since the trustee/executor has executed the Deed of Assent which is permissible under the law on a proper stamp paper, therefore, the penalty of Rs.12,80,97,000-00 imposed by the Collector of Stamp is excessive, unwarranted and contrary to law. Before imposing the penalty, the Collector ought to have issued a notice to the petitioner. It is further submitted that impounding cannot be done on photocopy of the instrument as admittedly the original Deed of Assent was not before the Collector. It is further submitted that the said deed has not been given effect so far.

[10] Per contra, Shri Rohit Mangal, learned Govt. Advocate on behalf of the respondents/State refuted the argument of petitioner and submitted that the order passed by the Collector of Stamp and the Board of Revenue are just and proper and no interference is called for. It is submitted that the property in question had been vested in the trust by way of Will. The trustee has transferred the properties to the legal heirs of H.C.Dhanda without any consideration, therefore, it is a Gift

Deed. Once Late Shri H.C.Dhanda has created the trust and vested his properties in it than the executor/trustee has no right to transfer the property to the legatees. Under Sections 331 and 332 of the Indian Succession Act, the Assent may be verbal or it may be either expresses or implied from the conduct of the executor, even no deed is required to be executed. Article 56 (d) of the Stamp Act would not apply in the present case because by executing so called Deed of Assent, the properties are no more the trust property. The provision of Article 56 (d) applies where trust property is transferred from one trustee to another trustee and it remains the trust property. But in the present case the trustee/executor has transferred the property to Jogesh Dhanda and Ishan Dhanda virtually by dissolving the trust. Therefore, the document in question is not covered under Article 56 of Schedule 1-A of Stamp Act. The Collector has not committed any error while imposing the penalty to the extent 10 times looking to the conduct of the parties by which they avoided to pay the proper stamp duty.

[11] It is further submitted that since no question of law is involved in this issue, it was not required to refer by the Board of Revenue under Section 57 of the Stamp Act to the High Court. The impugned deed from face of it is a “Gift Deed” by which the entire property has been transferred to the legatees. Therefore, the prayer for reference has rightly been declined by the Board of Revenue and prayed for dismissal of writ petition.

[12] Shri R.S.Chhabra, learned counsel for the Respondent No.4 argued in support of Government and tried to justify the impugned order. He submits that being a citizen when Respondent No.4 came to know that petitioner has deliberately avoided to pay the adequate stamp duty, he brought it to the knowledge of Collector of Stamp. He is no where related within trust or properties of Late Shri H.C.Dhanda.

[13] I have heard learned counsel for the parties at length.

[14] Initially Shri Chitale, learned Senior Counsel argued the writ petition on following questions of lawm according to him are involved in this petition :-

“(A) Is any stamp duty exigible on the Deed of Assent Annexure P/5 dated 21.04.2005 on pages 49 to 53 ?

(B) Could the Collector of Stamps have passed the order imposing stamp duty and penalty without impounding the Deed of Assent ?

(C) Is the maximum penalty of ten times the stamp duty illegal ?

(D) Should the Board of Revenue have made a reference of the questions of law to this Hon'ble Court ?”

[15] But later on he has confined his arguments on a limited issue about the nature of transaction by way of Deed of Assent whether is a gift or a document covered under Article 56 (d) or Article 5 (g) of Stamp Act. According to Shri Chitale, the Deed dated 21st April, 2005 is a Deed of Assent executed by executors appointed by Late Shri H.C.Dhanda to execute his Will. The learned authorities and the Board of Revenue has

wrongly treated as a gift and imposed heavy stamp duty. To appreciate the nature of transaction, it is necessary to refer the contents of the Will dated 26th October, 2002 executed by Late Shri H.C.Dhanda as a last and final Will. The said Will is in 2 parts. The first part of the Will from Clause 4 to Clause 15 by which Late Shri H.C.Dhanda has given the details of his moveable and immoveable properties and this is not related with the subject matter of this petition. By way of Part-II, Late Shri H.C.Dhanda has appointed 3 persons as a Trustees of his immoveable and moveable properties which will be entrusted to them on his death upon the terms specified in the Will. These Trustees were – Shri Jogesh Dhanda as Chairman; Shri D.J.Dave, Chartered Accountant and Shri Chhaganlal Nagar, Chief Accountant. Clause 17 (a) of the Will state that except items of the properties specified in Clause 17 (b), all others on my death will stand put in the Trust with the above mentioned Trustees. The properties mentioned in clause 17 (b) is reproduced below :-

“17 (b) I make the following bequests unconditionally :

- I I bequeath my 1/4th (one fourth) legal interest in the property willed by my late father-in-law by his Will of 1966 to me as also my shares in Krishan Prasad and Co. Ltd., Ambala City to my elder son, Jogesh.**
- II I bequeath all my agricultural holding of about 6 (six) acres in village Palda to my younger son, Ishan as also all my three motor vehicles to Ishan.**

I bequeath all my wife's paintings to Hotel Lantern for display in the Reception Hall.

- III (a) I bequeath to my daughter-in-law, Kaylene a silver tea set lying with me in my safe.
- (b) I bequeath to my grand son, Prem, my silver trophies.
- (c) And my law books to my grant daughter, Shelly, except AIR Supreme Court reports which I have presented to my friend, Shri D.J.Dave, Chartered Accountant.”

[16] By way of Clause 18 (a), the Trustees who were the Board of Directors were assigned the certain duties in respect of Hotel Lantern and Shab-E-Malwa and the land therewith. They have been directed to maintain the properties from the income therefrom and if they cannot run profitably, they will have the option to give out on rent or license. Late Shri H.C.Dhanda was assured that this situation would not come that is why he has used the word “which is unlikely”. It has been specifically provided that the Trustees shall aim at not selling the above mentioned properties and shall as far as possible manage. Clause 18 (a) and (b) are reproduced below :-

“18 (a) The Trustees above mentioned will also function as a Board of Directors and Management to look after maintain, develop and control the management of my specified properties. If the said Trustees cum Directors find that all my immovable properties entrusted to them, in particular Hotel Lantern, Shab-E-Malwa, and the land therewith including the open land to the south of Hotel Lantern, admeasuring about 84300 sq.ft. (Eighty four thousand and three hundred square feet) cannot be run profitably (which is unlikely), they will have the option to give out these on rent or license which should be easily possible, in view of their central situation & to safe parties, e.g. Scheduled Banks and/or Insurance Companies, multinational companies of repute and the like. The Trustees shall aim at not selling the above mentioned immovable properties. They shall as far as possible manage the properties from the income therefrom. The Trustees shall also likewise aim at preserving the capital of the fixed deposits with the State Bank of Indore and apply the net interest therefrom after tax to the management, development and maintenance of my properties. They will maintain accounts of the properties entrusted

to them and pay taxes and rates when due. Trustee Shri Dave will deal with all procedures, returns and hearings in re assessment of taxes with such help as he needs from Trustee, Shri Chhaganlal Nagar.

(b) The Trustees shall be entitled to sign cheques for meeting all necessary expenditure for various items as mentioned in this Will. Cheques for necessary expenditure as far as possible should be usually signed by three Trustees, but where it is not possible, these may be signed by any two of them. In issuing these cheques the aim should be to maintain my capital in fixed deposits and to use the net interest thereon, besides the net profits from the business by running Hotel Lantern and any such activities by the Trustees, as for instance letting out the open land with the Lantern complex for marriages, weddings etc and the net income from Shab-A-Malwa. In consultation with State Bank of Indore, the Trustees may work out a detailed procedure to implement, this. The Trustees will also have the power of renewing Bank deposits suitably from time to time.

(Emphasis supplied).

[17] In Clause 21, it is specifically mentioned that “It is my integral wish that my following immovable properties in particular, entrusted to the Trustees, shall not be sold”. Clause 21 is reproduced below :-

“(21) It is my integral wish that my following immovable properties in particular, entrusted to the Trustees, shall not be sold and only the net income therefrom after meeting all expenses, rates & taxes etc. shall be applied for the beneficiaries under this Will :

- i The Hotel Lantern and the land therewith
- ii Shab-A-Malwa and the land therewith
- iii The open land to the south of the Hotel Lantern building.

Note : The total area of the land under item (i), (ii) and (iii) above is about 84330 sq ft (Eighty four thousand three hundred and thirty square feet). (out of 108900 sq ft gifted to me by the late Maharaja of Indore less 24570 sq ft of the land with the Starlit Cinema, already sold by me.

Note : The municipal Corporation have further reduced this area for widening their roads on the west and north, about 4 feet along the whole boundary on the west and about 7 feet likewise on the north.”

[18] The fee for the Trustees has also been fixed in the Will. Share of beneficiaries Jogesh Dhanda and his family; younger son Ishan Dhanda and daughter Sheela Linde in all his properties has also been mentioned in the Will. All the Trustees under the Will were made executor of the Will. The provisions has also been made to fill vacancies in the Board of Trustees. It has also been clarified that after the life time of Jogesh Dhanda, his son Prem will be the Chairman of the Trust.

[19] From the aforesaid clauses of the Will substantiate that H.C.Dhanda had intention that the properties entrusted to the trust must continue in the Trust and the Trustees were given power only to manage that properties, not to sell.

[20] On 05.07.2003 Shri H.C.Dhanda expired and on his demise Will became operative. That Shri Jogesh Dhanda, Ishan Dhanda legatees/beneficiaries Shri D.J.Dave and Shri Chhaganlal Nagar i.e. executor/trustees after 12 months of the death of Shri Dhanda held a meeting on 6th April, 2005. They approved the sale of Hotel Jahajmahal. They further decided that the Will has become effective and the function of the executor starts to vest the properties mentioned in the Will to the legatees/beneficiaries of deceased. By way of resolution, the executor/Trustees has decided to transfer respective share to Jogesh Dhanda and his family and Ishan Dhanda in the Lantern Hotel and Jahaj Mahal Hotel by way of meets and bounds by executing a deed of transfer with the site plan between trustees and the beneficiaries. The resolution is reproduced below :-

“RESOLUTION :

Executors/Trustees to transfer and west area belonging to Jogesh Dhanda & family and Ishan Dhanda in Lantern Hotel and Jahaz Mahal by meets and bounds and by executing a deed of Transfer with a site plan from the trustees to beneficiaries and registering the same on the lines of a draft placed before the Trustee duly initiated by the Chairman for identification and that Jogesh Dhanda Chairman/Trustee and C.L.Nagar, Trustee be and are hereby authorized jointly to execute and register if required a transfer deed with plan on the lines of the aforesaid draft in favour of Jogesh Dhanda and Ishan Dhanda and to take all other steps as may be necessary and required to best and transfer the properties covered thereunder in favour of the beneficiaries & mutation of names in Municipal register.

This resolution was passed by an absolute majority with C.L.Nagar, Mrs. N. Sheikh and J.Dhanda voting in favour and A.K.Gupta abstaining from voting.”

[21] After the aforesaid resolution, a Deed of Assent was executed between M/s H.C.dhanda Trust and (1) Jogesh Dhanda and (2) Ishan Dhanda.

[22] In Clause (4) of the Deed of Assent, it is mentioned that as per clauses 4 to 6 of the Will, Late Shri H.C.dhanda has bequeathed his interest in the property known as Lantern Hotel in favour of the beneficiaries for all purpose. As per their respective shares, mentioned in clause 23 the property known as Hotel Lantern has been divided between beneficiaries i.e. Jogesh Dhanda and Ishan Dhanda by way of deed. The deed was signed by the Trustees/Executors as one party and Jogesh Dhanda and Ishan Dhanda as second party. The said deed was executed on a stamp paper of Rs.200-00 and same was not registered.

[23] A complaint was made by Respondent No.4 to

the Collector of Stamp that the Trustees have not paid the adequate stamp duty on the said "Deed of Assent. The Collector of Stamp issued a notice to the Trust and Ishan Dhanda under Section 48-B of the Indian Stamp Act as to why the stamp duty of Rs.1,62,82,150-00 be not recovered and as to why the maximum penalty of 10 times to the stamp duty i.e. Rs.16,28,21,500-00 be imposed. A detailed reply was filed by the petitioner denying their liability to pay the stamp duty as the Deed of Assent is not required to be registered or stamped by virtue of Section 332 of the Indian Succession Act. The Collector of Stamp vide order dated 22.09.2008 has rejected all the contentions of the petitioner and has held that by way of Deed of Assent entire immovable properties has been absolutely transferred and vested with Jogesh Dhanda and Ishan Dhanda and it comes under the category of Gift deed, therefore, the stamp duty @ 8% is liable to be imposed. Since the petitioner has deliberately avoided the stamp duty, therefore, penalty of 10 times to the stamp duty is liable to be imposed.

[24] Thereafter the petitioner preferred a revision before the Board of Revenue with a request to send reference to the High Court as important questions of law are involved but the same prayer of the petitioner was rejected. The Board of Revenue by the impugned order dated 25.10.2011 has affirmed the order of Collector of Stamp in all respect.

[25] The contention of the petitioner is that that it was a Deed of Assent as provided in Section 332 of Indian

Succession Act which mandate that the assent of the executor or administrator is necessary to complete a legatee's title to his legacy. By the deed of Assent, the executor of the Will has executed the Will by transferring the title to the legatees of Shri H.C.Dhanda. The Deed of Assent is not in the schedule under Section 3-A of Indian Stamp Act, therefore, no duty is payable. Under Section 56 (d) of the Indian Stamp Act when the trust property is transferred from one Trust to another, the deed is required to be executed on stamp papers of Rs.200-00 only. In the present case when the Trustees/Executors made in the Will has transferred the title to the legatees of H.C.Dhanda, therefore, it is nothing but a Deed of Assent not the Gift. In support of his contention a reliance has been placed on the judgement of apex Court in the case of *Hindustan Lever* v/s *State of Maharashtra* [(2004) 9 SCC 438].

[26] As stated above, the Will of Late Shri H.C. Dhanda was in two parts. In Part-I he has given the details of his all moveable and immoveable properties. In Part-II, he appointed the Trustees of his properties, moveable and immoveable properties and in Clause 17 (a) he has mentioned that except items mentioned in Clause 17 (b) all the properties of Will-Trust put in the Trust and the Trustees while functioning as the Board of Director shall manage and maintain Lantern Hotel and Shab-E-Malwa and these properties would continue to remain as Trust properties and the Trustees shall not sale these properties and only net income therefrom shall be given to

the beneficiaries. The intention behind to create Trust to run both Hotels by the Trustees. In meeting dated 6th April, 2005 the resolution was passed to transfer these properties namely Lantern Hotel and Jahaz Mahal by meeds and bounds between Jogesh Dhanda and Ishan Dhanda and the Deed of Assent was executed. It was titled as “Deed of Assent” but its nature is like a Gift. Mr. H.C.Dhanda has intention to create Trust of his property other wise he could have executed simple Will in favour of Jogesh Dhanda and Ishan Dhanda. There was restriction of sale of the properties in Will hence same were gifted by Deed in the name of Assent. The Collector as well as the Board of Revenue rightly came to the conclusion that the Trust has gifted the property to Jogesh Dhanda and Ishan Dhanda. Complete title has been transferred by way of this deed to them. Under Section 123 of the Transfer of Property Act stipulates that for the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. The duty of executor was that to transfer the property to the legatees except Lantern Hotel and Shab-E-Malwa and the land there with. But by way of this so called Deed of Assent, these properties has been transferred to Jogesh and Ishan Dhanda. Since no consideration was given by them to the Trust, therefore, it has rightly been treated as a Gift Deed. The so called Deed of Assent was executed by the Trust to transfer the properties to the legatees. All the Trustees

were made executor by way of Will to manage the Trust. The Trust was not required to execute a deed to transfer the properties to the beneficiaries to complete the legatees title. These 3 persons were specifically kept in the Trust with the instructions not to sell but run and manage these properties from income received from it. Had it been a transfer of these properties to the legatees, like other properties, the executors could have simply have completed the legatees title. Since these properties vested in the Trust, therefore, they executed the deed in the name of Deed of Assent, specially for these two hotels. Therefore, there is no detail of other properties for which the title of legatees was required to be completed. When special deed was executed for these properties entrusted to the Trust, then it was rightly terms as a gift in favour of Jogesh Dhanda and Ishan Dhanda by the Trust. Therefore, the orders passed by the Collector and Board of Revenue are not required to be interfered.

[27] The argument was also raised that original Deed of Assent was not before the Collector there he cannot pass an order of impounding on the photo copy of the document.

[28] The notice was issued to the petitioner under Section 48-B directing the petitioner to produce the original instrument before the Collector where the deficiency of stamp duty noticed from a copy of any instrument. Section 48-B provides that if after notice the original instrument is not

produced before him within the period than it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in the Chapter-V which deals with recovery of deficit stamp duty not properly paid while executing the instrument. As per Section 48-B when the original instrument is not produced, it would be presumed that the original is not duly stamped. The original deed is in the possession of the petitioner and they did not produce the same before the Collector of Stamp. Therefore, by way of Section 48-B it has been presumed that the original deed is not duly stamped. Section 48-B creates friction that the original deed is not duly stamped when it was not produced before the Collector of Stamp. The Collector is competent to proceed on the basis of the copy by virtue of this presumption. Therefore, objection is not tenable that no order can be passed without the original instrument.

[29] Another issue was raised whether unregistered document which is not required to be registered is exigible to pay stamp duty. Section 2 (6) defines the word “Chargeable” and Section 17 provides that all instruments chargeable with the duty shall be stamped before or at the time of execution. The document which is signed shall be treated as executed. The word “Instrument” has been defined in Section 2 (14) and according to which every document by which any right or liability is or purports to be created, transferred, extinguished or recorded is a 'instrument' and that instrument is chargeable

under Section 2 (6) read with Section 17. Therefore, the composite reading of Sections 2 (6), 2 (12) and 2 (14) makes every instrument chargeable with stamp duty. The Constitution Bench of Andhra Pradesh High Court in the matter of *Hazrami Gangaram* v/s *Kamlabai* [AIR 1968 AP 213] has held that for the purpose of the Stamp Act the crucial time for determining the stamp duty is before or at the time of execution and apart from its execution no other formalities under the Act is required. Para 13 is reproduced below :-

“13. In the view we have taken, we must, with great respect, dissent from the views of the eminent Judges of the Full Bench of the Madras High Court in *Crompton Engineering Co's* case, MANU/TN/0344/1953 : AIR 1953 Mad 764 (FB) before whom the several aspects to which we have referred, were not argued, nor were they otherwise considered, – and hold that for the purpose's of the Stamp Act, the crucial time for determining whether an instrument chargeable with duty is duly stamped or not, is before or at the time of execution, and that apart from its execution, no other formalities under any other law need be satisfied.”

Therefore, the aforesaid objection is also not tenable, hence same is hereby rejected.

[30] So far as denial of Reference under Section 57 is concerned, there was no substantial questions involved in the petition. The discretion lies with the Board of Revenue under Section 57 of the Stamp Act whether to refer the dispute or not. The apex Court in the case of *Chief Controlling Revenue Authority* v/s *Maharashtra Sugar Mills Ltd.* [AIR 1950 SC 218] has held as under :-

“8.....In our opinion, in the present case the power to make a

reference under Section 57 is not only for the benefit of the appellant. It is coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, as a public servant it is his duty to make the reference. If he omits to do so it is within the power of the Court to direct him to discharge that duty and make a reference to the Court.”

Therefore, the Board of Revenue has not committed any error while not making the reference to the High Court.

[31] Shri Chitale, learned Senior Counsel has vehemently contested about the imposition of penalty of 10 times to the stamp duty. He submits that there is no justification on the part of the Collector of Stamp to impose 10 times penalty. Various judgments have been cited on a point of penalty in a taxation matter and submit that even if taxability is proved, the penalty is not automatic. The penalty is leviable only if the conduct of the assessee is dishonest, deliberate and distinct objective of breaching the law. He has placed reliance over the judgments of *CIT v/s Hindustan Elector Graphites Ltd.* [(2000) 3 SCC 595]; *E.I.D. Parry (I) Ltd. v/s CCT* [(2000) 2 SCC 321]; *Akbar Badrudin Giwani v/s Collector of Customs* [(1990) 2 SCC 203]; *Cement Marketing Co. of India Ltd. v/s CST* [(1980) 1 SCC 71]; *Hindustan Steel Ltd. v/s State of Orissa* [(1969) 2 SCC 627]; and *CIT v/s Bhikaji Dadabhai & Co.* [AIR (1961) 3 SCR 923]. It is further submitted that no notice was issued before imposing the penalty by the Collector of Stamp. The Collector issued composite notice to the petitioner under the provisions of Stamp Act for recovery of

deficit stamp duty as well as the penalty. Therefore, it cannot be said that no notice was issued to the petitioner before imposing penalty. The resolution was passed on 6th April, 2005 to execute the Deed of Transfer by Trustees in favour of Jogesh Dhanda and Ishan Dhanda. But later on they deliberately executed the deed in the name of Deed of Assent on a stamp paper of Rs.200-00 and terms as transfer by one Trustee to another Trustee under Article 56 (d) of Schedule 1-A. The Article 56 (d) provide payment of stamp duty @ 200/- where any Trust property is being transferred without consideration from one Trustee to another Trustee; or Trustee to beneficiaries. The basic requirement of this transfer is that the property remains as Trust property and said transfer is within the Trust, then only it is required to be executed only on stamp papers of Rs.200-00. But in the present case the complete title has been transferred by Trust to Jogesh Dhanda and Ishan Dhanda in the name of Deed of Assent. Therefore, there was intention to evade the heavy stamp duty on such transaction. Therefore, the Collector of Stamp has rightly imposed 10 times penalty which is maximum under the Act.

[32] In view of the above, I do not find any merit in this writ petition. The same is hereby **dismissed**.

[VIVEK RUSIA]
JUDGE

Adarsh+AKS/-**