(1958) 07 AP CK 0016

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1122 of 1954 and C.R.P. No. 1122 of 1954

Grandhi Chakraiah APPELLANT

Vs

Grandhi Pitchaiah RESPONDENT

Date of Decision : 17-07-1958

Acts Referred:
Stamp Act, 1899 — Section 44

Citation : AIR 1959 AP 105

Hon'ble Judges : P. Chandra Reddy, C.J;Kumarayya, J

Bench : Division Bench

Advocate : G. Venkatrama Sastry, for the Appellant; A. Raghaviah and B. Krishna Sastry, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—Both the Second Appeal and the C.R.P. raise the same question bearing on the interpretation of Section 44 of the Indian Stamp Act. When the matter came up before Justice Umamaheswaram for final hearing, he thought that an important question of law was involved in it and should therefore be decided by a Bench.

2. The material facts giving rise to the appeal and the C.R.P. are within a short compass and may be stated as follows :

In a suit for dissolution of partnership, the plaintiff relied on an instrument which was not stamped. The trial Court impounded the document before it was admitted in evidence and had the necessary stamp duty and penalty collected. Ultimately, the suit ended in a decree in favour of the plaintiff. The unsuccessful defendant carried the matter in appeal, While the appeal was pending the Appeal Examiner issued a check-slip to the effect that the document fell under Article 39 of the 1st schedule to the Stamp Act and the duty and penalty should have been collected on that basis and not as one coming within the scope of Article 48.

After notice to the appellant, the Judge decided that the instrument was governed by Article 39 and therefore the difference in duty and penalty should be collected from the appellant. For that purpose, it was sent to the Collector. It may here be mentioned that the appellant does not seem to have contested that the instrument was a memorandum of association of a Company. It seems to have been conceded that it was not an agreement of partnership. The Collector levied a sum of Rs. 423-8-0 towards stamp duty and penalty and this was collected from the appellant. Subsequently the appeal filed by the present respondent was dismissed with costs for default, The appellant in the memo of costs filed by him included the sum of Rs. 423-8-0 and this was comprised in the decree for costs.

3. When the respondent was apprised of this he moved the Subordinate Judge to delete this sum from the decree for costs on the ground that it was illegally included and he was not liable to bear this burden.

4. The application was resisted on the contention that the decree could not be amended and the respondent could choose any other remedy that was open to him. This plea did not find favour with the lower Court and the application for the amendment of the decree was allowed. Dissatisfied with that order he filed the revision petition, and the second appeal against the amended decree.

(For the sake of convenience, the appellant in the second appeal and the petitioner in the C.R.P. will hereafter be referred to as the appellant).

5. It is urged on behalf of the appellant that when once an item of expenditure is included in the decree for costs the Court has no jurisdiction to exclude it from the decree. We do not think we can accede to this contention.

6. Section 44(1) of the Stamp Act recites : "When any duty or penalty has been paid u/s 35, Section 37, Section 40 or Section 41, by any person in respect of an instrument, and, by agreement or under the provisions of Section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expenses of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid."

Section 44(3) runs as follows :

"Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceedings to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable."

It is abundantly clear from the provisions of Section 44(1) that it is only a person who is compelled to pay stamp duty and penalty in regard to an instrument not duly stamped but not bound to bear the expenses of providing for proper stamp that is entitled to recover the same from a party who is liable in that regard. But, if the party seeking to recover the amount himself is under a common duty to pay proper stamp he could not claim contribution in respect of such instrument if he is compelled to pay the stamp duly and penalty owing to common default.

It is only a party who is innocent and who is absolved from all responsibility for the infringement of the provisions of the Stamp Code that could invoice Section 44(1). The intendment of the section is not to enable a party who was under a common duty to bear the proper stamp along with others to claim recovery wholly or in part of the amount which he was afterwards obliged to pay when the document is impounded. See Raman Chetty Vs. Nagappa Chetty, , Athipalli Sundararamireddi Vs. Athipalli Pattabhiramireddi, , Parshottam Ram Vs. Sheo Mangal Ram and Others, and Kashinathsa Yamosa and Others Vs. Narsingsa Bhaskarsa and Others, .

7. That being so, in passing an order under that section, the Court has to apply its mind and decide which of them has to bear the duty and penalty. Unless there is a specific direction to have the amount included in the order for costs it could not be recovered from the other person obliged to bear its burden,

8. In this case, it is true that this was included in the decree for costs by the office, but when it was brought to the notice of the Subordinate Judge he excluded it from the decree on the ground that there was no order made by the Judge at the time of giving a decision in the appeal for its inclusion in the costs and that the Judge "has not exercised his discretion as to which party should bear the stamp duty and penalty entirely or in part."

We cannot say that this opinion of the Subordinate Judge is open to exception. That, apart, indisputably, both the parties, namely, the respondent as well as the appellant were parties to the agreement and as such were under a common duty to have the document properly stamped. It cannot, therefore, be said that this is a case in which the sole responsibility for the default can be fixed on the respondent.

9. The difficulty created by Section 44(1) is sought to be got over by Mr. Kanyaka Prasad by the argument that Section 44(1) has no application to a case where a party is obliged to pay an additional amount by way of stamp duty and penalty pending an appeal and such a person has a right to claim reimbursement under Subsection 3 of Section 44. We do not think this argument can bear any scrutiny. It is Section 44 that vests the right on the person paying duty to recover the same in certain cases. Sub-section 3 of Section 44 does not give any independent right to any party.

It only enacts a prohibition against further proceedings bring instituted for the recovery of this amount and the only way of recovery provided by that sub-section is by its inclusion in the order for costs. Both the sub-sections have to be read together. The expression "such amount" in Subsection 3 conveys the idea that it has reference to and is correlated to the amount recoverable under Subsection (1).

10. There seems to be also another ground upon which the appellant''s claim has to he disallowed. If the document sought to be impounded was only an instrument of partnership and not a memorandum of association of a company, the levy of stamp duty and penalty on the basis of its being the latter kind of document is an illegal one. If that is so, the amount of stamp duty and penalty collected from him cannot be awarded as costs to the party from whom this was collected. However, we do not want to express any final opinion on this aspect of the matter as this was not raised in the Courts below and the document concerned was not placed before us. In these circumstances, we think that the order complained against cannot be successfully impugned.

11. In the result, the appeal and the revision petition are dismissed with costs in the C.R.P.