(1985) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Case Referred No. 112 of 1979

Chittavalasa Jute Mills Ltd. APPELLANT

Vs

Commissioner of Survey, Settlements and Land Records and The Chief Controlling Revenue Authority, Andhra Pradesh, Hyderabad and Another RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:
Stamp Act, 1899 — Article 35, 6, 2(17)

Citation : AIR 1985 AP 391 : (1985) 3 APLJ 273

Hon'ble Judges : P. Chennakesav Reddy, Acting C.J.;Kodandaramayya, J;Amareswari, J

Bench : Full Bench

Advocate : Vedula Jagannadha Rao, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Judgement

P. Chennakesav Reddy, Actg.C.J.

1. On 20-12-1976 a document was presented to the Sub-Registrar, Bheemunipatnam by the Chittavalasa Jute Mills, the petitioner before us, for registration. The document was engrossed on a stamp paper of Rs.5/-. But the document was styled as a ''deed of hypothecation'' for Rs. 10 lakhs. Therefore, the Sub-Registrar impounded the document and referred the matter to the District Registrar, Visakhaptanam, for classification of the document and chargeability of the document with stamp duty. The District Registrar by his order dt. 11-3-1977 held it was a mortgage without possession for Rs. 10 lakhs and was chargeable with stamp duty of Rs. 30,000/- under Art. 35(b) of Sch.1-A of the Indian Stamp Act, 1899 (hereinafter referred to as ''the Act''). He therefore ordered the recovery of the deficit stamp duty of Rs. 29,995/- and a penalty of Rs.1,000/- a total of Rs. 30,995/- under S. 40 of the Act, and informed the Sub-Registrar accordingly. Aggrieved against the said order, the Managing Director, Chittavalasa Jute Mills preferred a revision before the Commissioner of Land Revenue and Chief Controlling Revenue Authority under S. 56(1) of the Act. The

chief Controlling Revenue Authority confirmed the order of the District Registrar and dismissed the revision petition. A petition filed by the petitioner for a reference under S. 57(1) of the Act was also unsuccessful. Therefore, the petitioner invoking the extraordinary jurisdiction under Art. 226 of the Constitution filed a writ petition, W.P.No. 4198 of 1977 seeking a direction from the High Court to the Chief Controlling Revenue Authority to state the case and refer the question, namely, whether the document in question is an agreement as contended by the executants falling under Art. 6 of Sch. I-A or is a mortgage deed as defined under S. 2(17) of the Act, for the opinion of the High Court. The High Court allowed the writ petition and directed the Chief Controlling Revenue Authority and Commissioner of Survey Settlement and Land Record to make a reference to the High Court as the case involves a substantial question of law. Accordingly the Chief Controlling Revenue Authority referred the following question for our opinion:

"Whether on the facts and in the circumstances the deed of hypothecation dated 17-1-1977 entered into between the petitioner and the A.P. Financial Corporation falls under item 6 or 35(b) of the Sch. I -A of the Stamp Act, 1899".

2. To answer the question, it is necessary to look at the definition of ''mortgage deed'' in the Act itself. S. 2(17) defines ''mortgage deed'' as follows:

"mortgage deed" includes every instrument whereby for the purpose of securing money advanced or to be advanced by way of loan, or an existing or future debt, or the performance of an engagement, one person transfer, or creates, to, or in favour of another, a right over or in respect of specified property."

It could at once be noticed that the definition of ''mortgage deed'' under the Act is much wider than the definition under S. 58 of the T.P. Act . The Stamp Act is made applicable to transfers of both movable and immovable properties while S. 58 of the T.P. Act refers to mortgages relating to immovable property only. In addition, a charge is also included in the definition under the Stamp Act while there is a separate provision in respect of charges over immovable property under S. 100 of the Transfer of property Act. The word ''Property'' under S. 2(17) of the Act is used in its widest and more generic legal sense and embraces every kind of property whether movable or immovable. Therefore, when the question of classification and chargeability of a document with stamp duty arises, it is with reference to the definition under the act that the question has to be decided. We shall, therefore, proceed to scrutinise the document and find out whether the document in question, described as a deed of hypothecation, is a ''mortgage deed'' falling under Art. 35(b) or an ''agreement'' falling under Art. 6 of Sch.1-A of the Act.

3. The deed itself as described as a deed of hypothecation for a sum of Rs. 10 lakhs of loan to be advanced by the Corporation to the borrower -Company. A charge is created on the land and buildings, mortgaging separately under an equitable mortgage by deposit of title deeds and upon all the assets of the

borrower-company. There is an assignment to the Corporation of the rights of the borrower-Company to receive all moneys. What is more, there is a clause for reconveyance of the land and buildings, plant and book debts and other assets and good-will to the borrower-company. The recitals of charge on the assets, movable and immovable of the borrower-Company and reconveyance of buildings and plant clearly point to one and the only conclusion that the document described as a deed of hypothecation is a mortgage deed as defined under S. 2(17) of the Act.

4. The learned counsel invited our attention to the decision of the Lahore High Court in Sher Singh v. Daya Ram, AIR 1932 Lah 465 wherein the learned Judges referring to the essentials of a mortgage under S. 58 of the Transfer of Property Act held that a document which gives immovable property as security for the satisfaction of a debt, without transferring any interest in the property, merely constitute a charge on the property and is not mortgage. Garnering support from the said decision, it was argued that though the document was styled as a deed of hypothecation for Rs. 10 lakhs, there was no transfer of any interest in the property under the said deed since there was an earlier mortgage by deposit of title deed in respect of the same property executed by the mortgagor-Company on 28-3-1967. This contention cannot detain us for discussion in view of the clear recitals referred to above in the deed in question itself. The mere fact that a prior mortgage by deposit of title deeds has been effected is irrelevant to consider the question whether deed referred to is a mortgage deed as defined under S. 2(17) of the Act.

5. We accordingly answer the question in the affirmative and hold that the deed in question is a deed of hypothecation and falls under Art. 35(b) of the Sch.1-A of the Act and not under Art.6 of Sch.1-A of the Act. The parties are directed to bear their own costs in this reference. Advocate''s fee Rs.500/-.

6. Order accordingly.