
(2013) 03 MP CK 0147

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11986 of 2012

Deochand Bhura (Dr.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) ILR (MP) 1870 : (2013) 3 MPJR 25

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Samdarshi Tiwari, G.A. for the State, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenge in this writ petition under Article 226 of the Constitution is made to an order dated 24.07.2012 passed by the Commissioner, Jabalpur Division exercising powers of an Appellate Authority as contemplated u/s 56(A) of the Indian Stamp Act, 1899 as applicable in the State of Madhya Pradesh in the matter of demanding stamp duty on an instrument which was impounded by the competent authority in a proceeding that was held before it under the M.P. Land Revenue Code for mutation. Facts in brief which are necessary for disposal of the writ petition goes to show that one late Usha Hajarnavis executed a Vasiyatnama (will) on 18.07.2006 (Annexure P-1) by which the property in question consisting of a plot measuring 2880 Sq.ft. situated in Manmohan Nagar, Jabalpur was given in favour of petitioner. After death of Smt. Usha Hajarnavis it is said that the petitioner applied for mutation and sought for entry of his name in the land/revenues record. The Superintendent of Land Records before whom the application was filed held that the Vasiyatnama has not been duly proved and based on the same mutation cannot be ordered. He, therefore dismissed the application and returned the documents. However, thereafter a demand notice Annexure P-2 was issued by the Collector of Stamps demanding a sum of Rs. 12,28,879/- as stamp duty, payable on the document. Challenging the same petitioner filed a writ petition

before this Court being Writ Petition No. 3132/2008. The said writ petition was disposed of vide Annexure P-3 with a direction to the petitioner to file an appeal before the Commissioner. The petitioner preferred an appeal, but the Commissioner refused to entertain the appeal and returned the same vide order dated 04.11.2008 Annexure P-4. The petitioner thereafter approached the Board of Revenue and when the Board of Revenue also refused to entertain the appeal (Annexure P-5) dated 06.10.2010, the second writ petition being Writ Petition No. 10925/2011 was filed before this Court. This writ petition was disposed of vide order Annexure P-6 dated 12.08.2011 directing the Commissioner, Jabalpur Division to decide the matter. The Commissioner having decided the matter and having rejected the same vide order Annexure P-7 dated 24.07.2012, petitioner is before this Court challenging the order Annexure P-7 passed by the Commissioner and demand notice as indicated hereinabove.

2. Petitioner, who appears in person, submitted that the Collector of Stamp on the basis of unattested photocopy of Vasiyatnama has passed the impugned order. It is stated that in the absence of original documents being available all proceedings are null and void. Thereafter placing reliance on a judgment rendered by a Division Bench of this Court in the case of Shiv Kumar Saxena and Others Vs. Manishchand Sinha and Another, , the petitioner argued that the Commissioner after considering the collateral circumstances, such as payment of consideration for a plot purchased in the name of petitioner's wife one Smt. Vijay Laxmi Bhura, decided the appeal. It is stated that in view of the provisions of Section 3 of the Stamp Act consideration of collateral circumstances/evidence for demanding stamp duty on the instrument is illegal. Further relying on the judgment rendered by the Division Bench in the case of Shiv Kumar Saxena (supra) it is argued that the revenue cannot go into the object of the transaction and thereafter impose stamp duty by impounding certain purpose, which is not disclosed in the document. It is argued that the Vasiyatnama is not a sale-deed and, therefore, stamp duty need not be paid. That apart, it is stated that the Superintendent Land Records refused to grant mutation, there was no authority under the Collector Stamp to take action in the matter. Contending that the entire action is initiated in an illegal and arbitrary manner and demand is made contrary to law, this writ petition has been filed and written argument has been submitted.

3. Shri Samdarshi Tiwari refuted the aforesaid and argued that, if the totality of circumstances are taken note of, it would be seen that even though the document is titled as a "Will" but in fact it is not a will. It is only an instrument evidencing transfer of property and as based on this document petitioner preferred an appeal before the SDO u/s 44 of the M.P. Land Revenue Code, challenging the order passed by the Superintendent Land Record refusing for mutation on 03.04.2007 and as the document was used in the appeal, the SDO before whom the document was presented in the appeal impounded the same by exercising his power u/s 33 and as the Collector of Stamp has proceeded in the matter after impounding of the document u/s 40, the action is proper.

Contending that the petitioner by the documents in question was infact trying to get the property transferred in his own name and as a device for not paying stamp duty and other dues in accordance with law, the document was titled as will, it is argued that the action is proper and no interference be made. Shri Samdarshi Tiwari has produced the entire record starting from the application filed by the petitioner before the Superintendent Land Record, the appeal filed by him u/s 44 and the document and written argument submitted in the appeal and action taken by the Collector of Stamp and various documents produced in the matter, in support of his contention.

4. I have heard petitioner in person and Shri Samdarshi Tiwari, learned Government Advocate for the State, at length and have also gone through the material available on record. Petitioner claims that the document in question on which stamp duty is being assessed is a will, which is not subjected to stamp duty and when the Superintendent Land Record refused to grant mutation on the basis of these documents there was no occasion for the Collector of Stamp to proceed in the matter. That apart it is his case that the will has to be read in its totality and given effect to and the collateral purpose or any other intention proposed to be fulfilled by the document cannot be a ground for claiming the stamp duty.

5. Before proceeding to consider the rival contentions one objection of the petitioner with regard to initiation of the proceedings by the Collector in an illegal manner has to be looked into. In both the petitions and in the written argument, petitioner has tried to submit that when the Superintendent Land Record refused to grant mutation and when the will was returned to the petitioner there was occasion for the Collector of Stamp to proceed in the matter and he has challenged to initiate a proceeding before the Collector of Stamp himself. It is surprising that petitioner is making such a submission whereas the original record produced by the learned Government Advocate goes to show that after the Superintendent, Land Record refused mutation, the petitioner on 03.04.2007 filed a first appeal before the SDO, Jabalpur being Revenue F.A. No. 595/A-06/06-07 (Dr. Deochand Bhura v. Professor Charudutt Hajarnavis). The appeal was filed under Sections 44(1) of the M.P. Land Revenue Code, 1959 and challenge in this appeal was made to the order dated 03.04.2007 refusing mutation, more than 10 documents were enclosed with the memo of appeal and the first document enclosed was the order of the Superintendent, Land Record dated 03.04.2007 refusing mutation and document No. 3 was will in question. When these documents were presented, records indicate that the appellate authority namely the SDO found that the document infact is a document evidencing and making transfer of immovable property which has to be subjected to payment of stamp duty and, therefore, exercising his powers available u/s 33(1) of the Indian Stamp Act, impounded the document and sent it to the Collector, Stamp for assessment of stamp duty. It is based on this order passed by the SDO, that is, the appellate authority that the proceedings were held before the Collector. It is, therefore, clear that the proceedings in the matter

commenced when the petitioner tried to use the documents i.e. the so called Vasiyatnama in the appeal preferred by him u/s 44(1) of the M.P. Land Revenue Code and the appellate authority namely the SDO impounded the same. In the case of Southern Eastern Coal Fields Ltd. v. State of M.P., (2003) 1 MPLJ 341, it has been held by this Court that if three conditions as stipulated in Section 33(1) of Indian Stamp Act are fulfilled, impounding of the document u/s 33 is permissible. It is stated that the conditions are that the authority empowered to impound the document must be the authority specified therein.

6. The second condition is that the instrument in question is not stamped according to Act and lastly the instrument is produced or comes in the performance of the function of the authority. In the present case, the SDO who has impounded the document is the authority empowered to impound the document because he is an authority holding the public office before whom the document has come, while exercising his appellate jurisdiction in a proceeding u/s 44 and if he found that the document pertains to sale of the property and is not duly stamped he is authorized to deal with the matter. In view of above, the first ground raised by the petitioner to the effect that the entire initiation of proceedings is illegal cannot be accepted. As the proceeding are held by the Collector of Stamp after the document was impounded u/s 33 and proceedings were held in accordance to the requirement of Section 40 of the Indian Stamp Act. Having held so, the next question would be as to what is the document in question and to what extent the contention advanced by petitioner can be accepted.

7. Before advertng to consider all these questions of law with regard to payment of stamp duty. The law with regard to certain aspects pertain to wills as is made out from the Indian Succession Act, 1925 and with regard to payment of duty on instrument as provided in the Indian Stamp Act may be taken note of. A "instrument" is defined in Section 2(14) of the Indian Stamp Act and it says that an instrument includes every document by which any right or liability is created or purports to be created or transferred etc. After considering the definition of instrument, as is indicated hereinabove, the Supreme Court in the case of Municipal Corporation of Delhi Vs. Pramod Kumar Gupta, , held that the document to come within the purview of instrument has to be a vehicle for transfer of the right, title and interest in the property. It is held that if transfer of right, title or interest is made out from the documents it is an instrument, but if it is a document only evidencing transfer which has already taken place at an earlier point of time then it is not an instrument within the meaning of Section 2(14). Thereafter in the case of The Madras Refineries Ltd. Vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras, , the Supreme Court again considered the question with regard to stamp duty chargeable on an instrument and it held that in order to determining whether any duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be asserted.

8. The Karnataka High Court also considered some of these questions in the matter of L. and T. Komatsu Limited Vs. Senior Sub-Registrar and Others, and held that in understanding a deed or a document, particularly a document conveying title, the document has to be read as a whole and thereafter the intention of the parties determined. It is held by Division Bench of Rajasthan High Court in the case of State of Rajasthan v. Bhilwara Spinners Ltd. & Ors., AIR 2001 Rajasthan 184, that charge of stamp duty is on instrument and not on the transaction, subject matter of the duty is on the instrument through which the property is transferred or right created and not anything else. The complete reading of the aforesaid principle of law goes to show that the document which creates right of liability or transaction in which right or liability with regard to a property are created will come within the purview of instrument and if the instrument which creates the right or liability has to be executed after payment of stamp duty, the incidence for payment of duty is attracted.

9. It would therefore be necessary at a later stage for this Court to go through the documents in question, namely the Vasiyatnama and find out as to whether it is infact a simple will as canvassed by the petitioner or is a document fulfilling the requirement of being an instrument executed for transfer of property.

10. So far as the will is concerned, u/s 2(h) of the Indian Succession Act, 1925 a will is defined to mean a legal declaration of the intention of a testator with respect to his or her property which he desires to be carried into effect after his or her death. In the case of N. Ramaiah Vs. Nagaraj S. and Another, the Division Bench of Karnataka High Court has held that there is difference between transfer and will. The transfer is conveyance of existing property by one living person to another, on the other hand a will involves transfer after death of the person concerned and is infact a legal expression of the wish and intention of the author of the will, with regard to the property or things referred to in the will. The principle governing wordings of the will and its interpretation are laid down in Chapter 6 of the Indian Succession Act. It is settled law that in determining the real intention of the testator entire document has to be construed as a whole. No word, phrase or clause should be ignored after reading the document in its totality. The Court has to find out the intention of the testator and the will should be interpreted by giving a correct meaning in accordance to the intention of testator. It is also well settled in law that the a Court while construing the will is required to ascertain the intention of the testator which is gathered from the language of the document and from doing so the surrounding circumstances and position of the testator, his family relationship and other related factors have to be considered. These are principles of law which are made out with regard to a will, going through the judgment rendered by the Supreme Court in the case of Veerattalingam and others Vs. Ramesh and others, , it is held that in all cases it is not necessary that the document which is described as a will is so, it may not be a will at all. The document by which any property is disposed has to be evaluated which certain other circumstances as are available, these have to be taken note of and merely because the word "will" is mentioned in the document,

it will not make the document a "testamentary one". It has been held by the Patna High Court in the case of Nirmal Nalini Devi and Another Vs. Nirmal Nalini Devi and Another, , that the document has to be read as a whole and thereafter it is to be gathered whether it is a will at all or some other document worded as a will. It is held that the first duty of the Court is to take note of the circumstances under which the will is made by the testator. The Court is required to place itself in the chair of the testator who executed the will and find out the manner of execution and other reasons for execution of the will.

11. The aforesaid legal principle is to be applied in the facts and circumstances of present case and it is only thereafter that a decision to be taken. That being so, it would be most appropriate stage now to take note of certain factual aspects of the matter, which has bearing in the present case. On going through the original record available it is seen that when the petitioner filed the appeal before the S.D.O. Jabalpur u/s 44(1) originally, in the memorandum of appeal he filed 10 documents. Thereafter he filed an application for amendment under Order VI Rule 17 CPC and subsequently on 14.6.2007 filed his affidavit along with a return of the respondents in the appeal, that is of Professor C.R. Hajarnavis. Thereafter he filed an application under Order X Rule 2 CPC and impleaded six other persons as party. He then filed various documents in the proceedings, more than 8 documents which are available from page 51 to page 67 of the original record and the written arguments along with some judgments. These documents and affidavit which were presented by the petitioner in the appeal u/s 44 gives a very interesting picture. It is seen that the total property which was available with Late Usha Hajarnavis consisted of a plot bearing No. 194 situated in Manmohan Nagar Jabalpur and the total area of the said plot was 8480 sq.ft. Late Usha Hajarnavis executed a Power of Attorney in favour of petitioner authorising him to deal with the property and to sell it. The power of attorney was executed on 14.8.1994 at Jabalpur, thereafter it is seen that an agreement was executed between the parties and it was agreed that the entire plot measuring 8480 sq.ft. Shall be sold by Late Usha Hajarnavis to the petitioner for certain consideration. Available on record is sale-deed executed on a non-judicial stamp paper of Rs. 500/- filed by petitioner, this document is for sale of a property valued at Rs. 50,000/- and the stamp duty is shown as Rs. 4,150/-. This sale deed is executed between Smt. Usha Hajarnavis and one Smt. Vijaylaxmi Bhura, wife of petitioner. In the recital of sale-deed the property to be sold is indicated as plot No. 194 measuring 36X80 ft total 2880 sq.ft. It is indicated that this property is part of plot No. 194 measuring 80 ? 106 ft total 8480 sq.ft. and it is stated that on 20.5.1993 a sum of Rs. 50,000/- as sale consideration for the entire plot measuring 2880 sq.ft. has been received by Smt. Usha Hazarnavis. It is stated that for the total area of 8480 sq.ft. the agreement between the parties is to sell the entire property for a consideration of Rs. 2,10,000/-. It is further indicated that by a registered sale deed executed on 5.10.1988 between Smt. Vijaylaxmi Bhura wife of present petitioner and Smt. Usha Hajarnavis, plot measuring 70X80 ft i.e. 5600 sq.ft. has already been sold. The registered sale deed is

executed on 5.10.1998 and the consideration of 1,60,000/- by demand draft drawn in favour of Smt. Usha Hajarnavis has already been paid. It is, therefore, clear from this document available on record which is an unregistered sale-deed executed on 22.4.2006 which bears thumb impression of Usha Hajarnavis and signature of Vijaylaxmi Bhura, that with regard to same property a sale-deed was drawn-up on 22.6.2007, which was signed by the parties and this sale deed was for the same property, i.e. Plot No. 194, 2808 sq.ft. for which a consideration of Rs. 50,000/- was already received on 20.5.1993. After the sale-deed was prepared and signed on 22.4.2006 for reasons which remain unexplained and sale deed was not registered, however, after three months on 18.7.2006, the Vasiyatnama in question is executed. Available on record is also a notarized affidavit of Smt. Usha Hajarnavis attested and certified by a notary, bearing the photograph of Smt. Usha Hajarnavis and in this affidavit she says that she has sold the property bearing plot No. 194 measuring 36X80 ft. total area 2880 sq.ft. and the sale consideration Rs. 50,000/- has been received by her on 20.5.1993. She also says in para 3 of this affidavit that she has executed a Power Of Attorney in the name of Dr. Devchand Bhura (petitioner) on 4.1.1999 and he is authorized to execute the sale deed and get it registered. It is, therefore, clear from these two document that the property in question was already subjected to sale for a consideration of Rs. 50,000/-. It is also seen that property bearing plot No. 194 had a total area of 8480 sq.ft. a sale was executed between Smt. Usha Hajarnavis and petitioner's wife and by a registered sale deed transfer of the property measuring 5600 sq.ft. was effected on payment of consideration Rs. 1.60,000/- the sale deed was executed on 5.10.1999 and after its registration it was impounded by the collector of stamp on 23.10.1998, who assessed the market value of the property to be above Rs. 5,49,000/- and demand additional stamp duty on this deed, and finally the matter traveled in appeal to the court of Commissioner and the order of the Commissioner is available at para 56 of the original record which goes to show that vide order dated 5.11.2005 the market value of the property measuring 5600 sq.ft. is assessed as Rs. 2,68,000/- and after adding certain more amount the property is valued at Rs. 3,13,800/- and the difference of stamp duty on this sale deed is directed to be recovered. It is, therefore, clear that the total area available with Smt. Usha Hajarnavis, which consisted of Plot No. 194 in Manmohan Nagar Colony Jabalpur was measuring 8480 sq.ft. By a registered sale deed executed on 5.10.1998, 5600 sq.ft. was sold and registered in the name of petitioner's wife Smt. Vijaylaxmi Bhura and for the remaining area i.e. 2880 sq.ft. even though a sale deed was prepared and executed, but it was not presented for registration and instead this property measuring 2880 sq.ft. is proposed to be transferred by the so called Vasiyatnama. Apart from the aforesaid, the document filed by petitioner in appeal u/s 44 of M.P. Land Revenue Code goes to show that on 4.9.2006 a letter is issued to the petitioner indicating that Smt. Usha Hajarnavis has expired on 13.11.2006 and certain documents were sent to the petitioner which includes the so called Vasiyatnama. Thereafter when the proceedings were pending for mutation before the Superintendent of the Land

Record Jabalpur, Annexure P-6 is a letter of confirmation given by one Professor Charudutt Hajarnavis in this letter Shri Charudatt Hajarnavis claims to be son of Smt. Usha Hajarnavis and confirms that the entire property consisting of Plot No. 194 area 8480 sq.ft. has been sold by his mother Smt. Usha Hajarnavis to the petitioner and a registered sale-deed dated 5.10.1998 for 5600 sq.ft. is already been executed. Registration of deed of transfer "for remaining area of 2800 sq.ft. has not been done, even though the entire consideration has been paid by Dr. Deochand Bhura, but as his mother has expired before execution of the registered sale deed. It is said that she has executed a Vasiyat Nama dated 18.7.2006 for transfer of aforesaid 2800 sq.ft. portion of Plot No. 194 to Dr. Deochand Bhura. It is, therefore, clear from reading of all these documents along with the affidavit of Smt. Usha Hajarnavis that the document in question which is treated as Vasiyat Nama is not a document by which the testator Smt. Usha Hajarnavis wanted to bequeath her property to petitioner, but it is only a document evidencing transfer of property on payment of consideration, available at page 34 of the proceedings held before the Superintendent Land Record is a written statement of the petitioner himself and he also admits the factual assertion, as indicated hereinabove. It would now be appropriate to see as to what is the Vasiyatnama said to have been executed, what are its wordings and what would be intention of parties in doing so. The Vasiyatnama as available on record and is also filed by petitioner as Annexure P-1 in Hindi the same reads as under:

12. If the aforesaid Vasiyatnama is scrutinized it would be seen that Smt. Usha Hajarnavis says that she gives the right to title and ownership of her property situated in Manmohan Nagar Jabalpur being Plot No. 194 measuring 36X80 total 2880 sq.ft. to the petitioner and for this all her legal heirs have consented. She further says that after her death based on this Vasiyatnama Dr. Deochand Bhura will be deemed as Bhumi Swami and he can get his name entered into all Government and Semi-Government documents and she also says that she has given right to Shri Bhura through a Power of Attorney on 04.01.1999 to transfer the entire property. She says that after her death as this power of attorney will become unfruitful and redundant, she has executed this Vasiyatnama to protect the interest and title of Shri Deochand Bhura. If the principle governing interpretation of will, as have been detailed hereinabove, is considered with reference to the fact of the present case and the intention of the testator is analyzed in the background of facts about sale of the property, payment of consideration and surrounding circumstances that has come on record it is clear that parties have infact sold the property in question, for part of the property that was sold a registered sale deed was executed on 5.10.1998, the total consideration for the property was Rs. 2,10,000/-, the entire consideration was received, but for a part for which a registered sale deed could not be executed the will was prepared. Even though sale deed was drawn up on 22.6.2006,. for this sale transaction but as it could not be registered after its execution, the will in question was drawn up. This is nothing but a device for transfer the property

for which sale consideration was also received and sale deed was executed between the parties. It is, therefore, a case where the will in question is not a will, which under normal circumstances we understood. It is not a simple declaration of the intention of the testator to give her property, on the contrary it is a device and substitute for sale of property or for transfer of immovable property, for which sale consideration was already received. The parties had infact agreed for sale and transfer of the property and as this is now done by an instrument filed as a will, the stamp duty is being imposed. The wording of the will and the intention of the testator clearly shows that it was transfer of her right, title and interest on the property after receipt of consideration, the document is not a will, but is an instrument by which transfer of the right, title and interest of an immovable property is being effected and if that be so, I see no error in the act of respondents in claiming stamp duty on the property in question. Petitioner is contending that the collateral purpose or the collateral circumstances cannot be taken note of for assessing stamp duty, this submission cannot be accepted in the peculiar facts and circumstances of the present case.

13. Petitioner by relying on the judgment of the Division Bench in the case of Shiv Kumar Saxena (supra) has emphasized that stamp duty is leviable on the instrument only and, therefore, no collateral evidence can be looked into, nor can the intention of the parties derived at on the basis of such collateral material considered. It is stated that the contents of the documents can only be looked into and then a decision taken.

14. It is not in dispute that this preposition has to be applied for the purpose of considering the question of levying stamp duty on an instrument. However, in this case there are certain peculiar and exceptional circumstances and, therefore, this principle has to be applied in the light of these circumstances.

15. The documents in question if read as a whole without the aid of any external material would go to show that the document is executed by Smt. Usha Hajarnavis and by the said document she is transferring her property in the name of the petitioner and says that after her death he is the "Bhumi-Swami" and in all records his name be entered. That being so, the document read as a whole goes to show that it is the document transferring certain immovable property. For determining the nature of document, it is only this content of the document which is taking note of, the other material available on record, considered by this Court and discussed in this order are with regard to finding out the intention of the parties to see as to whether the document is a will i.e. testamentary document by which the testator is bequeathing her property to the petitioner or anything else. That being so, the collateral material available which is referred to and considered are the material for the purpose of finding out the intention of the parties in the matter of execution of the will and not for the purpose of considering the question of levying the stamp duty on the instrument. In this case the peculiar circumstances warrants this Court to undertake this exercise.

16. Infact this Court has evaluated the material to consider the question as to whether the document is infact a will or is if something else and on enquiry it is seen that the document even though titled as a Vasiyatnama is not a document which can be termed as testamentary document, executed by a testator for dealing with her property after her death or bequeathed to the beneficiary. On the contrary it is a document which is used as a vehicle for transfer of property. The enquiry and consideration of collateral purpose is only limited to this extent. So far as imposition of stamp duty on the document is concerned, the contents of document itself shows that it transfers the bhumi-swami rights and", therefore, it is an instrument by which transfer of property is effected and, therefore, has to be assessed for payment of stamp duty. That being so, the position of law as contemplated in the case of Shiv Kumar Saxena (supra) is taken note of and met with in this case.

17. Accordingly, in the totality of facts and circumstances finding action of respondents to be in accordance with law, this petition is dismissed, no order as to costs. Original record be returned back to Shri Samdarshi Tiwari, Government Advocate.