(2017) 04 AHC CK 0181

In the Allahabad High Court

Case No : 10219 of 2004

Firm Radha Krishna Vimal Kumar Ltd. Thru Lalit Kr. Laddha — APPELLANT

Vs

State of U.P. Thru Secy. — RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 145, Section 146, Section 40, Section 126, Section 125, Section 147, Section 148, Section 127, Section 128 - Procedure where dispute concerning land or water is likely to cause breach of peace - Power to attach subject of dispute and to appoint receiver - Duty of officers employed in connection with the affairs of a village to make certain report - Procedure — Order for maintenance of wives, children and parents - Dispute concerning right of use of land or water - Local inquiry - Alteration In allowance - Enforcement of order of maintenance

Stamp Act, 1899, Section 33, Section 33(5), Section 47A - Examination and impounding of instruments - Examination and impounding of instruments

Citation : (2017) 04 AHC CK 0181

Hon'ble Judges : Ram Surat Ram (Maurya)

Bench : Single Bench

Advocate : Anil Pathak, Sunil Kumar Mehta

Judgement

1. Heard Sri Sunil Kumar Mehta for the petitioner and Standing Counsel for State.

2. The writ petition has been filed against the order of Assistant Commissioner, Stamp dated 9.7.2001 imposing deficiency of stamp of Rs. 63800/- along with fine of Rs. 10,000/- upon the petitioner on the sale deed dated 2.5.1989 and the order of Commissioner dated 10.12.2003 dismissing revision of the petitioner filed against the aforesaid order.

3. Very short point has been argued by the counsel for the petitioner in this case that admittedly the sale deed was executed on 2.5.1989. The proceeding for

deficiency of stamp according to the provisions of Section 47 A of Indian Stamp Act, 1899 has been initiated on the report dated 13.8.1996. The Assistant Commissioner, Stamp allegedly made spot inspection on 13.8.1996. The petitioner put appearance before Assistant Commissioner, Stamp and raised objection that in view of Section 33 (5), 2nd proviso (added by UP Act No. 22 of 1998), of Indian Stamp Act, 1899, the limitation to initiate the proceeding is 04 years. It is alleged that the permission for initiation of proceeding has been obtained by State Government on 11.5.2000. He submits that even under the 2nd proviso of Section 33 (5) of Indian Stamp Act, 1899 , maximum period is 08 years during which the State Government can give permission for initiation of proceeding in the matter. He further submits that sale deed was executed on 2.5.1989 as such 08 years period has been expired on 1.5.1997 and no permission to initiate the proceeding in the matter can be granted by State Government thereafter. The proceeding is highly time barred and no order could be passed on it. So far as the dates mentioned above is concerned, it is verified from the records filed in the writ petition and has not been denied in the counter affidavit filed by State Government.

4. I have considered the argument of the counsel for the parties and examined the record.

5. Section 33 along with proviso as amended by UP Act No. 22 of 1998 of Indian Stamp Act, 1899, is quoted below :- 33. Examination and impounding of instruments.-

(1) Every person having by law or consent of parties authority to receive evidence, and, every person in-charge of a public office; except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance in his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that -(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Section 125 to 128 and section 145 to 148 of the Code of Criminal Procedure, 1973;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, the State Government may, in cases of doubt determine what offices shall be deemed to be public offices; and who shall

be deemed to be persons in charge of public offices.

(4) Where deficiency in stamp duty paid is noticed from the copy of an instrument, the Collector may suo motu or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the Board of Revenue in that behalf, call for the original instrument for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced or come before him in the performance of his functions.

(5) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty under section 40 on the copy of the instrument;

Provided that no action under sub-section (4) or sub-section (5) shall be taken after a period of four years from the date of execution of the instrument;

Provided further that with the prior permission of the State Government an action under sub-section (4) or sub-section (5) may be taken after a period of four years but before a period of eight years from the date of execution of the instrument.

6. Thus in view of the aforesaid provision, the proceeding for imposing deficiency of stamp could be initiated on or before 1.5.1997. Since in this case, permission from State Government was obtained on 11.5.2000 as such it was time barred and the orders passed by Assistant Commissioner, Stamp as well as Commissioner are without jurisdiction.

7. In the results, the writ petition succeeds and is allowed. The orders of Assistant Commissioner, Stamp dated 9.7.2001 and Commissioner dated 10.12.2003 are hereby quashed. Petition Allowed.