
(1976) 11 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 847 of 1975

Divvi Suryanarayana Murthy

APPELLANT

Vs

Competent Authority, Inspecting Assistant Commissioner of
Income Tax and Another

RESPONDENT

Date of Decision : 05-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269A, 269B, 269C, 269D, 269E
Transfer of Property Act, 1882 — Section 54

Citation : (1979) 117 ITR 278

Hon'ble Judges : Sambasiva Rao, J;Muktadar, J

Bench : Division Bench

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

Judgement

Muktadar, J.—This appeal is directed against the judgment dated July 28, 1975 of Chinnappa Reddy J. in W.P. No. 3928/73 [reported in Divvi Suryanarayana Murthy Vs. Competent Authority and Another,] dismissing the same. The facts are these :

One M. Linga Raju and Narasimha Raju were the owners of Saras-wathi Picture Palace situated in the village called Malkipuram, East Godavari District. They executed a sale deed on October 28, 1972, in favour of the appellant conveying the cinema theatre for a consideration of Rs. 1,10,000. The said deed was presented for registration to the concerned registering authority. The Sub-Registrar of Malkipuram Village called upon the vendors to obtain a clearance certificate from the Income Tax authorities u/s 230A of the I.T. Act, 1961, hereinafter referred to as "the Act". The vendors obtained the tax clearance certificate on November 16, 1972, and having produced the same before the registering authority got the sale deed registered on November 16, 1972. Chapter XX-A was introduced in the Act and it came into force on November 15, 1972, The competent authority under Chapter XX-A of the Act, viz., the IAC, Income Tax, issued a notice u/s 269C dated May 18, 1973, calling upon the

petitioner to show cause as to why the said property should not be acquired as the competent authority had reason to believe that the property had been transferred for an apparent consideration which was less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties had not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax under the Act in respect of any income arising from the transfer, or facilitating the concealment of any income or any moneys or other assets which had not been or which ought to be disclosed by the transferee for the purposes of the Indian I.T. Act, 1922, or the Act or the W.T. Act, 1957. In answer to the notice, the appellant filed a letter before the competent authority on June 16, 1973, objecting to the jurisdiction of the competent authority to invoke the provisions of Section 269D. The competent authority declined to accept the preliminary objection by its letter dated June 21, 1973. Aggrieved by that order of the competent authority, the appellant preferred W.P. No. 3928/73.

2. Before the learned single judge, Mr. Y. V. Anjaneyulu who was appearing for the petitioner had argued that the sale deed was executed on October 28, 1972, but was registered on November 16, 1972, i.e., after the coming into force of Chapter XX-A of the Act; therefore, having regard to the provisions of Section 47 of the Indian Registration Act, the sale deed would be deemed to operate from the date of its execution and not from the date of its registration, and since Chapter XX-A came into force on November 15, 1972, it did not apply to the sale deed in question. In support of that contention, Mr. Anjaneyulu had cited several rulings. That contention was not accepted by the single judge in view of the ruling of the Supreme Court in *Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others*, . The learned single judge also was of the opinion that, having regard to the provisions of Section 269C of the Act read in conjunction with the definitions of the expressions "transfer" and "instrument of transfer" in Section 269A of the Act, Section 269C would apply to all cases of transfer of property which were completed on or after November 15, 1972, by registration of the instrument. He, therefore, dismissed the writ petition. Hence, this appeal.

3. The same contention that was advanced before the learned single judge is being reiterated by Mr. Anjaneyulu in this appeal. The learned advocate contends that, having regard to the provisions of Section 47 of the Indian Registration Act, although the sale deed in question was registered on November 16, 1972, nevertheless it takes effect from the date of its execution, viz., October 28, 1972, and, therefore, it should be held that Chapter XX-A of the Act has no application to the sale deed. In support of this contention, Mr. Anjaneyulu relied upon several rulings, viz, AIR 1927 42 (Privy Council); *Sadei Sahu Vs. Chandramani Dei and Another*, , *Union Bank Ltd., Utraula Vs. Mst. Ram Rati and Others*, , *Basant Lal Vs. Bala Misra and Others*, , *Thirumagaral Mudaliar Vs. Muruga Pillai*, and *RM. AR. Adaikkappa Chettiar Vs. The Kumbakonam City Union Bank Ltd. and Another*, . No doubt, the arguments advanced by Mr. Anjaneyulu conform to the proposition of law as stated in those rulings ; nevertheless, having regard to the

decision of the Supreme Court in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, , which is binding on us, we need not probe into that contention. In Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, , the Supreme Court has categorically observed (p. 1749):

"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 3, 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 Vs. Gunadhar Bar, ."

4. The same view was followed by the Supreme Court in Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., .

5. Even otherwise, having regard to the relevant provisions of Chapter XX-A of the Act and Section 54 of the Transfer of Property Act, we are of the opinion that the sale deed in question was completed on November 16, 1972, and, therefore, Section 47 of the Indian Registration Act has no application. According to Section 54 of the Transfer of Property Act, "sale" has been denned as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. A sale in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. Therefore, u/s 54 of the Transfer of Property Act, a sale of immovable property for a consideration of Rs. 100 or more is completed only by registration of the document, and until the sale deed is registered, no title in the property passes to the buyer. Clause (f) to Section 269A of the Act defines "instrument of transfer" to mean "the instrument of transfer registered under the Registration Act, 1908 (16 of 1908)" and according to Clause (h) "transfer ", in relation to any immovable property, means transfer of such property by way of sale or exchange u/s 269C of the Act, the competent authority appointed u/s 269B of the Act is entitled, to initiate proceedings for the aequsition of any immovable property where the competent authority has reason to believe that any immovable property of a fair market value exceeding Rs. 25,000 has been transferred by one person to another for an apparent consideration which is less than the fair market value of the property, and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer, or facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian I.T. Act, 1922, or the Act or the W.T. Act, 1957. The proviso to Section 269C provides for

the recording of reasons by the competent authority for the initiation of such proceedings. u/s 269D of the Act, the competent authority will initiate proceedings for the acquisition under Chapter XX-A by issuing notice to that effect by way of publication in the Official Gazette provided that no such proceedings should be initiated in respect of any immovable property after the expiration of the period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908.. Section 269E provides for filing of objections by the person to whom notice has been issued and Section 269F provides for hearing of the objections. Subsection (6) of Section 269F of the Act empowers the competent authority, if after hearing the objections, if any, and after taking into account all the relevant material on record, it is satisfied that the immovable property to which the proceedings relate is of a fair market value exceeding Rs. 25,000, that the fair market value of such property exceeds the apparent consideration therefore by more than 15% of such apparent consideration and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of Sub-section (1) of Section 269C of the Act, to make an order for the acquisition of the property under the Chapter after obtaining the approval of the Commissioner.

6. A perusal of the sections noted above especially in view of the definitions of the expressions "instrument of transfer" and "transfer" u/s 269A of the Act, would leave us in no doubt that the legislature intended that on the completion of the instrument of transfer by registration under the Indian Registration Act, the competent authority would be entitled to acquire the property if the conditions mentioned in Section 269F of the Act have been satisfied. As pointed out earlier, u/s 54 of the Transfer of Property Act, a sale of immovable property of the value of Rs. 100 or more could only be completed by registration under the Indian Registration Act. The expressions "instrument of transfer" and "transfer" in Section 269A of the Act read in conjunction with the relevant provisions noted above would clearly show that a sale by means of an instrument of transfer could only be completed by registration of the instrument and not otherwise. The above interpretation of ours receives support from the proviso to Section 269D which provides that no such proceedings should be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908. Proceedings u/s 269C could only be initiated after the instrument of transfer is registered under the Registration Act and the limitation for initiation of such proceedings is provided in the proviso to Section 269D. It could, therefore, be safely concluded that transfer of immovable property would be completed only when the instrument of transfer is registered under the Registration Act, in which case only, proceedings u/s 269C would be initiated and, under the proviso to Section 269D, such initiation should take place within nine months from the end of the

month in which the transfer in respect of such property is registered under the Registration Act. When such is the position, it cannot be said that Section 47 of the Registration Act is applicable to the case. When having regard to the provisions of Section 54 of the Transfer of Property Act and Sections 269A and 269F of the Act a sale is completed only by the registration of the instrument of transfer under the Registration Act, it is not possible to invoke the provisions of Section 47 of the Indian Registration Act; more so, when the Supreme Court has held in *Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others*, , that the completion of sale takes effect on the date of its registration. We are fortified in our view by the decision of the Delhi High Court in *Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another*, .

7. We, therefore, see no substance in this appeal. It is, accordingly, dismissed with costs. Advocate"s fees Rs. 250.