

(1983) 03 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.C.C. No. 252 of 1981

Chaturbhuj Das and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 24-03-1983

Acts Referred:

Stamp Act, 1899 — Section 24

Citation : AIR 1984 MP 114

Hon'ble Judges : R.K. Vijayvargiya, J;K.N. Shukla, J;G.G. Sohani, J

Bench : Full Bench

Advocate : S.L. Garg and A.S. Garg, for the Appellant; S.R. Joshi, Government Advocate and N.K. Dave, for the Respondent

Judgement

Vijayvargiya, J.—This reference is made by the Chief Controlling Revenue Authority (Board of Revenue) Madhya Pradesh Gwalior, u/s 57, Stamp Act (for short "the Act").

2. The material facts giving rise to this reference briefly stated are as follows : Shri Shankarshan Das son of Munshiram Vithal acting as the karta of the joint Hindu family of Munshiram Gopalji Viththaldasji mortgaged the joint Hindu family property known as Krishna Ginning Factory including the land situate at Zinga Khoh, Agar, -- District Shajapur with Shri Ramkishan Goyal by a duly registered mortgage deed dated 19-4-1957. Shri Ramkishan Goyal granted a lease of the mortgaged property to M/s. Jain Brothers, a registered partnership firm of Agar, with the consent of the mortgagor and delivered possession thereof to M/s. Jain brothers. On 6-5-56 the mortgagor created a second mortgage of the mortgaged property for Rs. 2000/- in favour of M/s. Jain brothers. This mortgage was as usufructuary mortgage. As per terms of the mortgage deed, the mortgagees were entitled to remain in possession of the mortgaged property till 30-8-1977. It was also stipulated in the mortgage deed that the mortgagees would be entitled to spend any amount for making improvements to the mortgaged property and if any such amount was spent on improvements the mortgagors would pay interest

thereon at the rate of 7 per cent per annum before redemption. The mortgagees spent a sum of Rs. 70,000 on the improvements to the mortgaged property with the consent of the mortgagors. The mortgagors then transferred their equity of redemption by a deed of sale dated 16-6-1970 for a sum of Rs. 18,000 in favour of the mortgagees M/s. Jain brothers. This deed was executed on stamps worth Rs. 810 and was presented for registration before the Sub-Registrar Agar. The Sub-Registrar impounded the document and referred the matter to the Sub-Divisional Officer, Agar, for considering the question of stamp duty payable on it. The Sub-Divisional Officer after hearing the executants, held that the instrument was not correctly valued and that it should have been valued at Rs. 18,000 plus Rs. 70,000 the amount spent by the mortgagees on improvements to the mortgaged property and stamp duty paid on the instrument was deficient by Rs. 3,406. The Sub-Divisional Officer, therefore, directed that the deficit stamp duty be recovered from the vendors together with an equal amount as penalty. The vendors submitted a revision before the Chief Controlling Revenue Authority against the order of the Sub-Divisional Officer. The learned Member of the Board of Revenue exercising jurisdiction u/s 56 of the Act passed an order further enhancing the duty and penalty chargeable on the instrument. Thereafter the Sub-Divisional Officer issued a notice to the vendors for the recovery of Rs. 4536.50 p. as stamp duty and equal amount as penalty. The vendors then filed a petition under Article 226 of the Constitution challenging the recovery of the amount of duty and penalty. This petition, which was registered as M. P. No. 43 of 1972, was allowed by this Court by order passed on 22-3-1975. This Court directed the Chief Controlling Revenue Authority to state a case to this Court u/s 57 of the Act. Accordingly the Chief Controlling Revenue Authority has made this reference.

3. The finding of fact recorded by the Chief Controlling Revenue Authority are these: The vendors executed a deed of mortgage for Rs. 2,000 in favour of M/s. Jain brothers. It was a usufructuary mortgage and possession of the mortgaged property was delivered to the mortgagees. Under the terms of the mortgage deed the mortgagees were entitled to spend money on improvements to the mortgaged property and the mortgagors agreed to pay interest at 7% per annum on the amount spent by the mortgagees on such improvements. The amount spent on the improvements to the mortgaged property and the interest thereon became a charge, on the mortgaged property. On these facts the Chief Controlling Revenue Authority expressed the opinion that the sale deed was chargeable to stamp duty on the original mortgage amount of Rs. 2,000 plus Rs. 70,000 being costs of improvements plus 7% interest calculated according to conditions 8 and 9 of the mortgage deed plus Rupees 18,000 being the consideration of the sale of the equity of redemption by the mortgagors.

4. The Chief Controlling Revenue Authority while stating the case has not formulated the question of law on which the opinion of this court is sought. After hearing the parties we are of the opinion that the following question of law arises on the facts found by the Chief Controlling Revenue Authority on which we are

required to give our opinion. The learned counsel for the parties agreed to the formulation of the said question by us.

Question:-- What is the stamp duty chargeable on the instrument of sale executed by the applicants in favour of M/s. Jain Brothers on the facts and in the circumstances of the case.

5. We have heard the learned counsel for the parties. Section 24 of the Act which is relevant for answering the question formulated by us reads as follows :

"24. How transfer in consideration of debt or subject to future payment etc. to be charged -- Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be of the consideration in respect whereof the transfer is chargeable with ad valorem duty:

Provided the nothing in this section shall apply to any such certificate of sale as is mentioned in Article 10 of Schedule I.

Explanation.-- In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage."

6. In the present case the property which has been sold was subject to the mortgage of M/s, Jain Brothers to whom it has been sold. The Chief Controlling Revenue Authority has found that the mortgage money or RS. 2,000 was unpaid and the mortgagors were also liable to pay to the mortgagees a sum of Rupees 70,000 as rests of improvements made by the mortgagees together with interest thereon at 7% p. a. The Chief Controlling Revenue Authority has also found that under the terms of the mortgage deed a charge was created on the mortgaged property in respect of costs of improvement made by the mortgagee and interest thereon.

7. In the circumstances explanation to Section 24 of the Act is squarely applicable and the unpaid mortgage money with interest, if any, thereon and the costs of improvements with interest shall be deemed to be part of the consideration for the sale and stamp duty on the instrument of sale is chargeable accordingly.

8. The learned counsel for the vendors contended that Explanation to Section 24 of the Act was not applicable to the present case because it is not a case of sale of property subject to a mortgage but by the sale deed the vendors have only

transferred their equity of redemption. The contention has no merit. If a property is subject to a mortgage and the mortgagor transfers his right in such property it is a transfer of the mortgagor's equity of redemption and such sale of mortgagor's right is nothing but sale of the property subject to the existing mortgage thereon. The explanation to Section 24 of the Act is attracted to such a case.

9. The decision of the Supreme Court in Board of Revenue, Uttar Pradesh Vs. Rai Saheb Sidhnath Mehrotra, relied upon by the learned counsel is not helpful to the vendors. In that case the Supreme Court held that if the mortgage has been paid off by the date of the conveyance the explanation does not require it to be added to the consideration. However, if the mortgage money has been paid off by the vendee before the date of the sale, as part of the consideration, it would be included in the amount leviable with stamp duty under Article 23, but not under the explanation.

10. In the present case as stated above neither the amount, of mortgage nor the costs of improvement have been paid off before the conveyance, In the circumstances the Supreme Court decision (supra) is not applicable to the facts of the present case. In our opinion, the explanation to Section 24 of the Act fully applies to the facts of this case and therefore the unpaid mortgage money with interest, if any, thereon, and the costs of improvements amounting to Rs. 70,000/-and interest thereon at 1% p.a. have to be added as consideration for the instrument of sale in addition to Rs. 18,000/-for which the equity of redemption has been transferred by the vendors to the vendees. The instrument of sale is chargeable to stamp duty accordingly. From the duty so payable the amount of duty already paid on the deed of mortgage executed by the vendors in favour of the vendees-mortgagees has to be deducted.

11. Thus, the stamp duty on the instrument of sale is chargeable on the consideration of Rs. 18,000/- as recited in the document plus Rs. 2000/- unpaid mortgage money together with unpaid interest, if any, thereon, plus Rs. 70,000/- being the costs of improvements with interest thereon at 7% p.a. From the duty so chargeable the amount of duty already paid by the vendors-mortgagors on the deed of mortgage executed by them in favour of the vendee-mortgagees should be deducted.

12. The reference is answered accordingly. In the circumstances the parties shall bear their own costs of this reference.