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(1942) 11 AHC CK 0002

In the Allahabad High Court

Case No : Miscellaneous Case No. 947 of 1939

Firm Shyam Lal Bidhi Chand — APPELLANT

Vs

Mukund Lal — RESPONDENT

Date of Decision : 20-11-1942

Acts Referred:

Citation : (1942) 11 AHC CK 0002

Hon'ble Judges : Dar, J;Braund, J;Bajpai, J

Bench : Full Bench

Advocate : A.M. Khwaja for Crown, for the Appellant;

Judgement

Bajpai and Dar, JJ.—This purports to be a reference u/s 61 of the Stamp Act. It appears that a document was filed in Miscellaneous Case No. 254 of 1938--Firm Shyam Lal Bidhi Chand v. Mukund Lal in the Court of the Civil Judge of Agra. One of the Inspectors of Stamps brought to the notice of the Civil Judge that the document was a security bond mortgaging immoveable property and requested the learned Judge to examine the document in the light of the ruling given by the High Court in the Stamp Reference of the Board of Revenue In Re: Stamp Reference (Jangilal) . The Civil Judge held that the document was liable to be stamped with a court-fee of annas eight only which the decree-holder paid subsequently.

2. The Chief Inspector of Stamps is of the opinion that the decision of the Civil Judge is wrong and has, therefore, by means of a letter dated the 1st of November, 1939, written to the Registrar of this Court requested that a declaration may be made by the High Court u/s 61(2) of the Stamp Act.

3. When this matter came before a Bench of this Court on the 1st of December, 1939, notice was ordered to be issued to the Standing Counsel. The matter then came again before the same Bench on the 8th of May, 1940, when the Stamp Reporter was directed to furnish a report because there was some doubt entertained by the Bench as to the competence of the reference. The Stamp

Reporter submitted his report on the 15th of October, 1940, when the case was put up again before a different Bench. On the 17th of October, 1940, the learned Junior Standing Counsel asked for some time in order to examine the report of the Stamp Reporter.

4. The case has now been put before this Bench and we have heard the Junior Standing Counsel and perused the report of the Stamp Reporter. One of us was a member on every occasion when the matter came before this Court and one of us was also a member of the Bench which decided Miscellaneous Case No. 828 of 1939 Kallu Singh v. Mir Kunwar 1941 AWR (HC) 254. In that case the reference purported to be u/s 6B(1) of the Court Fees Act 1870, as amended upto date in its application to United Provinces by the United Provinces Court Fees (Amendment) Act, 1938 and the Bench agreed with the report of Stamp Reporter and the learned Junior Standing Counsel conceded that the proceedings had not been submitted to the High Court in a proper form. He prayed for time to convert the letter of the Chief Inspector into a proper duly stamped application in revision in conformity with the provisions of Chapter III of the Rules of this Court and the Bench acceded to his request and gave time to take proper steps.

5. The Stamp Reporter in the present case has again reported that the proceedings have not been submitted to this Court in proper form. He has drawn our attention to the heading of Chapter VI of the Stamp Act which is "References and Revision" and to the marginal note of Section 61 which is "Revision of certain decisions of Courts regarding the sufficiency of Stamps" and to the fact that this Court can be asked to take the order of the Civil Judge into consideration on the application of the Collector. It is further said that the letter of the Chief Inspector of Stamps is not in the form of an application as provided by the High Court Rules, Chapter III and that the letter is further not stamped with the proper court-fee under Schedule II, Article 1(e)(3) of the Court Fees Act and the Collector or the Chief Inspector of Stamps is no where exempt from Court fees duty. Two other objections as to the competence of the letter are mentioned namely that the letter contains a statement of the opinion of the Chief Inspector of Stamps which is not contemplated by Section 61 of the Stamp Act and secondly that it does not ask for any particular relief.

6. The learned Junior Standing Counsel has drawn our attention to the difference between the phraseology of Section 6B of the Court Fees Act and Section 61 of the Stamp Act and submits that whereas in the former case he conceded the point he was not prepared to do the same in the present case. The words in Section 6B are--

...the Chief Inspector of Stamps may, within three months from the date of receipt of such order, move, by an application in writing, the Court to which an appeal lies from a decree in the suit or appeal in which such order has been passed, for revision of such order....

7. The words in Section 61(1) of the Stamp Act are--

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...the Court may of its own motion or on the application of the Collector take such order into consideration.

8. It is submitted that no time limit is given that the application is not enjoined to be in writing and further that there is nothing about the revision of the order and all that this Court can do u/s 61(2) is that it may record a declaration, may determine the amount of duty with which such instrument is chargeable, may require any person in whose possession or power, such instrument then is to produce the same and may impound the same when produced. The submission is that although the heading of the Chapter is "References and Revision" and although the term "Revision" can apply only to Section 61 in that chapter and although the marginal note of Section 61 is "Revision of certain decisions of Courts" yet the intention of the Legislature was not that there should be a regular application in writing in the form of revision by the Collector and the letter of the Chief Inspector of Stamps is a sufficient compliance with all that is required by the Legislature. It is also J pointed out that in this Court as well as in all other Courts in India the practice has been that Letters by the Collector (and the Inspector of Stamps has been invited with the powers of a Collector) have been treated as references and declarations have been given without any protest or demur. Certain practical difficulties have also been pointed out, but it is not necessary to mention I them at this stage.

9. One of us is committed to the view that u/s 6-B of the Court Fees Act the Chief Inspector of Stamps has got to move this Court by means of a formal application in revision. There is some force in the argument that there is nothing in Section 61 of the Stamp Act which necessarily differentiates it from Section 6-B of the Court Fees Act. At the same time there is a long course of practice in support of the contention of the Government and we are assured by the learned Junior Standing Counsel that the matter is considered to be very important so far as the Government is concerned. We have also come to the same conclusion and we think that the matter is of sufficient importance to be decided by a stronger Bench. We, therefore, direct that the matter be laid before the Hon''ble the Chief Justice for the constitution of a Full Bench. The question that is being referred to the Full Bench is:

Has the matter been brought to this Court by the Chief Inspector of Stamps in a proper form?

Order by Full Bench.

Bajpai, Braund and Dar JJ.--(November 11, 1941)--The facts under which the present reference has been made to the Full Bench are stated at length in the referring order and it is not necessary to detail them again. We are not prepared to interfere with the long practice that has prevailed in this Court and in other Courts to entertain similar applications in the form in which the present matter has been submitted to up and accordingly we answer the question in the affirmative.

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