(1999) 10 OHC CK 0013

In the Orissa High Court

Case No : Civil Revision No. 264 of 1999

Ananda Chandra Pradhan APPELLANT

Vs

Smt. Kshyamamayee Pradhan RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Stamp Act, 1899 — Section 35, 36

Citation : (2000) 90 CLT 122 : (1999) 2 OLR 642

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R.K. Samantaray, for the Appellant; Bijoy Pal, A.K. Mishra, J. Pal, S.K. Ojha and P. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Defendant in a pending suit has filed this revision under following circumstances :

Plaintiff-opposite party has filed Title Suit No. 270/95 for dissolution of partnership, rendition of accounts, permanent injunction, eviction and other ancillary reliefs. In course of trial of the suit, a document has been admitted into evidence on the side of the defendant as Ext. A. At the time of admitting the aforesaid document as Ext. A, no objection had been raised by the plaintiff regarding its admissibility on the ground that the document had been insufficiently stamped. Subsequently, after evidence was closed on both sides, the trial Court posted the suit to 17.7.1999 for hearing of arguments from both sides. At that stage, the plaintiff filed an application for impounding the document marked Ext. A on the ground that it had been insufficiently stamped and for a direction regarding realisation of proper fees from the defendant. Objection was filed immediately. The trial Court passed an order allowing the petition of the plaintiff and subsequently directed the defendant to pay stamp duty of Rs. 3,094/ - on Ext. A by the next day, that is to say by 30.6.1999.

Subsequently, on 30.6.1999, the defendant filed a petition for recalling the order dated 29.6.1999. The said petition was rejected on 30.6.1999 and the trial Court directed that necessary stamp duty should be paid by 1.7.1999 failing which the document would be impounded. On 1.7.1999, the defendant filed an application praying for time to obtain stay order from the High Court. The said petition was taken up on 2.7.1999. The trial Court impounded the document by observing that necessary stamp duty had not been paid. The matter was directed to be posted on 17.7.1999 to which date the suit had already been posted for hearing argument. On 17.7.1 999, the defendant filed several applications, inter alia, for recalling the orders dated 29.6.1999, 30.6.1999 and 2.7.1999. All the petitions were rejected and the trial Court proceeded to hear arguments from the side of the plaintiff, but the counsel for defendant though present, did not advance any argument presumably because the defendant wanted to file revision in the High Court. Thereafter, the present Civil Revision has been filed challenging the orders dated 29.6.1999, 30.6.1999, 2.7.1999 and 17.7.1999.

2. The learned counsel appearing for the opposite party has raised a preliminary objection relating to maintainability of one Civil Revision against several orders passed by the trial Court. Though ordinarily, separate Civil Revision is to be filed against each impugned order, in the peculiar facts and circumstances of the present case, such preliminary objection raised by the counsel for opposite party is to be overruled. It is apparent from the narration of events that the subsequent orders passed on 30.6.1999, 2.7.1999 and 17.7.1999 are only consequential orders based upon the primary order dated 29.6.1999 where under the defendant was called upon to pay the stamp duty on Ext. A. If the first order is found to be unsustainable, the other orders being consequential in nature can be set aside in exercise of the suo motu power of the High Court even though separate revisions have not been filed challenging such subsequent orders.

3. The learned counsel appearing for the petitioner has submitted that once Ext. A was admitted into evidence without any objection being raised relating to insufficiency of stamp, at subsequent stage of the suit, the said question could not have been raised either by the other side or by the trial Court itself. For the aforesaid purpose, the counsel has placed reliance upon Sections 36 and 61 of the Indian Stamp Act.

4. From the record it appears that Ext. A had been admitted into evidence on 18.7.1998 without any objection being raised regarding its inadmissibility on account of insufficiency of stamp. Such being the position, it was not open to the plaintiff to raise objection at a subsequent stage regarding the inadmissibility of the document on the ground of insufficiency of stamp. This position is clear in view of the provisions contained in Sections 35 and 36 of the Indian Stamp Act. These provisions have been interpreted and explained in the decisions reported in Javer Chand and Others Vs. Pukhraj Surana, and Mahadev Ghose Vs. Antarjyami Das and Others, . In view of the provisions contained in Sections 35

and 36 and the decision of the Supreme Court as well as this Court, there is no doubt that the question of inadmissibility of the document on the ground of insufficiency of stamp could not have been raised before the very same trial Court either by the adversary or by the Court itself. It is not disputed that no action as contemplated u/s 61 of the Indian Stamp Act has been taken. Thus, the trial Court purported to exercise jurisdiction not vested in it by calling upon the defendant to pay the stamp duty on the document. On the aforesaid ground, the order dated 29.6.1999 is to be quashed and the other orders, namely the orders dated 30.6.1999, 2.7.1999 and 17.7.1999 being consequential orders must also be set aside.

5. The learned counsel for the opposite party contended that the trial Court is yet to hold that the document in inadmissible on the ground of insufficiency of stamp and as such, the Civil Revision is premature and the orders passed by the trial Court are not revisable as it cannot be said that the orders passed by the trial Court come within the meaning of the phrase "case decided" as envisaged in Section 115, Code of Civil Procedure. Such contention raised by the counsel for opposite party is unacceptable. As already noticed, the trial Court has already passed orders impounding the document. The natural effect of such order is that the document in question cannot be considered although the trial Court has not stated so in so many words. The order if allowed to stand is likely to prejudice the defendant, inasmuch as the defendant would be precluded from relying upon the document before the trial Court. It is, of course, true that defendant could have participated in the further hearing of the suit and thereafter raised the question relating to legality of such orders before the appellate Court, but that would have been a time-consuming process. Having regard to the facts and circumstances of the case, it must be held that the order passed by the trial Court particularly the consequential order impounding the document, being a "case decided" is revisable.

6. The learned counsel for the petitioner also vehemently contended that the document itself should have been taken to be an agreement and as such had been sufficiently stamped. In support of such contention, the learned counsel has relied upon the decisions reported in AIR 1943 333 (Nagpur) and Mt. Bibi Marim Vs. Surajmal and Others, . However, since the trial Court had no jurisdiction to call upon the defendant to pay the stamp duty and such order is being set aside, it is unnecessary to go into this question regarding sufficiency or insufficiency of the stamp on Ext. A, and if necessary such question can be decided at an appropriate stage subsequently.

7. The Civil Revision is accordingly allowed. Needless to point out that the matter would now go back to the stage at which it was on 29.6.1999. In other words, the trial Court would fix a fresh date for hearing oral arguments from both sides and thereafter proceed to decide the suit in accordance with law as expeditiously as possible, preferably by end of December, 1999. Parties are directed to appear before the trial Court on 10th November, 1999. There would be no order as to

costs.

