(2002) 02 DEL CK 0081

In the Delhi High Court

Case No : Stamp Act Reference No. 1 of 1983

Chief Controlling Revenue Authority and Another APPELLANT

Vs

Shrimati Sharda Devi RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Constitution of India, 1950 — Article 23, 48
Stamp Act, 1899 — Section 10, 11, 17, 1A, 2(21)

Citation : (2003) 102 DLT 716 : (2002) 63 DRJ 505

Hon'ble Judges : S.B. Sinha, C.J;Mukul Mudgal, J;D.K. Jain, J

Bench : Full Bench

Advocate : Avnish Ahlawat, Vaishalee Mehra, Yogesh Chaudhry and Mohit Madan, for the Appellant; A.S. Chandhiok, as amices Curiae, Anshul Saharan and Manmeet Arora, for the Respondent

Judgement

S.B. Sinha, C.J.—This reference has been made by the petitioners afore-mentioned purporting to be in terms of Section 57 of the Indian Stamp Act, 1899 (in short the "Act") referring two questions for opinion of this Court, which are in the following terms:

"(1) Whether General Power of Attorney and the receipt in question can be clubbed and stamp duty under Article 48(f) of Schedule 1-A of the Indian Stamp Act, 1899 can be charged for a consideration of Rs. 19,000/- received by the principal of General Power of Attorney from a person other than the attorney.

(2) Will it make any difference if such General Power of Attorney and receipt indicates that the consideration mentioned in a separate receipt flows directly from the attorney."

2. The facts relevant for answering the afore-mentioned reference are as under:

The respondent Smt. Sharda Devi executed a General Power of Attorney in favor of Smt. Prem Wati, in terms whereof, the latter was appointed as a General Attorney for performing certain acts in respect of property No. G-158, Nai Basti, Seelampur, Shahdara in the town of Delhi. On the said date allegedly Smt. Sharda Devi confirmed the receipt of Rs. 19,000/- from husband of Smt. Prem Wati. At the time when the said documents were presented for registration an objection was raised on the ground that in the documents the executant had not truly set forth the value of the property. In the said Power of Attorney, it was stipulated that the Attorney can sell the property which consists of Quarter No. G-158 in addition to other functions specified therein.

3. Having regard to the fact that the receipt of the amount synchronised with the execution of the General Power of Attorney and the transaction had allegedly been entered into by the afore-mentioned Sharda Devi with the couple, a question arose as to whether the same would amount to sale of the property and stamp duty could be charged, on the amount shown in the receipt i.e. Rs. 19,000/- although no consideration had been mentioned in the power of attorney.

4. Article 48(f) of Schedule 1-A of the Indian Stamp Act, 1899 reads thus:

"48 Power of Attorney as defined by Section 2(21), not being a PROXY (No. 52)-

(f) when given for consideration and authorizing the attorney to sell any immovable property;

The same duty as a Conveyance (No. 23) for the amount of the consideration."

5. In terms of the afore-mentioned, the document is chargeable to the same duty as a Conveyance under Article 23. According to the referring authority it is not clear from the said article as to whether stamp duty can be charged by clubbing the two documents.

6. In the instant case it is not in dispute that despite reference having been made document in question has been registered as far back as in 1977.

7. Furthermore, in the instant case, no finding of fact has been arrived at to the effect that the afore-mentioned power of attorney had been executed as a collateral document by way of camouflage. There is also nothing on record to show that the possession of the property had been delivered by the owner in favor of the husband of the said Smt. Prem Wati or the holder of the power of attorney.

8. In the afore-mentioned situation, we are of the opinion that, in absence of any finding to the afore-mentioned requisite fact and further having regard to the fact that there is nothing to show that the possession has been delivered either by way of part performance of contract or otherwise, the questions referred to this Court for its opinion cannot be answered. We in the facts of the instant case, thus, deem it fit that the questions need not be answered. We may also notice that the Parliament has enacted the Registration and Other Related Laws (Amendment), Act 2001, which has been published in the Official Gazette on 24th September 2001 whereby, inter alia, the provisions of the Registration Act, Transfer of Property Act and Indian Stamp Act have been amended. By reasons

of the provisions thereof a new Section 16A in the Registration Act has been inserted and after Section 17 thereto Sub-section 1A has been amended. In terms of Section 5 of the said Act after Section 32 a new provision, namely, Section 32A has been inserted. By reason of Section 6 of the said Act, Section 49 has been amended. Similarly by reason of Section 7 thereof, Section 52 of the Registration Act has been amended. Further by reason of Section 9 of the said Act in Sub-section (1), after Clause (a) Clause (aa) has been inserted. By reason of Section 10, which occurs in Chapter III of the said Act, Section 53A has been amended to the following effect:-

"the words "the contract, though required to be registered has not been registered or" the contract recorded, that shall be omitted" in Section 53A of the Transfer of Property Act.

9. By reason of Section 11, which occurs in Chapter IV of the said Act, Indian Stamp Act has been amended in the following terms:

"Amendment of the Indian Stamp Act, 1899

11. In Schedule 1 to the Indian Stamp Act, 1899-

(a) under column heading "Description of Instrument", in Article No. 23, in Exemption, the portion beginning with the words "Assignment of Copyright" and ending with the word and figure "Section 5" shall be numbered as Clause (a) thereof, and after Clause (a) as so numbered, the following clause shall be inserted, namely:-

"(b) for the purpose of this article, the portion of duty paid in respect of a document falling under Article No. 23A shall be excluded while computing the duty payable in respect of a corresponding document relating to the completion of the transaction in any Union territory under this Article.";

(b) after Article No. 23 and the entries relating thereto, the following article No. and the entries shall be inserted, namely:-

-- Description of Instrument Proper Stamp-duty -- "23A. CONVEYANCE IN THE NATURE OF Ninety percent of PART PERFORMANCE - Contracts for the duty as a the transfer of immovable Conveyance property in the nature of part (No. 23)" performance in any Union territory u/s 53A of the Transfer of Property Act, 1882. --

10. In view of the fact that legislative measures have already been taken, which prima facie appear to have a direct nexus with the question referred for opinion of this Court, in terms of Section 57(1) of the Act, we are of the opinion that, having regard to the facts and circumstances of this case, the said questions are not required to be answered for future guidance. As and when any appropriate matter comes up for adjudication before this Court, the same shall be considered

on its own merit.

Reference is accordingly disposed of.

