(2005) 07 KL CK 0030

In the High Court Of Kerala

Case No : C.A. No. 12026 of 1997

Abdul Jaleel APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:
Kerala Stamp Act, 1959 — Section 2, 47, 48

Citation : (2005) 3 KLT 807

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : C.A. Majeed and Sunil Jose, for the Appellant; P.K. Shakeela, Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—The possibility and procedure in getting refund of value of impressed stamps and executed instruments is the issue arising for consideration in this case. Petitioner purchased non-judicial stamp paper to the value of Rs. 16,600/- on 30-8-1994 for the purpose of execution of a sale deed. The vendors Mr. P.T. Skaria and Mrs. Chinnamma Skaria executed a document by affixing the signatures on 31-8-1996. The same was promised to be registered on 1-9-1994. It is stated in the Writ Petition that Sri. Skaria fell ill on 31-8-1994 after the execution and hence registration did not take place on 1-9-1994. It was noticed that there was a mistake in the extent and survey number of the property and hence the registration got delayed further. In the meanwhile Sri.P.T. Skaria died. It is submitted that after correcting the mistake the legal heirs of Sri. Skaria along with Smt. Chinnamma Skaria executed another document on 3-8-1996 and got the same registered on the same date. Ext.P1 is the copy of the instrument executed on 31.8.1994 and Ext.P2 is the copy of the one executed on 3.8.1996. Since Ext.P1 document was rendered unfit for the intended purpose, the petitioner submitted Ext.P3 application dated 20.2.1995 for refund of the value of the stamp paper. Petitioner filed another application Ext. P4 dated 5.8.1996 submitting also that the sale in respect of the property covered by Ext.P1 had been executed on 3.8.1996 on another instrument and for that reason also the request for refund was made. The request was turned down as per Ext.P5. It is stated in Ext.P5 that since the documents have already been executed, it is not possible u/s 47 of the Kerala Stamp Act, 1959 to refund the amount covered by the instrument. Hence the Writ Petition.

2. Learned counsel for the petitioner submits that he is entitled to get refund of the value since the stamp used for the instrument has been found unfit, by reason of error or mistake, for the purpose originally intended. It is also submitted that he is entitled to the refund by way of allowance u/s 47(c)(6) since another instrument (Ext.P2) had already been executed in respect of the same property covered by Ext.P1 instrument the value of which is sought to be refunded. Learned Government Pleader, on the other hand, submits that since Ext.P1 document had already been executed, the petitioner is not entitled to the refund; the refund is permissible only in the case of spoiled stamps.

3. Chapter V of the Kerala Stamp Act, 1959 deals with allowances for stamps in certain cases. Section 47, the first provision under that Chapter, deals with allowances for spoiled stamps. The said section reads as follows:--

"47. Allowance for spoiled stamps.-- Subject to such rules as may be made by the Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made, within the period prescribed in Section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned namely:-

xxx xxx xxx (c) the stamp used for an instrument executed by any party thereto which-

xxx xxx xxx (2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

xxx xxx xxx (6) becomes useless in consequence of the transaction intended to be thereby effected, being effected by some other instrument between the same parties and bearing a stamp of not less value."

xxx xxx xxx

4. On a perusal of Section 47 of the Act it can be seen that three situations are contemplated for the refund of the value of impressed spoiled stamps; (1) before the execution of any instrument, when the stamp on any paper is inadvertently or undesignedly spoiled, obliterated or otherwise rendered unfit for the intended purpose; (2) the stamp on any document which is written but wholly or partly but not signed or executed by any party thereto; (3) situations after execution of the instrument. As per Section 2(f) of the Act, a document is executed when it is signed. Eight instances are referred to under the third possibility. In the light of Section 47(c) it is clear that even after the execution of the document the Collector is empowered to make allowance and order refund of the value of the stamp, subject to the conditions stipulated therein. Thus the very basis of the rejection as per Ext.P5 that there can be no refund once a document is executed

is clearly illegal.

5. Coming to the instant case the contention centres round Section 47(c)(2) and 47(c)(6). I shall first deal with Section 47(c)(6). That is a situation where an instrument executed becomes useless in consequence of the transaction intended to be effected, when the same transaction is effected by some other instrument between the same parties and bearing a stamp of value not less than that of the instrument sought to be cancelled. On an analysis of the said provision it can be seen that the following conditions are to be satisfied: (1) There should be two instruments; (2) The transaction should be between the same parties; (3) The latter transactions should be the same as intended in the former; (4) The latter instrument should bear stamp of equal or more value than the former. In the instant case one vital condition is not satisfied, regarding the value of the stamp. Ext.P1 is of Rs. 16,600/- whereas Ext.P2 is only Rs. 16,100/-. Therefore, it is unnecessary to deal with any other aspects. The petitioner is not entitled to the benefit of Section 47(c)(6).

6. u/s 47(c)(2), the contention is that since the instrument executed by the parties has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended, the petitioner is entitled to get refund of the value of stamp covered by Ext.P1. The condition that the application should be filed within six months is seen satisfied; as can be seen from the impugned Ext.P5 order also - there is an application for allowance within six months after the date of the instrument. Therefore, the only question is whether Ext.P1 had been found unfit by reason of any error or mistake pursuant to which the intended purpose could not be achieved. In other words, was there any error or mistake in Ext.P1 stamp paper as contended by the petitioner in survey number, extent of property, identity of the property etc. are matters to be looked into. If it is found that there was an error or mistake in the document executed by the parties and in view of such errors or mistakes the intended purpose could not be achieved, the petitioner is entitled to the allowance by way or refund of the value of stamp. That certainly requires enquiry. That is not an aspect adverted to in Ext.5. I quash Ext.5. There will be a direction to the second respondent to consider the matter afresh with notice to the petitioner after conducting a proper enquiry and in case the petitioner satisfies the requirements of Section 47(c)(2), appropriate orders for allowance shall be passed. The needful shall be done within three months from the date of production of a copy of the judgment.

The Writ Petition is disposed of as above.

