

(2019) 02 RAJ CK 0243
In the Rajasthan High Court
Case No : Civil Writ No. 2659 Of 2019

Bihari Lal

APPELLANT

Vs

Navratan Mal Bumb And Ors

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151
Rajasthan Stamp Act, 1998 — Section 37

Citation : (2019) 02 RAJ CK 0243

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : D.D. Chitlangi

Final Decision : Dismissed

Judgement

By way of the present writ petition, petitioner has laid challenge to the order dated 09.01.2019, passed by the Additional District Judge, No.1, Bhilwara (hereinafter referred to as 'the Trial Court'), whereby petitioner's applications dated 02.11.2018 and 03.12.2018 have been rejected.

Briefly stated, the facts giving rise to the present writ petition are that the plaintiff (respondent No.1 herein) had filed a the suit for specific performance of an agreement dated 08.05.2005. During the pendency of the suit, pursuant to objection raised by the petitioner-defendant, the learned trial court impounded the document and referred the same to the Collector (Stamps) for determination of appropriate stamp duty.

Pursuant to the reference so made by the trial court, a case was registered by the Collector (Stamps) and a demand of stamp duty and penalty to the tune of Rs.7,81,845/- has been raised.

Being confronted with such situation, the petitioner moved the aforesaid applications dated 01.11.2018 and 22.11.2018 under Section 151 of the Code of Civil Procedure and requested the trial court to set aside the determination of

duty and remand the same to the Collector (Stamps) for de novo determination, as the parties were not afforded any opportunity of hearing.

The petitioner's aforesaid applications have been rejected by the trial court, vide its order dated 09.01.2019, operative portion whereof reads thus:-

"न्यायिक दृष्टान्त संख्या एक में न्यायालय द्वारा मार्केट वेल्यू के विनिश्चय के लिये कलेक्टर को आदेशित किया। हस्तगत प्रकरण में कलेक्टर को मार्केट वेल्यू करने के लिये आदेशित नहीं किया गया। अतः उक्त तथ्य हस्तगत प्रकरण पर लागू नहीं होते हैं। न्यायिक दृष्टान्त संख्या 3 में भी मार्केट वेल्यू के लिये दस्तावेज को इम्पाउण्ड कर कलेक्टर को भेजा गया, हस्तगत प्रकरण में मार्केट वेल्यू के निर्धारण के लिये नहीं भेजा गया है। अतः उक्त तथ्य हस्तगत प्रकरण पर लागू नहीं होते हैं। जहाँ तक न्यायिक दृष्टान्त संख्या 2 का प्रश्न है, उसमें बिना सुनवाई के आदेश दिये जाने को उचित नहीं माना गया है, तथा संबंधित पक्षकारान को सुनवाई का अधिकार होना माना गया है। यह स्पष्ट है कि उक्त आदेश रिट याचिका में माननीय राजस्थान उच्च न्यायालय द्वारा पारित किया गया है। हस्तगत न्यायालय मुद्रांक कलेक्टर की अपीलेंट ऑथोरिटी या निगरानी ऑथोरिटी हो, या ऐसी कोई कानूनी विधि को प्रस्तुत नहीं किया है। अगर नियमानुसार मुद्रांक वसूल नहीं किया गया है तो प्रतिवादी नियमानुसार मुद्रांक कलेक्टर की उच्च ऑथोरिटी के यहाँ कार्यवाही कर सकता है। अतः देनो प्रार्थना पत्र सारहीन होने से खारिज किये जाते हैं।"

Calling the order dated 09.01.2019, passed by the learned court below, Mr. Chitlangi, learned counsel for the petitioner, zealously contended that the learned trial court has committed a grave error in rejecting the petitioner's applications and so also in observing that the judgment No.2, relied upon by the petitioner, is not applicable, as the same had been passed by this Court in a writ petition.

I have heard learned counsel for the petitioner and perused the material available on record including the impugned order.

Indisputably, the Rajasthan Stamp Act, 1998, provides a separate remedy against determination of stamp duty, made by the Collector (Stamps), which remedy is available even against an order passed under Section 37 of the Rajasthan Stamp Act, 1998.

According to considered opinion of this Court, a remedy of revision is available to the concerned aggrieved party and he cannot seek a quashment of the order by the Civil Court, simply because the matter was referred by it.

The petitioner's ambitious attempt to get the order of the Collector (Stamps) set aside by the Civil Court, is his own misunderstanding of law, which has been rightly negated by the trial court.

Counsel for the petitioner relied upon the judgment rendered in Rajiv Jain Vs. The Collector (Stamps), Bhilwara[2017(1) WLC (Raj.)UC 35]. A bare perusal of para No.1 of the said judgment, makes it clear that in the said writ petition, the order under challenge was passed by the Collector (Stamps), whereas in the present writ petition, the petitioner has laid challenge to the order passed by the Civil Court. Therefore, the judgment relied upon is clearly distinguishable on the facts of the present case and does not serve the cause of the petitioner.

It is true that the subordinate Courts are bound by the judgment of High Court,

but then, it will be expecting too much from the Civil Court, to set aside the order of the Collector (Stamps) on the basis of law laid down by this Court. It can only be done by a competent authority, authorised to hear appeal or revision against such order.

As a parting remark, this Court is constrained to observe that the petitioner has no occasion to file the subject applications and thereafter challenge the order dated 09.01.2019 passed in furtherance thereof.

That apart, a look at the order dated 28.08.2018, passed by the Collector (Stamps) reveals that the burden to pay the demand has been fixed on Navratanmal - the plaintiff (respondent herein). This Court is at a loss to comprehend as to why the petitioner has moved the present writ petition?

Apparently, the applications in question and the writ petition have been filed simply with a view to stall the proceedings.

The writ petition is not only frivolous, but is also an attempt to abuse the process of the Court. Hence, it is dismissed with a cost of Rs.5,000/-. The cost aforesaid shall be deposited by the petitioner, with the Rajasthan Legal Service Authority, Jodhpur within a period of 15 days from today.

The cost aforesaid shall be a fetter on petitioner's defence in the suit proceedings. If the petitioner does not deposit the cost aforesaid, the petitioner shall not be permitted to lead his evidence.

A copy of this order be sent to Additional District Judge, No.1, Bhilwara, forthwith.