

(2011) 05 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6211 of 2004

Ashok Kumar and Another

APPELLANT

Vs

Chief Controlling Revenue Authority and Others

RESPONDENT

Date of Decision : 24-05-2011

Acts Referred:

General Clauses Act, 1897 — Section 3(26)

Stamp Act, 1899 — Section 33

Transfer of Property Act, 1882 — Section 3, 5, 54, 6, 8

Citation : (2011) 6 ADJ 332 : AIR 2011 All 142

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Vipin Sinha, Ashok Mehta and Devendra Gupta, for the Appellant;
R.V. Singh, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—The two petitioners are brothers. They have purchased a piece of land from one Smt. Chandrakanta vide sale deed dated 19.12.2002 for consideration of Rs. 2.90 lacs but for the purposes of payment of stamp duty its market value was disclosed as Rs. 31,73,920/- and stamp duty paid accordingly. On the said land there existed a six storied hotel building but the building was excluded from the sale as the vendor had no right in the building.

2. The Collector in exercise of his powers u/s 33/47A of the Indian Stamp Act, 1899 (hereinafter referred to as Stamp Act) held that the transfer of the land by the aforesaid sale deed included the transfer of the building and as such determined the market value by adding the value of the building to that of the land. Accordingly, deficiency in stamp duty was determined. The order of the Collector has been upheld by C.C.R.A. in appeal.

3. The petitioners have thus, invoked the writ jurisdiction of this Court, challenging the order of the Collector dated 25.6.2003 and that of the Chief Controlling Revenue Authority dated 20.1.2004 dismissing the appeal.

4. I have heard Sri V.C. Mishra, Senior Advocate, assisted by Sri Rajesh Mishra, learned counsel appearing for the petitioners and Sri Sanjay Goswami, learned Standing Counsel for the respondents.

5. Pleadings exchanged between the parties have also been examined by me.

6. The only submission of Sri Mishra, is that under the sale deed, the building was expressly excluded from the transfer. The vendor was not the owner of the building and as such she could not have transferred the same. Therefore, the market value of the building cannot be added in the value of the land for the purposes of determining the deficiency in stamp duty.

7. The contrary argument of Sri Goswami, learned Standing Counsel is that the sale deed seeks to transfer immovable property in the form of a land which necessarily includes all things permanently attached or embedded in the land. Thus, building is part of the transfer and therefore, its value has rightly been added in the value of the land in determining the market value of the property transferred under the sale deed, In support of his submission he has placed reliance upon a Single Judge decision of this Court in Shri Abdul Waheed and Others Vs. U.P. State, .

8. It is not in dispute that the land in question Plot No. Nil measuring 308.1/3 sq. meters situate at Mohalla Pathanpura, Clock Tower, Dehradun Road, Saharanpur was the land of one Mool Raj Singh. He had purchased the same vide registered sale deed dated 24.2.71.

9. The aforesaid Mool Raj Singh, leased out the aforesaid plot of land on 22.9.1983 without any constructions to M/s. Mool Raj Singh and sons (Hotel) Pvt. Ltd. a company incorporated under the Indian Companies Act for a period of 30 years with a renewal clause for further 10 years on an annual rent of Rs. 2,000/- per month. The lease permitted the lessees to erect a building for running a hotel industry. On the expiry of the lease the lessees were entitled to remove all constructions failing which all structures and superstructures would vest in the lessor without payment of any compensation.

10. In pursuance of the aforesaid lease deed the lessees M/s. Mool Raj Singh and sons (Hotel) Pvt. Ltd. after obtaining loan of 15 lacs from the U.P.F.C. constructed a hotel building on the said plot of land. The lessor Mool Raj Singh had no concern with the said constructions. Subsequently, the name of the lessees was changed to Madur Milan Hotel Pvt. Ltd. with the permission of the Registrar of Companies, Kanpur, dated 21.11.2002 and a certificate of registration in the new name dated 30th December, 2002 was also issued by the Registrar of Companies, Kanpur.

11. Later on, the owner of the land Mool Raj Singh expired leaving a registered will dated 6th July, 1994. By the said will the aforesaid plot of land was bequeathed by him in favour of his second wife Smt. Chandrakanta. The relevant part of the will in connection with the aforesaid plot of land is reproduced here in

below:

12. The aforesaid will is not in dispute. According to the said will Smt. Chandrakanta stepped into the shoes of her husband and became the owner of the aforesaid plot of land entitle to realize annual lease rent from the lessee i.e. Madhur Milan Hotel Pvt. Ltd. as stipulated under the lease deed dated 22.9.1983 executed by her husband.

13. It is in the aforesaid factual matrix that Smt. Chandrakanta sold her ownership rights in the said land vide state deed dated 19.12.2002 in favour of the petitioners specifically mentioning that she is not the owner of the building and as such land alone is being transferred.

14. In the above background it is to be first seen as to what actually has been transferred under the sale deed in question or the transfer of the land alone as stated therein is a camouflage and in reality it amounts to transfer/sale of the hotel as well.

15. Transfer of property is defined u/s 5 of the Transfer of Property Act, 1882 (hereinafter referred as T.P. Act) and it provides that property of any kind may be transferred except those mentioned in Section 6 of the Act. Property may be classified differently and one of the broad classification is movable and immovable property. The Act further prescribes the various generally accepted modes of transferring property i.e. sale, mortgage, lease, exchange and gifts.

16. Here in the present case we are concerned with the transfer of property by "sale" of land which is an immovable property.

17. Transfer by "sale" has been defined in Section 54 of the Act.

18. Immovable property has neither been defined under the Stamp Act or the T.P. Act. However, it has been defined in Section 3(26) of the General Clauses Act, 1897 as under:

"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

19. So, anything attached to the earth forms part of the land which is an immovable property. In other words, building which is attached to the earth i.e. land also forms part of the land.

20. Section 3 of the Transfer of Property Act contains an interpretation clause. In the aforesaid Section the interpretation of the words "attached to the earth" has been provided to mean something rooted in the earth, as in the case of trees; anything embedded in the earth, as in the case of buildings; or anything attached to what is embedded permanently in the earth for its beneficial enjoyment.

21. In short buildings have been recognized as something embedded and attached to the earth. Thus, making them part of the land. So in the general and

broader sense building is part of the land.

22. However, Section 8 of the T.P. Act provides that a transfer of property passes to the transferee all the interest which the transferrer is then capable of passing in the property and in the legal incidents thereof which in the case of land property include the easements annexed thereto, the rents and profits thereof accruing and all other things attached to the earth unless a different intention is expressed or necessarily implied. The relevant part of Section 8 of the T.P. Act is reproduced hereinbelow:

8. Operation of transfer.--Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

.....

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23. A plain reading of the aforesaid provision makes it clear that transfer of property stipulates transferring of all rights which the transferrer is capable of passing in the property including things attached to the earth such as buildings also provided no contrary intention is expressed or necessarily implied.

24. Thus, ordinarily immovable property in the nature of land includes within its fold the building standing over it. Therefore, where a land is transferred any building standing on it normally forms part of such transfer unless a different intention is expressed or necessarily implied. Transfer of land, thus carries with it the structure existing over it unless excluded expressly or impliedly.

25. Now, arises the question of applying the above principle to the facts and circumstances of the present case. In this connection, it is to be seen as to whether the sale-deed in question is of a general nature or it expresses a different intention either specifically or by implication.

26. I have previously narrated the factual matrix in which the aforesaid sale deed came to be executed. The narration of the aforesaid facts clearly demonstrates that Mool Raj Singh was the original owner of the land only which he had leased out for 30 years with permission to the lessees to construct a hotel building. The

hotel building was constructed by the lessees and it never belonged to the owner.

27. On the death of the owner the land was inherited as per his will by his wife Smt. Chandrakanta. She simply inherited the rights of the owner in the land and never became the owner of the building. She never acquired any right in the building so as to entitle her to transfer or sell the same. Accordingly, by the aforesaid sale deed she rightly disposed of the land alone clearly mentioning that she is not the owner of the building existing over it.

28. Thus, the petitioners acquired only ownership right in the land and become entitled to lease rent as per the lease which was being realized by their predecessors and the lessees continued to be the tenants of the land and the owner of the building.

29. The aforesaid recitals in the sale-deed undoubtedly expresses a different intention i.e. not to sell the building as it does not belong to the vendor. In such a situation, Section 8 of the Act gets attracted and oust the general principle that transfer of land would include all things attached to it i.e. superstructure.

30. It is settled legal proposition that when words are clear and unambiguous, there is no scope for drawing any hypothetical considerations. It is also well settled that the intention of party to a document must be deduced from the document itself by giving words there ordinary and natural meaning and when the words are plain and clear it is not proper to supply any other meaning to them.

31. In the instant case, the language and the words used in the sale-deed dated 19.12.2002 are plain and clear which leaves no ambiguity. It clearly seeks to transfer the land only as the building never belonged to the vendor. Accordingly, it expressly excludes the transfer of the building even though it may be part of the land.

32. The Apex Court in the case in *Bishundeo Narain Rai (Dead) By Lrs. and Others Vs. Anmol Devi and Others*, laid down that in view of Section 8 and 54 of the T.P. Act, ownership and all interest in the property passes to the transferee, yet that would be on the terms and conditions embodied in the deed indicating the intention of the parties.

33. Authority cited at the bar Abdul Wahid (*supra*) is distinguishable and would not be applicable in the facts and circumstances of the present case. In the said case the learned Single Judge dealing with an instrument under the Stamp Act itself held that where a structure is standing on land the land alone cannot be transferred without the structure unless before transferring the structure is removed. There can be two opinions on the above general proposition but by virtue of Section 8 of the T.P. Act where a contrary intention is expressed not to transfer the superstructure, the general proposition would not hold good and the sale would not include superstructure. Section 8 of the T.P. Act was not considered by his Lordship in laying down the general proposition.

34. In a somewhat similar situation where UPSIDC earlier granted a licence to a charitable trust to run a school on its land; to raise a building and when building was raised transferring the land to the charitable institution, the question arose whether building constructed by the licensee would be a part of the transfer. In the said case in *Kunj Bihari Lal Charitable Trust Vs. State of U.P. and Others*, . I took the view that building cannot be the part of the transfer as UPSIDC was not the owner of the building and there can be no transfer of building by a stranger in favour of the owner himself.

35. Similarly, in the present case, the owner of land was not the owner of the building and it never came to be vested in her. Therefore, she could not have the transferred the building and as such she rightly confined the sale to the land alone. It is well settled that no one can convey more than what he or she owns.

36. In the light of the above discussion, my firm view is that the sale deed in question is only in respect of land and not the building which stands specifically excluded by virtue of Section 8 of the T.P. Act and as such the authorities under the Stamp Act were not competent to add the value of the building in the value of land for assessing the market value of the property transferred under the above sale deed.

37. In view above, the impugned orders cannot be sustained in law. A writ of certiorari is accordingly issued quashing the impugned orders dated 25.6.2003 and 20.1.2004 passed by the Collector and the C.C.R.A. respectively.

38. The petitioners are held entitle to return of any amount deposited by them pursuant to the impugned orders or the interim order of this Court within a period of one month from the date of production of certified copy of this order.

39. In the event of default or delay in making the refund within the time stipulated above, petitioners would be entitled to interest @ 8% on the amount to be refunded for the delayed period. Petition allowed with no order as to costs.