(1991) 05 OHC CK 0025

In the Orissa High Court

Case No : O.J.C. No. 2163 of 1985

Hadibandhu Sahoo and Others APPELLANT

Vs

Additional District Magistrate, Ganjam and Others RESPONDENT

Date of Decision : 07-05-1991

Acts Referred:

Orissa Stamp Rules, 1952 — Rule 24(1)
Stamp Act, 1899 — Section 29, 47A

Citation : AIR 1991 Ori 284 : (1991) 2 OLR 47

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : B.B. Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The short question that arises for consideration in this writ application is whether the vendor in a sale deed is entitled to be noticed by the Collector when the said Collector receives a reference under Sub-section (1) of Section 47A of the Indian Stamp Act (hereinafter referred to as the "Act") and proceeds with an enquiry to determine the value or consideration and the duty payable by the person liable to pay the duty.

2. The petitioners sold Ac. 0. 024 decimals of land under a registered sale deed dated 16-5-1923 for a consideration of Rs. 3,000/- to opposite party No. 3. The Sub-Registrar after registering the instrument and having reasons to believe that the value of the property has not been truly set forth in the instrument made a reference to the Collector for determination of the value and the proper duty payable thereon in exercise of his power u/s 47-A of the Act. On receipt of such reference, the Collector issued notice to the vendee to have an enquiry for determining the value of the property in question and the duty payable thereon. Even in spite of receipt of notice the vendee did not appear. Thereafter the Collector considered the report of the Sub-Registrar together with the sale

statistics of the locality and on that basis determined the consideration of the land to be Rs. 7,200/- and accordingly called upon the vendee to pay the deficit stamp duty. It is this order of the Collector which is being assailed in the writ application by the vendors.

3. Mr. B. B. Mohanty, the learned counsel for the petitioners, raises the sale contention that in the enquiry held by the Collector under Sub-section (2) of Section 47-A of the Act, the vendors are entitled to be noticed particularly when Form No. 1 issued under Rule 24 of the Orissa Stamp Rules clearly indicates that notice has to be given to the vendor.

Learned Additional Standing Counsel, on the other hand, contends that the liability to pay the duty in case of a conveyance is on the vendee and, therefore, it is the vendee who is required to be noticed and since title passes on registering the instrument, the vendor has no liability and, therefore, is not required to be noticed. The rival contentions require a careful examination of the relevant provisions of the A6t and the Rules made and an interpretation of those provisions.

4. u/s 29(a) of the Act, the expense of providing the proper stamp is required to be borne by the vendee in the absence of an agreement to the contrary. u/s 47-A of the Act, if the registering officer while registering any instrument transferring any property has reasons to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument then he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon. Under Sub-section (2) of Section 47-A of the Act, on receipt of a reference under Sub-section (1), other Collector is required, to hold an enquiry after giving the parties a reasonable opportunity of being heard and the enquiry in question would be held in such manner as may be prescribed under the Rules made under the Act and thereafter would determine the value or consideration and the duty and the deficit amount of duty, if any, which would be payable by the person liable to pay the duty. Under the Orissa Stamp Rules, 1952 (hereinafter referred to as the "Rules"), Rule 23 enables the registering officer to refer a document to the Collector for determination of the value or consideration and the duty payable thereon. Rule 24 is the provision for assessment of duty. Rule 24(1) stipulates that on receipt of a reference under Rule 23, the Collector shall start a miscellaneous case record and serve on the person or persons concerned a notice in Form-I appended to the Rules requiring him on adate and at a place to be specified therein either to attend in person or through an authorised agent to produce or to cause to be produced any evidence on which such person or persons may rely in his support. Sub-rule (2) of Rule 24 indicates that on the date fixed in the notice, the Collector after taking such evidence as the person or persons may produce and making such enquiry as he may deem proper shall determine the value or consideration, as the case may be and assess the amount of deficit duty recoverable from the person concerned.

Form-I appended to the Rules, however, clearly indicates that the notice has to be given to the person who executed the document. It is indeed on the basis of this form alone Mr. Mohanty for the petitioners contends that the notice is required to be given to the vendor. But after going through the scheme of the Act and the provisions referred to earlier, we are not in a position to accept the submission of Mr. Mohanty, inasmuch as the liability to pay the proper stamp is on the vendee and, therefore, it is the vendee who must be said to have a reasonable opportunity of being heard before any adjudication is made and he is called upon to pay the extra amount of duty as determined by the Collector. If the contention of Mr. Mohanty is accepted and Form-I is adhered to then the vendee is not entitled to be noticed and a notice is required to be served on the vendor and such a course of action would be grossly detrimental to the interest of the vendee and would be a negation of the principles of natural justice. Under the Act, the liability to pay is on the vendee in case of a conveyance. There is no rhyme or reason, therefore, in an enquiry to adjudicate the proper valuation, a vendor should be noticed. The expression "after giving a reasonable opportunity of being heard" used in, Sub-section (2) of Section 47-A of the Act must be interpreted to mean after giving an opportunity of hearing to the person who would be affected by any order to be passed under Sub-section (2). Since the liability to pay the duty is on the vendee, it is the vendee who must have a reasonable opportunity of being heard. Under the Act and the Rules, there is no liability on the vendor to pay the duty in question. The expression "serve on the person concerned a notice in Form-I" in Rule 24(1) of the Rules must necessarily have the only meaning that the person who is liable to pay the duty after adjudication must receive the notice. In that view of the matter, notwithstanding Form-I in question which prima facie indicates that notice has to be served on the vendor, we are of the considered opinion that no notice is required to be served on the vendor in an enquiry u/s 47-A(2) of the Act. Form-I in question is a form that has been appended to Rule 24, but on whom it should be served is dependent upon the question as to by whom the duty is payable. Therefore, the Collector has to decide in the enquiry by looking into Section 29 of the Act as to who is the person liable to pay the duty, since Section 29 contemplates in some cases duty to be paid by the person drawing, making or executing the instrument and in some cases like a conveyance by the vendee and the notice in question has to be served on the person who is liable to pay the duty. Since the duty in case of a sale deed is liable to be paid by the vendee, it is the vendee who is to be noticed and not the vendor. We accordingly reject the submission of Mr. Mohanty, the learned counsel for the petitioners and held that there has been no infraction of law in not noticing the vendor but only noticing the vendee.

5. No other contention having been raised and the only contention having failed, the writ application fails and is dismissed. There will be no order as to costs.