(1999) 08 CAL CK 0001

In the Calcutta High Court

Case No : C.O. No''s. 1410 and 1764 of 1999 and W.P. No. 19080 (W) of 1998

Dr. Swapnadin Lahiri APPELLANT

Vs

Tridib Das Roy
 Chittaranjan Jana Vs Arun Kumar Jana RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:
Stamp Act, 1899 — Section 2(10), 2(14)

Citation : 2 CWN 527

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Subhrokamal Mukherjee and Debasish Ray in C.O. No. 1410 of 1999 and Anil Jana, Barnali Maity in C.O. No. 1764 of 1999, for the Appellant; Jiban Ratan Chatterjee and Moloy Kumar Das, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—The only question that arises for determination in these two revisional applications is what is the stamp duty payable on an agreement for sale of immoveable property in terms of Schedule 1A, Item No. 5(d) as inserted by West Bengal Act XVII of 1990 with effect from January 31, 1994. C.O. No. 1410 of 1999 arises out of a suit for specific performance of contract for sale of immoveable property wherein, when the agreement for sale was tendered for marking the same as exhibit, the defendant took a plea that the said instrument should be impounded inasmuch as only a stamp of Rs. 10/- was affixed on such agreement. According to the defendant, in view of Item No. 5(d) of the Schedule IA of the Indian Stamp Act, 1899 as applicable in the State of West Bengal, stamp duty should be paid as if the same was a conveyance as mentioned in Item No. 23 of the said Schedule and accordingly it should be 5% of the market value of the property.

2. By order dated May 28, 1999 the learned trial Judge has turned down such objection with a finding that an agreement for sale does not create any right, title or interest in the immovable property and as such the said document cannot be said to be an instrument. According to the learned trial Judge, a document

become instrument only when a right is created in the immovable property by virtue of such document.

3. However, in CO. No. 1764 of 1999, the learned trial Judge has directed to assess the disputed document according to market value after accepting the contention of the defendant therein.

4. I have heard Mr. Subhrokamal Mukherjee on behalf of the petitioner in C.O. No. 1410 of 1999 and Mr. Jiban Ratan Chatterjee on behalf of the plaintiff/ opposite party and Mr. Jana appearing on behalf of the petitioner in C.O. No. 1764 of 1999.

5. Mr. Mukherjee, the learned advocate appearing on behalf of the petitioner in C.O. No. 1410 of 1999 has contended that in view of the amendment of the Item No. 5(d) of Schedule IA of the Indian Stamp Act as applicable in the State of West Bengal with effect from January 31, 1994, in case of an agreement of sale, or lease (sic) sale of immoveable property, stamp duty payable will be same as payable on a conveyance as mentioned in Item No. 23 of the said Schedule.

6. Mr. Chatterjee, the learned advocate appearing on behalf of the opposite party has however opposed the aforesaid contention of Mr. Mukherjee and has contended that by an agreement for sale no interest is created in the property and such agreement cannot be said to be an instrument so as to apply the said provision.

7. It appears from the definition of ''instrument'' as mentioned in section 2(14) of the Indian Stamp Act, instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

8. On the other hand, according to section 2(10) of the aforesaid Act, ''conveyance'' includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1 or by Schedule 1A, as the case may be.

9. The aforesaid two definitions make it abundantly clear that in order to become an instrument, what is necessary is that by such document, any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. It is not necessary that any right or interest must be created in the immovable property as contended by Mr. Chatterjee.

10. Mr. Chatterjee in this connection has relied upon a decision of the Apex Court in the case of Veena Hasmukh Jain & Anr. vs. State of Maharashtra & Ors., reported in AIR 199 SC 807 and contends that in the instant case the agreement sought to be enforced being a pure agreement for sale and there being no clause for transfer of possession either before or immediately after the execution of the said agreement or for delivery or future possession without executing conveyance in respect of property, his client was not required to pay stamp duty

as if it was a conveyance.

11. In the aforesaid decision, the Apex Court was considering the explanation to Article 25 of the Schedule 1 of the Bombay Stamp Act which reads as follows :

"Explanation I.-- For the purposes of this article, wherein the case of agreement to sell an immoveable property, the possession of any immoveable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly :

Provided that, the provisions of section 32-A shall apply mutatis mutandis to such agreement which is deemed to he a conveyance as aforesaid, as they apply to a conveyance under the section :

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

12. The aforesaid explanation makes it clear that the provision of the Bombay Stamp Act is totally different from the Act which is under our consideration and as such the said decision cannot be of any help to Mr. Chatterjee''s client.

13. The explanation added to Item No. 5 of Schedule 1A states in clear term that the expression agreement or memorandum of an agreement, if relating to a sale, shall include an agreement to sell or any memorandum or acknowledgement in relation to transfer or delivery of possession of immovable property with intent to transfer right, interest or title to such property at any future date.

14. Therefore, in view of the said explanation added to item No. 5 of Schedule 1A even in case of a pure agreement for sale where there is no promise to deliver possession immediately after or before execution of the agreement, even if it is a mere agreement to transfer or delivery of possession of immoveable property with an intention to transfer right, interest or title to such a property at any future date, by executing a separate conveyance, such agreement is to be stamped as if it is a conveyance as mentioned in Item No. 23 of the said Schedule. Therefore, I find substance in the contention of Mr. Mukherjee that the disputed agreement should be stamped according to Item No. 23 of Schedule 1A and as such the document is required to be impounded accordingly before it is marked as exhibit. The order impugned in C.O. No. 1410 of 1999 is thus set aside and the learned trial Judge is directed to pass necessary order for impunding the document in terms of the above observation.

15. As regards C.O. No. 1764 of 1999, Mr. Jana has practically repeated the argument of Mr. Chatterjee, appearing on behalf of the opposite party in the other revisional application and in view of my discussion stated above, I do not find any illegality in the order impugned in C.O. No. 1764 of 1999.

16. Therefore, C.O. No. 1410 of 1999 is allowed and C.O. No. 1764 of 1999 is dismissed in terms of the aforesaid observation. In the facts and circumstances there will be however no order as to costs.

