(2006) 05 MP CK 0049

In the Madhya Pradesh High Court

Babulal Gautam APPELLANT

Vs

Shyam Das and Another RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:
Stamp Act, 1899 — Section 2, 58

Citation : AIR 2007 MP 43

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Judgement

Arun Mishra, J.—Petitioner in this writ petition has assailed an order dated 13-1-2006 passed by the learned trial Court with respect to the levy on the stamp duty on the document (P-4), which relates to the management of Bhole Kuti Ashram executed by Ram Bai.

2. The trial Court has held that the said document is chargeable to stamp duty under Article 58 of Schedule 1-A of Stamp Act. It amounts to deed of settlement within the purview of Section 2(24)(c) of the Stamp Act.

3. Shri S.K. Pathak, learned counsellor the petitioner has submitted that the aforesaid document is only deed of management. By the said document trust has not been created. Document is simply with respect to the management which is chargeable under Article 7 of Schedule 1 -A of Stamp Act.

4. Shri R.P. Khare, learned Counsel for the respondents has submitted that settlement means document creating a trust. When executants entrusted the property to a new body of trustees created under the document. The disposition of property was for charitable purpose. Property no longer belonged absolutely to settlers. Beneficial interest got vested in beneficiaries. It has to be held that document was a settlement chargeable with duty under Article 58A and not a declaration of trust chargeable under Article 64A. He has placed reliance on a decision of Sita Ram Vs. Board of Revenue, . He has further relied upon the decision of Delhi High Court in The Chief Controlling Revenue Authority Vs.

Banarsi Dass Ahluwalia, , in which it was held that a deed creating a charitable trust is a settlement chargeable under Article 58 of Scheudle 1A and not a declaration of trust chargeable under Article 64.

5. In order to appreciate the rival submissions and applicability of Articles 7, 58 and 64 it is necessary to consider the nature of the document (P-4) itself. It is styled as Deed of Management of Bholekuti Ashram. It has been executed by Smt. Ram Bai, it contains recital that she along with Bhole Baba has constructed the aforesaid Ashram. After death of Bhole Baba management was looked after by Swami Shyam Das in the capacity of power of attorney holder on behalf of Smt. Ram Bai. A sum of Rs. 60,000/-in the shape of F.D., coins of silver were given to Shri Swami Shyam Das which is property of the Ashram. She will look after in her life time the movable and immovable property of said Ashram and after her death she has entrusted the managements a committee of seven persons. Thus it is clear that by way of aforesaid document (P-4), that property was already owned by the Ashram. Property has not been passed on through Ram Bai by the said document to anybody. It was already that of Ashram from earlier point of time. Document is not vesting the property in the Ashram, it was already that of Ashram. Thus it cannot be said to be a deed of settlement or declaration of any trust, Articles 7, 58 and 64 as applicable in M.P. are quoted below:

7. Description of Instrument Proper Stamp Duty (1) (2) 7. Appointment in execution of a One hundred rupees. power.- whether of trustees or of property movable or Immo- vable, where made by any wri- ting not being a will, 58. Settlement-AInstrument of The same duty as a (Including a deed of dower) bond (No. 15) for a sum equal to the amount of market value of the property settled: provided that, where an agreement to settle is stamped with the Stamp required for an instrument of settle-; ment, and an Instru- ment of settlement In pursuance of such agreement Is subse- quently executed,the duty on such instru- ment snail not exceed ten rupees. Exemption Deed or dower executed on the occasion of a marriage between Mohammadans. B- Revocations of- The same duty as a bind (No, 15) fora sum equal to the amount or value of the property concerned as stIlorth in the instru- See also Trust (No. 64) ment of revocation but not exceeding fifty rupees. 64. Trust- A. Declaration ofof, or con- The same duty as a cerning, any property when bond (No. 15) for a sum made by any writing, not equal to the amount being a will. or value of the proper- ty concerned, as set- forth in the instru- ment but not exceed- ing five hundred rupees B. Revocation of-of or con- The same duty as bond cerning, any property when (No. 15) fora sum made by any Instrument equal to the amount or other than a will value of the property concerned, as set forth See also Settlement (No. 58) in the instrument but not exceeding two hun- dred fifty rupees. Exemption Charitable and religious trusts Including wakf alal aulad Valuation, See Appraisement (No. 8)

Article 7 covers appointment in execution of power of trustees or of property in writing provided document is not a Will. Article 58 deals with settlement and Article 64 deals with declaration of trust.

6. In reference Abdulla Haji Dawood Bowla Orphange ILR (1911) 35 Bom 444 : 11 IC 982 it was held that an instrument by which certain funds bequeathed by the testator for a charity to be selected by the executors and were appropriated by the executors for a particular, charity was held chargeable, as appointment in execution of power under Article 7 and not under Article 58 in the instant case. Document is not vesting the property in the Ashram, it was already that of Ashram nor the property has been given to Ashram, it already vested in Ashram, there was no distribution of property in praesenti, thus in my opinion Article 7 would be attracted not Article 58 or Article 64. It cannot be said to be a declaration of the trust. In similar circumstances in The Chief Controlling Revenue Authority, Madras Vs. P.A. Muthukumar, , the Full Bench held that the document is not deed of settlement within the meaning of Article 58. It was held thus:

7. We have already referred to the salient clauses in the deed dated 2-7-1973. The author himself felt a doubt whether he would be in a position to manage his estate efficiently. There was a lurking suspicion in his mind whether by retaining the estate he could preserve it at all. He wanted therefore a safe media for administration and in order to achieve this objective, he vested his estate in the trustee for the purpose of paying off his debts, for the purpose of paying him a sum of Rs. 200/- a month during his lifetime, for the purpose of improving the estate as far as possible during the course of the administration and for the purpose of ''his heirs'', whomsoever they may be taking over the estate after his lifetime. One other recital in the deed gains the impression that there was no disposition or distribution in praesenti of the property under the instrument. Clause (6) of the deed reads thus - "Yerkaneve en minor Makart Makendranukku Veru Bhoomikal Vaimozimulam Kodukkappattu Uraiyana Gardia Anubavitthu Varuvadal Uraiyanukku Indha Chotthukkalil Yedhum Paththiyamillai".

8. In the decision which has been relied upon by Shri Khare in Sita Ram Vs. Board of Revenue, , the document was executed on 31-5-1967. The recitals in the aforesaid document show that as the donee of the previous gift had failed to observe the conditions, the gift deed was revoked. After revoking the gift of 1962, they created a trust and entrusted the management of the said building in the said body in perpetuity. The document further indicated that possession was given to the trustees and it was stated that the trust was irrevocable. It was held by the Full Bench of the Allahabad High Court that when document creates a trust, executants entrusted the property to a new body of trustees created under the document and disposition was for charitable purpose, document was settlement chargeable under Article 58A. It was not a declaration of trust chargeable u/s 64A. The nature of document in the instant case is quite different, hence ratio of the aforesaid case is not applicable in the instani case. The other decision in the Chief Controlling Revenue Authority v. Banarasi Dass Ahluwalia

AIR 1972 Del 128 (supra) also deal with the deed relating to charitable trust. It was held to be a settlement chargeable u/s 58. The nature of the document in question is different in the instant case.

9. Thus, in my opinion. Article 7 is attracted not Article 58 or Article 64 contained in Schedule I of Stamp Act as applicable in M.P. considering the nature of the document. It is not the case of the petitioner even that Article 64A as applicable in M.P. was attracted. Thus the order passed by the trial Court is set aside. Trial Court to treat the aforesaid document under Article 7 and to decide whether it has been properly stamped as per aforesaid provision or not thereafter to proceed further in accordance with law.

9. Writ petition is disposed of. No costs.

