(2006) 08 PAT CK 0074

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6668 of 2005

Brij Nandan Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Citation : (2006) 08 PAT CK 0074

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This matter comes up before us on a reference made by a learned single Judge of this Court by his order dated 3.4.2006.

2. The brief facts essential for adjudication of the matter are not in dispute. One Sanat Kumar Ghosh entered into an agreement with the present petitioner on 25.7.1987, for sale of the land in question for a total sum of Rs. 1,10,000/-, and received a sum of Rs. 30,000/- by way of earnest money by cheque. The petitioner thereafter tendered the balance sum of Rs. 80,000/- to Sanat Kumar Ghosh with the request to execute the registered sale deed; he refused to receive the amount, and did not execute the registered document. The petitioner, therefore, instituted Title Suit No. 168/88 in the court of learned Sub Judge, Gaya, for specific performance of the contract. Sanat Kumar Ghosh died during the pendency of the suit and was substituted by his heirs, being his two daughters. The learned Sub Judge VI, Gaya, allowed the suit by his judgment and decree on 3.12.2003 (Annexure 2). The petitioner (plaintiff) levied Execution Case No. 4/2004, in the court of learned Sub Judge, Gaya, and on the court''s direction deposited the balance sum of Rs. 80,000/- in court. The learned execution court approved the draft submitted by the petitioner (decre-holder) on 26.10.2004, and directed the Seristedar to execute the sale deed on his behalf. On 2.11.2004, the Seristedar presented the deed of registration, admitted execution and submitted the report in court. The defendants have preferred First Appeal No. 25 of 2004 (Smt. Kaveri Mitra v. Brij Nandan Singh), which is pending in this Court. The matter remained pending for one year with the registering

authorities and then the petitioner was given the impugned notice dated 14.5.2005 (Annexure 1) stating that the matter shall be examined in terms of Section 47A(iii) of the Indian Stamp Act 1899 (Act 2 of 1899) (hereinafter referred to as ''the Act''), as to why ad valorem stamp duty calculated on the basis of the current market price of the property be not realised from him, fixing 24.5.2005 as the date for hearing. Hence this writ petition.

3. This writ petition was placed before a learned single Judge who, by his order dated 3.4.2006, referred it to a division bench expressing certain reservations with regard to two earlier judgments of this Court, both by learned single Judges, wherein it was held that the amended Section 47A of the Act is not retrospective in its operation, and the stamp duty on the document of transfer shall be assessed and payable according to the valuation given in the agreement for sale, unless the authorities come to the conclusion that the valuation given therein has not been rightly set forth in the instrument tendered for registration. It was further held that the time elapsed between the agreement for sale and tendering for registration shall not operate against the person liable to pay the stamp duty unless it is purposive and is meant to deprive the State of its lawful revenue. The two judgments are reported as follows:

(1) Smt. Shanti Devi Prasad and Another Vs. The State of Bihar and Others

(2) 2004 (2) BLJ 253 (Baiju Singh v. State of Bihar)

4. The learned single Judge by his aforesaid order dated 3.4.2006 has disagreed with the two reported judgments and, while making reference to the Division Bench, has, inter alia, expressed his view as follows:

....The law directs that such stamp shall be paid on the market value of the property as on the date of presentation of the instrument for registration.

We have, therefore, been called upon to decide whether the two learned single Judges of this Court in the two reported judgments have stated the correct position in law, or the learned single Judge who has passed the order dated 3.4.2006 in the present writ petition, has taken the correct view.

5. Section 54 of the Transfer of Property Act 1882, provides that ''sale'' is a transfer of ownership in exchange for a price paid or promised or part paid or part promised. Section 17 of the Registration Act 1908, provides that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in Immovable property, shall be compulsorily registered. There is no dispute about the position that the transaction in question is a ''sale'' within the meaning of Section 54 of the Transfer of Property Act and requires registration in terms of Section 17 of the Registration Act in order to be effective and operative in other words, the question for consideration is whether or not the stamp duty, in the facts and circumstances of the present case, is to be assessed on the basis of the

consideration money disclosed in the agreement for sale dated 25.7.1987, or on the basis of the market value of the property when the sale deed was presented for registration on 2.11.2004.

6. The Indian Stamp (Bihar Amendment) Act 1988 (Bihar Act 15 of 1988) had brought about substantial amendments in the Act. It inserted for the first time Section 47-A in the Act with effect from 31.3.1990. Section 47-A is reproduced hereinbelow for the facility of quick reference:

47-A. Instrument of conveyance.- (1) Where the registering officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition of settlement, has to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument he may, after registering such instrument refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon.

(Emphasis added)

Section 47-A was partially amended by Bihar Act 8 of 1991 with effect from 29.11.1991. Section 47-A as it stands today reads as follows:-

47-A. Instrument of conveyance.- (1) here the registering officer appointed under the India Registration Act, 1908 (XIV of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement, has to believe that the market value of the property which is subject matter of such instrument has not been rightly set forth in the instrument he may, at the time of admitting such instrument refer the market to the Collector for determination of the market value of such property and the proper duty payable thereon.

(Emphasis added)

It is thus manifest that the words "....after registering....", occurring in the earlier Section 47-A(1) of the Act have been substituted by the words "at the time of admitting...." by Bihar Act 8 of 1991. It thus appears to me that the original Section 47-A obliged the registering authorities to register a document and then refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon in the circumstances mentioned in Section 47-A. Deletion of the expression "...after registering...", and its replacement by the words "....at the time of admitting..." appears to mean that the registering authority can raise the question of determination of the market value of such property and the proper stamp duty payable thereon before registering the instrument.

7. The impugned notice seeks to raise the question of determination and payment of appropriate stamp duty on the basis of the current market price as on the date of presentation of the instrument. This question was raised in the case of Smt. Shanti Devi Prasad v. State of Bihar (supra) and we agree with the decision rendered in that case. It appears to me that it would not be right to

strain the person, liable to pay the stamp duty, by calling upon him to pay on the basis of the current market value of the property, for circumstances beyond his control. In the present case, if the vendor had not resiled from the agreement and had accepted the balance of the consideration money and executed the instrument of conveyance as per the agreement for sale, the petitioner would have paid the court-fee as on the date of presentation of the document, way back in 1987. He would not have been forced to pay at the higher rate because the other party to the agreement did not fulfill his obligations under it. He should also not be required to pay at the higher rate because of the tardy pace at which civil litigations in India proceed. The suit of 1988 has been decreed in 2003, and the first appeal is still pending in this Court. If this were permitted, then it is a possible situation that the petitioner may be required to pay at the market rate prevailing at the time of disposal of the first appeal pending in this Court. Are we permitted to take judicial notice of the position that the pending first appeal in this Court may take another two decades to be decided.

8. As has been noticed by Eqbal, J. in Shanti Devi Prasad v. State of Bihar (supra), the provision in Pari Materia was earlier considered by the High Court of Madhya Pradesh and that Court too has taken the same view in its judgment reported in Sitaram and Others Vs. The State of Madhya Pradesh, . The provision in Pari Materia was considered by a Division Bench of the Madras High court in its judgment reported in The State of Tamil Nadu Vs. T.N. Chandrasekharan, , and the Madras High court also has taken the same view.

9. As stated hereinabove, the agreement for sale was entered into on 25.7.1987. The Unamended Section 47(1) which came into force with effect from 31.8.90, and the amended provision as it stands today came into force on 2.11.1991. The provision has no retrospective effect for the reasons assigned in the judgment in Shanti Devi Prasad (supra), paragraph -18 of which is relevant and reproduced hereinbelow for the facility of quick reference:

18. It is well known cardinal principle of law that every statute which takes away or impairs vested rights acquired under the existing laws, or creates a new obligation or imposes a new duty in respect of past transaction must be presumed to be intended not to have retrospective effect. Applying the said principle, I am of the view that when the court execute a sale deed on the basis of a decree passed in a suit for specific performance and plaintiff was not responsible for the prolonged litigation, then the value on the date of agreement alone is relevant for stamp duty and not the value on the date of execution of the sale-deed by the court.

10. There is yet another aspect of the matter. The material before us do not give any indication that the registering authority is of the view that the market value of the property as disclosed in the agreement for sale, had not been rightly set forth with a view to evade appropriate stamp duty, in which case the position may have been different. The materials before us clearly suggest that they are of the view that the stamp duty has to be paid on the valuation of the property on

the date the deed of conveyance was presented for registration, i.e. on 2.11.2004. This is one further ground which renders the impugned notice bad in law.

11. For the reasons stated above, we agree with the statement of law summarised in paragraph 19 of the judgment in Shanti Devi Prasad (supra) and is reproduced hereinbelow for ready reference:-

19. As stated above, power u/s 47A of the Act can be exercised when the Registering Officer has reasons to believe that the market value of the property, which is the subject matter of conveyance, has not been rightly set forth with a view to fraudulently evade payment of the proper stamp duty. Mere lapse of time between the date of agreement and the execution of document will not be the determining factor that the document is under valued and such circumstances by itself is not sufficient to invoke the power u/s 47A of the Act unless there is lack of bonafide and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.

12. Chandramauli Kumar prasad, J. has, in his judgment in Baiju Singh v. State of Bihar (supra), followed the view taken by Eqbal, J.

13. In the result, we agree with the view taken by the learned single Judges in the case of Shanti Devi Prasad v. State of Bihar (supra), and Baiju Singh v. State of Bihar (supra). Accordingly, the writ petition is allowed and the impugned notice dated 14.5.2005 (Annexure 1), is hereby set aside.