(2014) 03 AHC CK 0156

In the Allahabad High Court

Case No : C.M.W.P. No. 37076 of 2004

Hakim Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Stamp Act, 1899 — Section 29, 29(c), 33, 35, 37
Transfer of Property Act, 1882 — Section 54

Citation : (2014) 4 ADJ 80 : (2014) 4 ALJ 552 : (2014) 104 ALR 619 : (2014) 4 AWC 3892 : (2014) 123 RD 251

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Yogendra Kumar Srivastava, Advocate for the Appellant

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the respondents. By means of the impugned orders the stamp affixed by petitioner has been declared to be illegal only on the ground that the same was purchased though in the name of Sri Hakim Singh but mentioning wrong name of the father of Sri Hakim Singh. Reliance is placed by respondents-authorities on section 33 of the Indian Stamp Act, 1899 (hereinafter referred to as the "Act, 1899") but a perusal thereof nowhere shows that if the stamp is not purchased in the name of executor of instrument, concerned instrument itself would be treated to be without any proper stamp and can be impounded.

2. In view of above, I do not find that section 33 has any application in this matter., Learned Standing Counsel, however, sought to place reliance on section 29 of Act, 1899 to suggest that since expenses of providing proper stamp in case of an instrument of sale has to be borne by purchaser of property, therefore, if in a particular case the purchaser has not given correct description in the stamp, it will amount to non providing expenses by purchaser and being in violation of section 29, the document will be deemed to be without any sufficient stamp and,

therefore, u/s 33 the instrument can be impounded.

3. In my view, section 29 has to be read with section 48 of Act, 1899. It shows that there is no obligation upon any of the person to pay stamp duty in a particular manner. Section 29 itself commences with the words "in the absence of an agreement to the contrary", meaning thereby if there is an agreement between the parties, the expenses of providing proper stamp can be borne by parties other than that stated in various clauses of section 29. When there is a deficiency of stamp, section 48 empowers the Collector to recover the same by distress from the person from whom the same are due and this takes into notice section 29 where it provides, who is to borne expenses in respect of different instruments. Section 48 provides that deficiency in stamp duty can be recovered only from the person from whom it is due and not from every person who may be party to the deal. In order to find out the person from whom the duty is due, one, then may come to section 29 of the Act, 1899. As a corollary if follows that in case of a sale deed of immovable property, the deficiency of stamp duty can be recovered from the vendee only and not from vendor but this by itself is different than saying that the stamp, if not purchased in the name of vendee, then the instrument will be treated to lack sufficient stamp.

4. Further, section 44 contemplates a situation where any duty or penalty has been paid under sections 35, 37, 40 and 41 by any person in respect of an instrument, by agreement or under the provisions of section 29, if some other person was bound to bear expenses or providing proper stamp in such instrument, in such a case, that person is entitled to recover the such amount from the person who was bound to bear the expenses of providing proper stamp for such instrument in accordance with section 29.

5. A Full Bench of Madhya Pradesh High Court in Balkrishna Biharilal v. Board of Revenue, AIR 1970 MP 74 has held that section 29 and section 44, in effect, only regulate the liabilities as between the parties inter se and the Collector can proceed to recover the entire duty and penalty from anyone or from all those parties in his discretion. A similar view is shown to have been taken by Madras High Court in Subramaniyam Shettiar v. Revenue Divisional Officer, AIR 1956 MP. 45 but both these decisions have been differed and a different view has been taken by a Division Bench of this Court in Kunwarpal Sharma and Another Vs. State of U.P. and Others, where, after referring to aforesaid decisions in para 11, the Court said:

11. With profound respects, we are unable to accept the view taken in the decisions cited by learned Standing Counsel that sections 29 and 44 of the Act only regulate the liabilities as between the parties inter se. Section 54 of Transfer of Property Act defines a sale and it provides that sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. The consideration for sale of an immovable property is a matter of agreement between the vendor and vendee. They can also enter into an agreement regarding the expenses of providing the proper stamp duty. There was no

requirement of making a legislation which may deal with expenses for providing proper stamp duty as between a vendor and vendee of immovable property as such a matter can always be settled by mutual agreement. If in a case of a conveyance the stamp duty is paid by the grantor, the deed would not be rendered invalid nor it would violate any provision of law. Under the scheme of the Act, the Collector has been empowered to recover any deficiency in stamp duty. The purpose of enacting section 29(c) is that he may recover the amount from the grantee and not from the grantor. This also appears to be logical as the vendee who acquires title over the property by the deed of conveyance should be held liable to pay the requisite stamp duty.

6. Be that as it may, none of these provisions deal with to a situation where for any defect in respect to the description of the person who has purchased stamp, or if stamp has been purchased by a person other than the executant, such stamp shall not be treated to be valid in respect to the instrument in which they are used. On this aspect no provision has been shown by learned Standing Counsel despite repeated query and he fairly stated that there is no such specific provision in Act, 1899.

7. In absence of any specific provision in this regard, it is not open to Collector to treat an instrument without any stamp duty if the stamp paid there contains description of a person other than the vendee or vendor or a wrong discretion of any of the parties to the document. Such power can be exercised by Collector only if it has been provided in the statute and not otherwise. The purpose of Act, 1899 is that the appropriate revenue must come to the State''s exchequer and also to get an instrument prepared which would have appropriate evidentiary value but this by itself will not confer a power upon Collector, either to impound the document or to declare an instrument having no stamp duty or insufficient stamp duty, only for the reason that the description of purchaser in the stamp duty is not correctly stated or the purchaser of stamp duty is not one of the party to the instrument.

8. In view of above, the impugned orders cannot sustain. The writ petition is allowed. The impugned orders dated 26.2.2001 and 1.7.2004 are hereby quashed. No costs.