

(1988) 11 AHC CK 0050
In the Allahabad High Court
Case No : Stamp Act Reference No. 32 of 1983

Chief Controlling Revenue Authority	Vs	APPELLANT
Manohar Lal Dudeja		RESPONDENT

Date of Decision : 02-11-1988

Acts Referred:

Stamp Act, 1899 — Article 58, 64, 2, 2(24), 57

Citation : (1989) 1 AWC 105

Hon'ble Judges : A. Banerji, C.J.; A.P. Misra, J.; A.N. Varma, J

Bench : Full Bench

Advocate : G.L. Tripathi, for the Appellant; D.P. Bahadur, for the Respondent

Final Decision : Disposed Of

Judgement

A. Banerji, C.J.—This reference has been made by the Chief Controlling Revenue Authority u/s 57 of the Indian Stamp Act, 1899, in respect of a document, as it felt a doubt as to whether the stamp duty on the document was chargeable as on a Settlement or as on a Trust. The following question has been framed by the Authority on which our opinion has been sought:

Whether the document under reference comes within the definition of a settlement as given in Section 2(24) of Indian Stamp Act as chargeable with duty under Article 58 of Schedule I-B thereof or is a declaration of Trust chargeable under Article 64 of the Schedule I-B of the said Act.

2. At the very outset we may state that it appears to us that the question framed proceeds on incorrect basis. The question shows that the Chief Controlling Revenue Authority proceeded on the basis that the instrument under the Stamp Act can either be a deed of "Trust" or "Settlement" only and not both. The proper question, in our opinion, is whether this particular instrument to which reference relates is a Settlement or not, even though it may on the face of it be a deed of Trust.

3. In the present case, one Shri Manohar Lai Dudeja executed a document on

18th April, 1972, purporting to create a Trust for religious and charitable purposes and transferred a building valued at Rs. 7 lakh for running a hospital. A duty of Rs. 1605/- under Article 64 Schedule I-B of the Stamp Act was paid. An objection was taken by an Audit party of the office of the Accountant General, U.P. that the instrument was "Settlement" as defined in Section 2(24) of the Stamp Act and a duty under Article 58 Schedule I-B was payable on it. The Additional Collector, Kanpur, having some doubt referred the matter to the Chief Controlling Revenue Authority who after local inspection found that the Trust was created for educational, religious and charitable purposes. This included a charitable eye hospital duly equipped and was being run with a Yogashram under a qualified Doctor. The Chief Controlling Revenue Authority came to the conclusion that the instrument was an instrument of "Trust" and not a "Settlement" and he held that the document was properly stamped vide order dated 18th April, 1980.

4. It appears that the decision was examined by the Law Department in the Government and they were of the view that it was a "Settlement" as defined in Section 2(24) of the Stamp Act and relied on a decision in the case of Sudarshanlal v. Chief Controlling Revenue Authority, (sic). Reference was also made to cases of Sita Ram v. Board of Revenue 1979 AWC 539 (SB), wherein it was held that a transaction may amount to a "disposition of property" though it may not be a transfer. Reference was also made to a decision in the case of Board of Revenue v. Sridhar 1964 AWR 123, wherein it was held by a Special Bench that where the instrument clearly contained a disposition of the future rental income of the property, initially in favour of the trustee, with a direction to him to utilise that income for the benefit of the minor children of the donor, it would be a "settlement" satisfying the requirements laid down in Section 2(24). The Special Bench also held that this would be so even though the instrument is by way of declaration of trust.

5. The present Reference has thereafter been made by the Chief Controlling Revenue Authority, U.P. with the question as mentioned above. As indicated above, the question framed by the said Authority is not quite correct. The proper question would be:

Whether the particular instrument to which this reference relates is a "Settlement" or not, even though it may on the face of it be a deed of Trust.

6. We have heard Mr. G.L. Tripathi, Standing Counsel and Mr. D.P. Bahadur, appearing for Sri. Manohar Lal Dudeja. A reference to the provisions of Section 2(24) of the Stamp Act would be necessary. It reads as follows:

(24) "Settlement"- "Settlement" means any non-testamentary disposition in writing of movable or immovable property made-

(a) in consideration of marriage.

(b) for the purpose of distributing property of the settler among his family or

those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

7. In the present case, the property involved is an immovable property and the instrument is a non-testamentary disposition. We may then read Clause (c) of Sub-section (24) of Section 2 of the Stamp Act along with the opening part of the definition. It thus reads as follows:

"Settlement" means any non-testamentary disposition in writing of movable or immovable property made-

(c) for any religious or charitable purpose.

8. The tenor of the document shows that it is a disposition of immovable property for religious and charitable purposes. The author expressly states that he "transfers, conveys and grants unto the trustees" the properties of which he was the absolute owner. It, therefore, squarely comes within the definition of the term "Settlement" as defined in Section 2(24) of the Stamp Act, 1899.

9. Learned Standing Counsel contended that it is not necessary to find out whether there was a declaration of trust or not. It was enough if it showed that it was a "Settlement" in writing of immovable property made for any religious or charitable purpose. Mr. D.P. Bahadur on the other hand, contended that if it was a deed which purported to be a Trust deed then it would not be a "Settlement" but would come within the term "Trust" and the Stamp duty payable would be under Article 64 of Schedule I-B of the Stamp Act as applicable in Uttar Pradesh. That provision reads as under:

Description of Instrument Proper Stamp duty 64. Trust? A. Declaration of, or concern- ing, any property when made by writing not being a will? (a) where the amount or value The same duty as on a Bond (No. 15) does not exceed Rs. 10,000 (b) where such amount exceeds On ten thousand rupees, the duty pay- Rs. 10,000, for every additional able under Clause (a) and on the remain- Rs. 1,000 or part thereof der, three rupees for every additiona one thousand rupees or part thereof.

As against this the same duty on an Instrument which comes under the head "Settlement" is provided for in Article 58.

It reads as follows:

58. Settlement- A. Instrument of including a The same duty as a Bond (No. 15 for a deed of dower. sum equal to the amount or value of the property settled: (Rest omitted)

It would be seen that if it is an instrument of settlement then the duty would be the same as a Bond (No. 15) for a sum equal to the amount or value of the property settled. In the case of a Trust, the duty would be the same as on a Bond where the amount or value does not exceed Rs. 10,000/-. If it exceeds Rs. 10,000/-, the duty payable will be the same as on Rs. 10,000/- and rupees three for every additional one thousand rupees. In other words, the stamp duty payable on a Trust would be at a lower basis if the amount or the value involved is more than ten thousand rupees, than on an Instrument of Settlement.

10. It is obvious that a party would like to pay a lower amount of stamp duty, if permissible. The contention on behalf of Manohar Lal Dudeja is that the Instrument was a Deed of Trust and not a deed of Settlement. This has been accepted by the Chief Controlling Revenue Authority in his order dated 18th April, 1980, but by a subsequent order dated 17-1-1983 the Chief Controlling Revenue Authority has not agreed with it and made a Reference.

11. On an examination of the matter, we find that an Instrument of Settlement may also include a Deed of Trust where a non-testamentary disposition in respect of an immovable property is made for religious or charitable purpose. We are fortified in this view by the conclusion of the Special Bench of Five Judges in the case of Board of Revenue v. Sridhar (supra). Reference was made to Section 2(24) of the Stamp Act where it was provided that "Settlement" includes an agreement in writing to make such a disposition, and where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition. (We lay emphasis on the portion underlined). This makes it clear that even if it is a declaration of trust in respect of immovable property under an agreement in writing, it would amount to a "Settlement". Hon"ble Bhargava, J. in the case of Board of Revenue v. Sridhar (supra) observed:

This definition of the word "Settlement" itself makes it clear that even instruments which are executed containing a declaration of trust can be settlements provided the conditions laid down earlier in that definition are satisfied.

We are in complete agreement with the view taken above. We have already seen that the instrument involved in the present case is a non-testamentary disposition of immovable property for religious and charitable purposes. This fulfils all the requirements of the term "Settlement". Even if the instrument purports to be an instrument "by way of declaration of Trust" it would not lose the character of being a "Settlement" as defined in Section 2(24) of the Stamp Act. We are, therefore, of the view that the proper answer to the question refrained by us is that the Instrument in the present case is a "Settlement" even though it purports to be a deed of trust.

12. The same conclusion is reached by another process of reasoning. Even if the document is treated both as an Instrument of Settlement as well as an

instrument containing a declaration of Trust, in view of Section 6 of the Stamp Act, the instrument would be liable to duty, as a "Settlement", the duty chargeable on a settlement being higher than that leviable on the declaration of the trust in the present case. That section as applicable to the State of U.P. reads as follows:

6. Instruments coming within several descriptions in Schedules I-A or I-B.

Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, Schedule I-A or Schedule I-B, shall, where the duties, chargeable thereunder are different, be chargeable only with the highest of such duties.

(Proviso omitted being unnecessary in this case).

13. The provision furnishes a complete answer to the question referred for our opinion in view of our conclusion that the instrument is undoubtedly a settlement as defined. In this case the duty payable on the Instrument as a settlement is higher than that leviable on a trust deed, the amount or value involved being more than ten thousand rupees. In the present case, the value of the property is Rs. 7 lakhs. Consequently, higher rate of duty as provided for an Instrument of Settlement under Article 58 would be applicable. Similar view was taken by the Special Bench in the case of *Sita Ram v. Board of Revenue* (supra).

14. Consequently, we are of the view that the document, which has been referred to us by the Chief Controlling Revenue Authority is liable to stamp duty as an instrument of Settlement under Article 58 of the Schedule I-B. Let this opinion be returned to the Chief Controlling Revenue Authority, U.P.