(1962) 12 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 704 of 1962

B.K. Narayana Singh APPELLANT

Vs

H.H. Mohum Shumshere Jung Bahadur and Another RESPONDENT

Date of Decision : 04-12-1962

Acts Referred:
Karnataka Stamp Act, 1957 — Section 31, 32, 32 (3), 33

Citation : AIR 1963 Kar 244 : (1963) 1 MysLJ 145

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Advocate : E.S. Venkataramaiah, for the Appellant; M.P. Somasekhara Rao and S.L. Simha, for the Respondent

Judgement

K.S. Hegde, J.—In this revision petition, the scope of Sections 31, 32 and 33 of the Mysore Stamp Act, 1957, comes up for consideration.

2. The first respondent produced into the Court, an award with a prayer that the same may be made into a decree of the Court. The petitioner contended that the award in question was not duly stamped and therefore It is inadmissible In evidence. At one stage, the arguments centered round the question whether in the matter of stamping an award, the total value of the estate which is the subject matter of the award should be taken into consideration or whether the relief granted should be taken into consideration. The Court expressed its opinion that the total value of the estate should be the criteria. But it did not dispose of the question whether the award had been duly stamped as the respondents'' learned Counsel wanted to cite authorities in support of his contention that the award is duly stamped. At a later stage, It was urged on behalf of the respondents that in view of the Certificate granted by the Collector u/s 32(3) of the Stamp Act, the Court cannot go into the question whether the award had been duly stamped or not. In support of that contention, the decision of the Madras High Court in Murugayya Pillai Vs. Rajagopal Pillai and Others, was cited before the Court below. The Court below following that decision held that the

award had been duly stamped.

3. In this Court, the learned Counsel for the petitioner has assailed the order of the Court below on two grounds, viz., (i) that the Court below had no jurisdiction to review its earlier order as no review application had been filed within the period of limitation; and (ii) the view of the Court below that it is bound by the certificate issued by the Collector cannot be supported on a true interpretation of Section 32.

4. Now coming to the first point formulated, there is absolutely no merit in it. From what has been stated earlier, it is clear that though the Court below expressed its opinion on one facet of the question that arose for consideration, it did not finally decide that question. Therefore, there was no question of reviewing the earlier order.

4-A. Now coming to the scope of Sections 31, 32 and 33 of the Stamp Act, the provisions relevant for our present purpose are Sections 31(1)(c), 32(1), (2) and (3) and 33(1).

5. Section 31 deals with adjudication about proper stamps. Sub-section (1) of that section says.

"When any Instrument, whether executed or not and whether previously stamped or not is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty naye paise) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, In his judgment, the instrument is chargeable.

* * * * * * Provided that no evidence furnished in pursuance of this section shall be used against any person In any civil proceeding except in any enquiry as to the duty with which the instrument to which it relates is chargeable:..."

Now coming to Section 32, it deals with certificates by Collector. Both Sections 31 and 32 are found in Chapter III which relate to adjudication of Stamps. Sub-section (1) or Section 32 says;

When an instrument brought to the Collector u/s 31, is in his opinion, one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector u/s 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid." Sub-section (2) reads:

"When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable." Now we come to the most important Sub-section (3) of that section, which says:

"Any instrument upon which an endorsement has been made under this section ''shall be deemed to be duly stamped or not chargeable with duty, as the case may be'', and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it bad been originally duly stamped:"

(Underlining (here in '' '') is mine)

6. From the foregoing, it is clear that once the Collector affixes his certificate on a document that document is duly stamped, in law it is deemed to be duly stamped, whether in fact it is duly stamped or not.

7. Having said this much, we may now proceed to consider Section 33(1). Sections 33 to 46 are found in Chapter IV, which deals with instruments not duly stamped. A document deemed to be duly stamped u/s 32 in the very nature of things, cannot come within the scope of Chapter IV. If it does not come within the scope of Chapter IV, It cannot come within the scope of Section 33. Bearing in mind these aspects, we may now proceed to examine the language of Section 33(1), which says:

"Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if It appears to him that such instrument is not duly stamped, Impound the same." Before impounding a document u/s 33 (1), the officer concerned must come to the conclusion that the document is not duly stamped. If a document bears a certificate u/s 32, such a document in the eye of the law it duly stamped. Therefore, it cannot be considered as not being duly stamped u/s 33(1). Section 33 applies only to documents which are either not duly stamped or which are not deemed to be duly stamped. For these reasons I am unable to accept the contention of the learned Counsel for the petitioner that a certificate given by a Collector is not binding on the Civil Court, when a document is produced before it and its admissibility is objected on the ground that it is not duly stamped.

8. My view on this question is fully supported by the decision in Murugayya Pillai Vs. Rajagopal Pillai and Others, wherein Horwell, J. held that an endorsement made on an instrument by a Collector u/s 32 is final and cannot be questioned by a Civil Court even if it was erroneous or was made out of time. I respectfully agree with the ratio of the above decision which in my judgment, if I may say so with respect has correctly interpreted Section 32 vis-a-vis Section 33.

9. The decision of the Supreme Court in Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, also bears on the point under

consideration. After reviewing the scope of Sections 31, 32 and 33 of the Indian Stamp Act, which are in pari materia with the corresponding provisions in the Mysore Stamp Act, this is what Kapur, J. who delivered the judgment of the Court observed (in paragraph 6):

"The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument he approaches him u/s 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and u/s 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which Is unexecuted and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of Section 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done."

10. For the reasons mentioned above, this revision petition fails and the same is dismissed with costs.

