(2014) 05 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5997 of 1989 (O&M)

Dayal Dass Charitable Trust — APPELLANT

Vs

Collector, Sonepat and Others — RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:
Stamp Act, 1899 — Section 2(44)

Citation : (2014) 176 PLR 341

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Alok Jain, Advocates for the Appellant; Kartar Singh, D.A.G, Advocates for the Respondent

Judgement

K. Kannan, J.—The challenge contained in the writ petition is an invitation to adjudicate on whether the party to a document would require to be joined in an enquiry of the nature of the document for purpose of stamp duly and penalty. I take it as too a fundamental point to be established that the adjudication of the nature of document could be undertaken only after serving a notice to the parry and eliciting his objection as regard the nature of document, since it would have an immediate bearing on the assessment to stamp duty and casting a financial liability. The impugned document had been registered as a trust and stamp duty was assessed under Article 64 of the Stamp Act. The Inspector General of Stamps and Registration raised an objection regarding the character of instrument and termed it as settlement and required stamp duty to be paid as such. This issue about how the document is to be reckoned that created a trust and made a settlement of property as well was considered by the Supreme Court in S.N. Mathur Vs. Board of Revenue and Others, . It considered a distinction between a trust deed and a deed of settlement to hold that if a property owned by the body of persons formed as religious and charitable trust and transferred the property to trust and a deed was executed to that effect, it would amount to dispensation of a property for religious and charitable purpose and the instrument would answer the definition of "settlement" under Section 2(44) of the Stamp Act Consequently, the instrument was chargeable with stamp duty prescribed under Article 58 of the Stamp Act. This truly answers the point which we confront in this case, for, at all times, the petitioner had been contending that the instrument was liable for duty only as a trust deed. The contention cannot any longer avail to his benefit in view of the judgment of the Supreme Court in the decision, referred to above.

2. The only issue appropriate would be, therefore, whether the petitioner would be also liable for any penalty. The impugned order does not refer to any penalty. It is not very clear from the order as to how the stamp duty was assessed at Rs. 30,000/-. The authority shall treat the instrument copy of which is brought as Annexure P1 as a settlement deed chargeable under Article 58 of the Stamp Act and serve a memo of calculation and assess the duty payable as on the date when the instrument was executed and presented for registration. The order already passed would require to be modified and the writ petition is disposed of on the above terms. The Registering Authority will take a decision and communicate the same for collection of stamp duty in accordance with law within a period of 6 weeks from the date of receipt of copy of this order.