(1975) 03 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 43 of 1972

Chaturbhujdas Dwarkadas Agar and others APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 15-03-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 26, 31, 40, 41, 56

Citation : (1975) JLJ 833

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.L. Garg, for the Appellant; P.L. Mehta, Addl. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Oza, J.—This petition has been filed by the petitioners against an order dated 29-10-1971, passed by a Member, Board of Revenue, exercising powers u/s 56 of the Indian Stamp Act.

2. The facts giving rise to the present petition are that on 10-4-1957 Krishna Ginning Factory including the land situated at Zinga Khoh, Agar, Tehsil Agar, District Shajapur, was mortgaged by the joint Hindu family of Munshiram Gopalji Vithaldasji through its ''Korteas'' Shri Shankar Khan Das son of Munshiram Gopal and Purushottamdas son of Munshiram Vithaldasji through with Shri Ramkishan Gopilal Goyal. Then Shri Ramkishan Goyal gave this on lease to Messrs Jain Brothers, a registered partnership firm of Agar of which respondents Nos. 4, 5, 6 and 7 are partners. The lease was given with the consent of the mortgagor and possession of the factory was also delivered to M/s. Jain Brothers. On 6-5-66, ''Kartas'' of the Hindu Undivided family Munshiram Gopal Vithaldas created a subsequent mortgage of the said factory with M/s. Jain Brothers for Rs. 2000. This mortgage was a usufructuary mortgage and according to the terms of the said deed, the mortgagees were entitled to remain in possession till 30th

September 1977 and on that date the mortgagees were to hand over possession of the factory back to mortgagors. It was also agreed in this mortgage that M/s. Jain Brothers, the mortgagees, could spend any amount for making improvements in the factory with the consent of the mortgagors and, if such amount is spent, the mortgagors would pay interest at the rate of 7 percent per annum on the amount so spent before the redemption. According to the terms of the said mortgage-deed, M/s Jain Brothers the mortgagees with the consent of the mortgagors, spent about Rs. 70000 (seventy thousand) for improvement of the said factory they made certain construction and also installed machine. The mortgagors, thinking that they have to pay the aforesaid sum of Rs. 70000 and interest thereon before the date of redemption i. e. 30th September, 1977 and also realising that they were not in a position to pay the same, decided to sell out their rights in the factory i. e. equity of redemption, to the mortgagees for Rs. 18000 and consequently on 16-6-1970, executed a deed of sale in respect of the equity of redemption of the said factory in favour of M/s Jain Brothers for an amount of Rs. 18000. The said deed of sale was executed on stamps of Rs. 810 and the deed was presented for registration before the Sub-Registrar, Agar, who impounded the document and referred the matter to the Sub-Divisional Officer of Agar for considering the question of stamp duty and penalty. The Sub-Divisional Officer, after hearing the petitioners, by his order dated 12-11-1970 held that the document in question does not contain the correct value of the property and, the value set forth in the instrument being improper, it should have been valued at Rs. 88000, and the stamp duty was found deficit by Rs. 3406 which he directed to be recovered and equal amount to be recovered as penalty. Against this order, the petitioners went up in revision before the Board of Revenue. The learned Member of the Board of Revenue, exercising jurisdiction u/s 56 of the Indian Stamp Act, passed an order further enhancing the duty and penalty chargeable against the petitioners. After the order of the Board of Revenue, the Sub-Divisional Officer issued a notice to the petitioners for recovery of duty of Rs. 4536.50 np. and an equal amount as penalty and therefore the petitioner have filed this petition under Article 226 of the Constitution of India.

3. When the revision petition was filed before the Board of Revenue, the learned Member proceeded to exercise power u/s 56 of the Indian Stamp Act (hereinafter referred to as ''he Act''). In exercising these powers, the learned Member re-assessed the duty chargeable from the petitioners. It was contended before us that the powers, the Board could exercise u/s 56 of the Act, were the powers of Control only and not of an appellate tribunal. It was also contended that in a case, like the present, where questions about interpretation of the documents and interpretation of the provisions of the Indian Stamp Act are involved, the Board of Revenue ought to have exercised jurisdiction u/s 57 of the Act, by making a reference to this Court rather than deciding the matter itself. It is not in dispute that the questions involved in the matter are important question of law relating to the interpretation of certain provisions of the Indian Stamp Act and also about the interpretation of the document which was sought to be registered.

Learned counsel for the respondent State also contended that the appropriate procedure, which the Board should have followed, was to make a reference to this Court u/s 57 of the Act, rather than deciding the question itself.

4. Section 56 of the Indian Stamp Act provides--

56. (1) The powers exercisable by a Collector under Chapter IV and Chapter v. and under Clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

(2) If any Collector, acting u/s 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

Sub-section (1) of this section confers powers on the Chief Controlling Revenue Authority to keep control over the Subordinate Revenue Authorities. Therefore, the power conferred on the Board of Revenue u/s 56 of the Act is power of control only. It is therefore clear, while exercising power of control, the scope of the jurisdiction of the Chief Revenue Controlling Authority will be limited and will not go to the extent of appellate powers where it can substitute its own decision. Apparently, therefore, what the learned Member of the Board of Revenue has done in the impugned order, he could not while exercising power u/s 56 of the Act. It appears that the learned Member lost sight of the provisions contained in section 57 of the Act, and it appears that the parties also did not bring to the notice of the learned Member of the Board of Revenue the provisions contained in section 57 of the Act. Section 57 of the Indian Stamp Act, reads:--

57 (1). The Chief Controlling Revenue Authority may state any case referred to it u/s 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon.

(a) if it arises in a state, to the High Court for that state;

(b) if it arises in the Union territory of Delhi or Himachal Pradesh, to the High Court of Punjab;

(c) if it arises in the Union territory of Manipura or Tripura, to the High Court of Assam;

(d) if it arises in the Union territory of the Andaman and Nicobar Islands, to the High Court at Calcutta; and

(e) if it arises in the Union territory of the Laccadive, Minicoy and Amindivi Islands, to the High Court of Kerala.

(2) Every such case shall be decided by not less than three Judges of the High

Court to which it is referred, and in case of difference the opinion of the majority shall prevail

Sub-section (1) of this-section provides that when a case is referred to it u/s 56 sub-clause (2) of the Act, or otherwise brought to its notice, it has to refer such a case with its own opinion to the High Court. It is clear from this section that the Chief Controlling Revenue Authority, under this section, has no option to decide a matter itself but to state the case and refer it to the High Court. It appears, the learned Member of the Board of Revenue, who heard the revision in this case, did not consider the provisions contained in section 57 of the Act. Consequently, the Board of Revenue failed to exercise jurisdiction vested in it u/s 57 of the Act. The petitioners, are, these fore, entitled to a direction from this Court.

5. In the Chief Controlling Revenue Authority and another v. The Maharashtra Sugar Mills Ltd. A I R 1950 S C 218, a question u/s 57 of the Stamp Act, came up for consideration and it was observed by their Lordships:--

In our opinion, in the present case the power to make a reference u/s 57 is not only for the benefit of the appellant. It is coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, as a public servant it is his duty to make the reference. If he omits to do so it is within the power of the Court to direct him to discharge that duty and make a reference to the Court.

It is therefore clear that this Court, exercising jurisdiction under Article 226 of the Constitution of India, can direct the Board of Revenue to make a reference u/s 57 of the Act. This Court in Balkrishna Nathani v. Board of Revenue Misc. petition No. 318 of 1964, decided on 16-9-1964 = 1965 M P L J 23 : 1965 J L J 40., following the decision of their Lordships of the Supreme Court quoted above, directed the Board of Revenue to make a reference u/s 57(1) of the Act. A Division Bench of the Delhi High Court in Union of India v. Sarup Singh A I R 1968 Del 219. also followed the same course.

6. Consequently in the light of the discussion above, this petition is allowed, the order passed by the learned Member of the Board of Revenue exercising provisional jurisdiction u/s 56 of the Act is quashed and the matter is sent back to the Board of Revenue with a direction that it shall exercise jurisdiction u/s 57 of the Indian Stamp Act and make a reference to this Court. The petitioners shall be entitled to costs of this petition. Counsel''s fee Rs. 100 if certified.

