

(1975) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3928 of 1973

Divvi Suryanarayana Murthy

APPELLANT

Vs

Competent Authority and Another

RESPONDENT

Date of Decision : 28-07-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 230, 269A, 269C, 269D

Citation : (1976) 102 ITR 19

Hon'ble Judges : Chinnappa Reddy, J

Bench : Single Bench

Advocate : Y.V. Anjaneyulu, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Chinnappa Reddy, J.—On October 28, 1972, Mudunuri Linga Raju and Narasimha Raju executed a deed of sale in favour of the petitioner in respect of a property described as "Sri Saraswathi Picture Palace "for a consideration of Rs. 1,00,000. Consideration passed and possession was delivered that day ; the document was presented to the Sub-Registrar, also on the same day, for registration. After complying with all formalities, the Sub-Registrar directed the vendors to produce the tax clearance certificate prescribed by Section 230 of the Income Tax Act in order to complete the registration. The vendors obtained the certificate on November 16, 1972, and the document was registered on the same day. On May 18, 1972, the competent authority under Chapter XX-A of the Income Tax Act issued a notice to the petitioner informing him that he proposed to acquire the property u/s 269D as he had reason to believe that the property had been undervalued with a view to facilitate the evasion of tax by the transferor and to facilitate the concealment of income and assets of the transferee. The competent authority invited the petitioner to state his objections, if any. The petitioner raised a preliminary objection to the exercise of jurisdiction by the competent authority. He claimed that the sale took effect from the date of execution of the sale deed, i.e., October 28, 1972, while Section 269C came into force on November 15, 1972, and, therefore, the sale was not affected by Section 269C.

The preliminary objection was overruled by the competent authority. The petitioner has invoked the jurisdiction of this court under article 226 of the Constitution.

2. Sri Y. V. Anjaneyulu, learned counsel for the petitioner, submitted that the effect of Section 47 of the Registration Act wa"s that a deed ot sale took effect from the date of its execution and not from the date of its registration and, therefore, the sale in favour of the petitioner was untouched by Section 269C of the Income Tax Act. Sri Anjaneyulu relied on AIR 1927 42 (Privy Council); Sadei Sahu Vs. Chandramani Dei and Another, ; Thirumagaral Mudaliar Vs. Muruga Pillai, and RM. AR. Adaikkappa Chettiar Vs. The Kumbakonam City Union Bank Ltd. and Another,

3. Section 54 of the Transfer of Property Act prescribes that a sale of property exceeding the value of one hundred rupees can be made only by a registered instrument. Section 47 of the Registration Act provides :

"A Registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

4. The question is what is the effect of Section 47 of the Registration Act on Section 54 of the Transfer of Property Act ?

5. In Kalyanasundaram Pillai v. Karuppa Mooppanar], the question before the Privy Council was whether an adoption of a son by a Hindu made after the execution and delivery of a deed of gift in favour of a charity, but before its registration, rendered the deed void as against the adopted son. The answer to the question depended on the effect of Section 47 of the Registration Act on Section 123 of the Transfer of Property Act which provided that a gift must be effected by a registered instrument. The Privy Council quoted with approval what had been said by the High Court :

"The effect of those Sections in my judgment is that if a title is complete except for registration, no subsequent alienation or dealing with the property by the vendor or donor as the case may be can defeat the title which on registration becomes an absolute title dating from the date of the execution of the document."

6. Subject to the qualification that the gift should have also been accepted by or on behalf of the donee, the Privy Council also expressed its approval of the following statement of law in Venkati Rama Reddi v. Pillati Rama Reddi ILR [1916] Mad 204

"There is nothing in Section 123 of the Transfer of Property Act which requires the donor to have the deed registered. All that is required is that he should have executed the deed. Once such an instrument is duly executed the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the date of execution."

7. The Privy Council further observed :

"Their Lordships, however, cannot accept them. They are unable to see how the provision of Section 123 of the Transfer of Property Act can be reconciled with Section 47 of the Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with."

8. Thus, according to the Privy Council, the effect of Section 47 of the Registration Act was that if a transfer was complete but for registration no act of the transferor between the dates of execution and registration would affect the transfer. In other words, Section 47, in effect, placed an embargo on the transferor to do anything in regard to the subject-matter of the transfer after the execution of the instrument of transfer. In *Sadei Sahu Vs. Chandramani Dei and Another*, and *Thirumagaral Mudaliar Vs. Muruga Pillai*, the Patna and the Madras High Courts expressed the view that the effect of Section 47 of the Registration Act read with Section 54 of the Transfer of Property Act was that a transfer effected by a registered instrument related back to the date of execution of that instrument and that such relation back operated not only between the parties to the instrument but affected the rights of third parties as well. The learned judges observed that the contrary view expressed in *Gobardhan Bar Vs. Gunadhar Bar*, and other cases that the rights of third parties would not be affected was inconsistent with the decision of the Privy Council in AIR 1927 42 (Privy Council). I am not referring to the decision of the Madras High Court in *RM. AR. Adaikkappa Chettiar Vs. The Kumbakonam City Union Bank Ltd. and Another*, as the full report of the case is not available.

9. The view expressed by the Patna and the Madras High Courts cannot be considered to be good law in view of the decision of the Supreme Court in *Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others*, where the learned judges expressly affirmed the view taken in *Gobardhan Bar Vs. Gunadhar Bar*, and observed:

"Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of the two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the

completion of the registration and, therefore, nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore, we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we have taken of Section 47 of the Registration Act seems to have been taken in *Tilkdhari Singh Vs. Babu Gour Narain*, . We believe that the same view was expressed in *Naresh Chandra Dutta Vs. Girish Chandra Das and Another*, and *Gobardhan Bar v. Gunadhar Bar*, "

10. This view was reiterated by the Supreme Court in *Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc.*, where an argument that the decision in *Ram Saran Lall v. Domini Kiter* was based on a principle of Mohammedan law was rejected and it was held that the decision was based on the effect of Section 47 of the Registration Act.

11. The legal position, therefore, is that while the executant of an instrument of transfer can do nothing, after its execution and before its registration, to render the instrument ineffective, the transfer itself is complete only when registration is effected. If a third party acquires a right between the dates of execution and registration of an instrument, otherwise than by an act of the transferor, such right will be unaffected by the subsequent registration of the instrument.

12. If the legal position stated in the previous paragraph is correct then the contention of *Shri Y. V. Anjaneyulu* must necessarily fail. The instrument of transfer, in the present case, was executed on October 28, 1972. It was registered on November 16, 1972. But on November 15, 1972, Section 269C of the Income Tax Act came into force providing for the acquisition of immovable property transferred for an apparent consideration which the competent authority has reason to believe is less than the fair market value of the property, if the consideration has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of tax by the transferor or facilitating the concealment of income by the transferee. Thus the statutory right of the competent authority has intervened between the dates of execution and registration of the instrument of transfer. Therefore, the transfer is subject to the right of the competent authority to acquire the property u/s 269C of the Income Tax Act.

13. *Sri P. Rama Rao*, learned counsel for the revenue, argued that even otherwise the position was the same in view of the special definition of the expression "instrument of transfer" in Section 269A(f) of the Income Tax Act. *Mr. Rama Rao* is right in his submission. The definition is as follows :

" "Instrument of transfer" means the instrument of transfer registered under the Registration Act, 1908."

14. If Section 269C is read in the light of the definition of the expression "instrument of transfer", it becomes clear that Section 269C applies to all cases of transfer of property which are completed on or after November 15, 1972, by registration of the instrument. A similar view was expressed by the Delhi High Court in Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another, . Rangarajan J. observed as follows :

"The next question is whether the impugned Act applies to the transaction which was executed before the Act came into force but registered thereafter. The key provision of the Act in this respect is the definition of the "instrument of transfer" in Section 269A(f) meaning the instrument of transfer registered under the Registration Act, 1908. It would follow that an instrument of transfer not so registered would not be covered by the definition. Then follows the definition of , "transfer" in Section 269A(h) which simply means that the transfer of any immovable property by sale or exchange, namely, under the Transfer of Property Act. u/s 54 of the Transfer of Property Act, a transfer of immovable property of the value of Rs. 100 and above can be made only by a registered instrument. It would follow, therefore, that any transfer, to attract the provisions of the impugned Act, would have to be registered under the Registration Act. Till then, the provisions of the impugned Act would not apply to it."

15. In the result, the writ petition is dismissed with costs. Advocate's fee Rs. 100.

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