
(1995) 10 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 13575 of 1989

Huleppa Balappa Karoshi

APPELLANT

Vs

Sub-Registrar

RESPONDENT

Date of Decision : 30-10-1995

Acts Referred:

Karnataka Stamp Act, 1957 — Section 28, 33, 39, 61

Citation : (1995) ILR (Kar) 3589 : (1996) 5 KarLJ 605

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : G. Balakrishna Shastry, for the Appellant; N.K. Ramesh, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Raveendran, J.—Petitioner agreed to purchase land bearing R.S.No. 103, measuring 3 acres 1 gunta of Yadur village, Chikodi Taluk for a sale price of Rs. 13,000/-. As the Vendor failed to execute the Sale Deed, petitioner filed a suit for specific performance in the year 1982. During the pendency of the suit, the Vendor executed a Sale Deed dated 26.8.1985 in favour of the petitioner conveying the said land for the agreed consideration of Rs. 13,000/- in pursuance of a consent decree passed by the Civil Court.

2. The said Sale Deed was presented to the Sub-Registrar, Chikodi (First Respondent) for registration on 29.8.1985. The Sub-Registrar impounded the Document on the ground that the Document was undervalued and therefore not duly stamped u/s 33 of the Karnataka Stamp Act, 1957 ("Act" for short) read with Rule 15A of Karnataka Stamp Rules, 1958 ("Rules" for short). After verification of sale statistics and other information, the Sub-Registrar came to the conclusion that the value set forth in the Deed was less than the market value and assessed the market value as Rs. 90,000/-. He held that the Document has been deliberately undervalued to evade payment of higher Stamp Duty and thus the Document is not duly stamped. Hence, the Sub Registrar,

purporting to exercise power of the Deputy Commissioner u/s 39 of the Act, directed recovery of deficit Stamp Duty of Rs. 6,930/-, penalty of Rs. 69,300/-(at 10 times the Stamp Duty) and deficit Registration Fee of Rs. 770/-, in all Rs. 77,000/- from the person in enjoyment of the property, vide Order dated 5.9.1985 (Annexure-A). The said Order was passed without notice to the petitioner and the order was not communicated to him. Petitioner came to know about the order only in March 1989, when he received a notice demanding payment of Rs. 77,000/-. Immediately he filed this Petition for quashing of Annexure-A. Rule and stay of the impugned order was granted on 1.8.1989.

3. The following Questions arise for Consideration in this Petition:

(a) Whether a Sale Deed presented for registration, bearing the necessary Stamp Duty calculated at the specified rate, on the consideration mentioned in the Deed, can be impounded u/s 33 of the Act, on the ground that it is undervalued and therefore not duly stamped?

(b) If it is found that there is undervaluation in regard to the market value of the property which is the subject matter of conveyance, whether it is permissible to require payment of penalty u/s 39 of the Act, in addition to the proper Stamp Duty and Registration Charges?

4. Section 33 is the only provision in the Act, authorising impounding of documents. Sub-section (1) of Section 33 of the Act provides that 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 of his functions, shall, if it appears to him that such instruments is not duly stamped, impound the same. Sub-section (2) provides that for that purpose, 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 law in force in the State of Karnataka. Thus u/s 33 of the Act, a Sub Registrar to whom a document is presented for registration, can impound it, if it appears to him that such document is not duly stamped.

5. When is an Instrument not "duly stamped"? According to Section 2(e) of the Act, unless the context otherwise requires, "duly stamped" as applied to an instrument, means that the instrument bears an adhesive or impressed stamps of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the territories of the State of Karnataka. This would mean that to be "duly stamped" an instrument should comply with three requirements : (i) the stamp must be of the proper amount; (ii) should bear the proper description of stamp; (iii) the stamp must have been affixed or used according to law for the time being in force.

6. In this case, the second and third requirements are not relevant, as the complaint is only regarding non-payment of adequate Stamp Duty, that is,

violation of the first requirement. It is evident from Sub-section (2) of Section 33 that for determining whether an instrument bears the proper stamp and thus complies with the requirement of being "duly stamped", the Stamp Duty payable on the instrument must be determined only with reference to the terms of the instrument and not evidence dehors or beyond the instrument. Section 33 does not contemplate an enquiry, with reference to material other than the instrument itself, to reach a conclusion as to whether such instrument is duly stamped or not. In other words, only the description, nature and contents of the document and the consideration mentioned in the instrument can be looked into, to find out whether instrument is "duly stamped".

7. The following four examples (not exhaustive) will illustrate when an instrument can be said not to bear the proper amount of stamp and therefore not duly stamped : (a) where the Schedule to the Act prescribes a fixed amount as duty and the instrument bears a lesser Stamp Duty; that is, if a Deed of Partnership for which the prescribed duty is Rs. 500/-, bears a Stamp Duty of Rs. 200/-, it is not duly stamped. (b) Where instruments falling under the same "description" are required to be stamped differently in different categories and an instrument falling under one category is stamped with a lesser Stamp Duty under a different category; that is, if an Agreement for sale of Immovable property where in part performance of the contract, possession is delivered or agreed to be delivered without executing the conveyance, which is liable to be stamped as a conveyance under Article 5(2)(i), is stamped Rs. 200/- under Article 5(e)(ii)(a)(iv) as an agreement where possession of the property is not delivered, the instrument is not duly stamped, (c) Where a document falling under a particular description is otherwise described involving payment of a lesser duty; that is, if a Mortgage Deed to be stamped under Article 34 is described as an Agreement relating to deposit of title deeds and stamped under Article 6, it is not duly stamped, (d) Where the Stamp Duty is described ad valorem, at a specified rate, and the duty paid is less than what is payable; that is, if a Deed of Sale specifies the sale price as Rs. 10,000/- and bears a stamp calculated on only Rs. 5,000/-, it is not duly stamped.

8. But if a property of the market value of Rs. 25,000/-, is conveyed under a Sale Deed, mentioning the sale consideration as Rs. 10,000/- and the Stamp Duty at the specified rate is paid on Rs. 10,000/- then it is duly stamped for purposes of the Act, even though there may be undervaluation regarding market value. Similarly if a property of the market value of Rs. 25,000/- is conveyed under a Gift Deed declaring the value of the property gifted as Rs. 10,000/- and Stamp Duty is paid at the specified rate on Rs. 10,000/-, then it is duly stamped, for the purpose of the Act, even though there may be undervaluation. This is so, because, to find out whether there is undervaluation, an enquiry beyond the terms and contents of an instrument, is required, to determine the market value. Undervaluation cannot be assumed merely with reference to the terms or contents of an instrument, but can be determined only with reference to external evidence relating to market value. Section 33 does not contemplate or permit

any such enquiry into the market value of the property which is the subject matter of the instrument, nor determination whether there is any undervaluation. Section 33 only contemplates and provides for examination of the instrument to find out it is "duly stamped", that is, "whether it is stamped with a stamp of the value and description required by the law in force in the State of Karnataka". Determination whether a document is not "duly stamped" depends on internal evidence, that is contents of the documents itself, whereas determination as to whether there is "undervaluation" depends on external evidence, that is material regarding market value. Thus, a Deed of Conveyance bearing the necessary Stamp Duty at the specified rate on the consideration or value mentioned therein, cannot be considered as "not duly stamped" and therefore cannot be impounded u/s 33. This answers the first Question.

9. The Sub Registrar can send an instrument to the Deputy Commissioner u/s 37(2) for determination of a proper Duty u/s 39, only if it is impounded u/s 33, as not being duly stamped. He cannot send an instrument to the Deputy Commissioner u/s 37(2), if he is merely of the opinion that it is undervalued. The Deputy Commissioner while exercising his power u/s 39 of the Act, in regard to an impounded instrument, cannot embark upon an enquiry into the market value of the property; he can only decide whether the instrument is duly stamped or not; and if he finds that it is duly stamped, he shall certify thereon that it is duly stamped; and if it is not duly stamped, he shall require payment of proper Duty or the amount required to make up the same together with a penalty as specified therein. The resultant position is that, there can be no determination of "proper duty" not levy of penalty u/s 39, in respect of documents which are not impounded or which cannot be impounded. Hence no penalty can be levied u/s 39, in regard to an instrument which is undervalued. It should however be noted that in regard to instruments which are not duly stamped, but which are not impounded, but registered, the proper Duty can be collected by initiation of proceedings u/s 46A of the Act. This answers, the second Question.

10. Having answered the two Questions in the negative, a brief reference as to the position and procedure in regard to instruments which are found to be undervalued is necessary.

11. While Stamp Duty was always payable with reference to the terms and contents of the instrument or the consideration/value/price mentioned in the instrument, a far-reaching change was effected by Karnataka Stamp (Amendment) Act, 1975 (Act 12 of 1975). By this amendment, in Article 20 relating to conveyances, for the words "where the amount or value of the consideration for such conveyance as set forth therein", the words "where the market value of the property which is the subject matter of the conveyance", were substituted. Consequently, even in regard to instruments of Exchange (Article 26), Gift (Article 28), for which the same duty as conveyance was prescribed, "market value" of the property became the basis for payment of the Stamp Duty. Thus, for the first time, it became necessary to look beyond the

contents of the instrument, for determination of the stamp duty as the consideration price/value mentioned in the instrument was not necessarily the market value. As a consequence, it became necessary to provide a machinery for determination of the market value for recovery of proper duty. Hence, Section 45A was also introduced by the said Act 12 of 1975.

12. Section 45A enables the Registering Officer, while registering the instrument, if he has reason to believe that the market value of the property, which is the subject matter of the instrument of Conveyance, Exchange or Gift, was not duly set forth in the instrument, to refer the matter to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereon, after registering the instrument. It also provided the manner in which Deputy Commissioner should determine the market value and proper duty. The Karnataka Stamp (Prevention of Undervaluation of Instruments) Rules, 1977 were also made in exercise of powers conferred on the State Government by Section 45A and Section 68. Significantly Section 45A does not contemplate either impounding of the instrument or levy or collection of any penalty in regard to an instrument involving undervaluation.

13. A comparison of the provisions relating to instruments which are not "duly stamped" and instruments which are "undervalued", brings out several significant differences. The first difference is about the validity of the instrument itself. If an instrument is not duly stamped, it cannot be admitted in evidence nor can it be acted upon nor can it be registered or authenticated. It is liable to be impounded. On the other hand, undervaluation of an instrument does not affect the validity of the instrument. Undervaluation does not prevent the same being acted upon or registered or authenticated or being admitted in evidence. The second difference relates to the stage of examination. While the question whether an instrument is duly stamped or not is normally to be determined before it is acted upon or registered or admitted in evidence (except where the question is examined u/s 46A). Thus the determination whether a document is not duly stamped and therefore should be impounded relates to a pre-registration stage. On the other hand, the enquiry as to whether the document is undervalued or not and the determination of market value and proper duty on such market value, is a post-registration enquiry, which has nothing to do with the registration or validity of the instrument.

14. Thus, if a document which is not duly stamped, is presented for registration, the Registering Officer will not register the document but impound it, and send it to Deputy Commissioner u/s 37(2) so that the Deputy Commissioner can require payment of proper duty and penalty u/s 39. On the other hand, if the document is undervalued, the Registering Officer shall register the document and refer the instrument to the Deputy Commissioner for determination of market value and payment of proper duty u/s 45A and the Deputy Commissioner has to determine the market value and the proper duty payable thereon after giving the parties, a reasonable opportunity of being heard.

15. Section 45A introduced by Act 12 of 1975, did not come into effect in the entire State immediately. Section 45A came into force in the City of Bangalore and certain other Cities named in Section 1(2)(b) of the said Amendment Act, on 1.5.1975. It came into force in certain other Towns/Cities named in the Notification No. RD RD 103 ESR 82 (1)) dated 8.7.1985, from 8.7.1985. In regard certain areas specified in the Notification No. RD 89 ESR 90 dated 31.3.1990, it came into effect from 1.4.1990. Finally, it was brought into force in all other areas of the State (that is, areas except the areas to which the said Section had already been brought into force) on 1.4.1991, vide Notification No. RD 90 ESR 91 dated 11.4.1991.

16. Before 1.4.1991, in areas where Section 45A was not brought into force, there could be no action either under Sections 33 and 39 or u/s 45A, even if the consideration/price/value mentioned in Instruments of Conveyance, Exchange or Gift was less than the market value. In such case, action could be taken only under Sections 28 and 61 of the Act. Section 28 provided that the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable, shall be fully and truly set forth therein. Section 61 provided that any person who wilfully, with intent to defraud the Government, executed any instrument in which all the facts and circumstances required by Section 28 to be set forth in such instrument, are not fully and truly set forth, shall be punishable with fine which may extend to Rs. 5,000/-. Sub-section (2) of Section 28 which was introduced by Amendment Act 17 of 1966 with effect from 15.11.1966, required that in the case of instrument relating to immovable property chargeable with an ad valorem duty on the value of the property and not on the value set forth, the instrument shall fully and truly set forth, the annual land revenue or the annual rental value, local taxes, Municipal or other taxes etc., as may be prescribed by the Rules. The said amendment Act No. 17 of 1966 also amended Article 28 relating to instruments of Gift with effect from 15.11.66 making an adValorem stamp duty payable for a consideration equal to the value of the property. With effect from the same date i.e., 15.11.1966, Rule 15A was introduced under the Karnataka Stamp Rules 1958, which provided that every person mentioned in Section 33 before whom any instrument of the kind mentioned in Sub-section 2 of Section 28 is produced, or comes in his performance of the functions, shall, verify in each case the value of the land, building or garden as the case may be, from such facts as are stated in the instrument and as may be available for determining the value of the property; and also provided for having recourse to local enquiry or independent evidence after giving due notice to the party concerned. Rule 15A applied only to Instruments of Gift when it was introduced on 15.11.1966.

17. It was only by Act 12 of 1975 that even in regard to Instruments of Conveyance, Stamp Duty became payable on the market value of the property instead of on the consideration set forth in the document. Thus, after 1.5.1975, in regard to instruments of Conveyance, Section 28(2) and Rule 15A became

applicable to Deeds of Conveyance executed in areas to which Section 45A was I not made applicable. The combined effect of Section 28 (1) and (2) and Section 61 and Rule 15A was that if there was any undervaluation, the person executing the document could be prosecuted and punished u/s 61. Once Section 45A was made applicable, of course, the deficit stamp duty could also be collected. But under no circumstances, penalty could be levied u/s 39, in regard to undervalued instruments.

18. Coming to the case on hand, the land sold is situated in Yadur Village in Chikodi Taluk and Section 45A became applicable in the said area only from 1.4.1991. On the date of execution and registration of the sale (26.8.1985) Section 45A was inapplicable and what was applicable was Section 28 and Rule 15A. Hence, if the Registering Authority on verification found that there was undervaluation, he could only prosecute the executant u/s 61 and could not impound the document u/s 33 or initiate any action u/s 39. Hence, the impugned order directing recovery of stamp duty on the basis of market value and penalty equivalent to ten times the duty, u/s 39 is without authority of law and contrary to the provisions of the Act.

19. The Petition is therefore allowed and the impugned order Annexure-A is quashed. The Sub-Registrar (first respondent) shall have to register the document in accordance with law and deliver it to the person who presented the instrument for registration.