

(1973) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Case Referred No. 28 of 1970

Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad

APPELLANT

Vs

Additional Chief Judge, City Civil Court, Hyderabad and Another

RESPONDENT

Date of Decision : 16-10-1973

Acts Referred:

Stamp Act, 1899 — Section 61

Citation : AIR 1974 AP 83

Hon'ble Judges : Gopal Rao Ekbote, C.J.;Lakshmiah, J;Chennakesav Reddy, J

Bench : Full Bench

Advocate : Govt. Pleader for Excise, for the Appellant;

Judgement

Ekbote, C.J.—We have before us the matter of clarification sought by the office as to before whom the revision filed u/s 61(1) of the Stamp Act should be placed for hearing.

2. The facts in brief are that Sri Bhagat Ram undertook to construct a house at Himyatnagar on behalf of Sri P.V. Narayana for an estimated construction value of Rs. 17,500/- . The contractor received Rs. 12,000/- and agreed to receive the balance of Rs. 5,500/- after completion of the construction. He drew up a receipt for Rupees 12,000/- in favour of the owner Sri P.V. Narayana on 21-2-1963 with the agreement referred to above. He also stated that he delivered the title deeds of his house situate at Beer Bhan Hyderabad as security for the advance.

3. The said document is entitled "a receipt". It was filed before the I. Addl. Chief Judge , City Civil Court in O.P. 47/67. The Court acting u/s 35 of the Indian Stamp Act , found that the document was unstamped. He found that under Article 53 of Schedule I to the Indian Stamp Act, it requires a stamp of Rs. 0-10 ps. The Court therefore, levied a penalty of Re. 1/- under provisio (b) of Section 35 of the Indian Stamp Act. The said amount thus collected was remitted to the Government by challan dated 7-8-1971 and bank receipt of the same date. The

Court also sent a copy of the document to the applicant u/s 30(1) of the Indian Stamp Act.

4. The Inspector General of Registration and Stamps , who happens to be the Collector under the Indian Stamps Act for the twin cities of Hyderabad and Secunderabad held the view that the document does not fall under the term receipt. He is also of the opinion that it does not fall under Art. 6 of Schedule 1-A of the Act viz., agreement relating to deposit of title deeds as the advance received and the purpose for which the deposit of title deeds was made was not for repayment of the loan or debt. He therefore expressed the opinion that the document creates a right over specific property falling under the definition of "mortgage deed" as defined by Section 2(17) of the Indian Stamps Act. He therefore opined that the document requires a stamp duty of Rs. 360/- under Article 35 (a) read with Art. 20 of Schedule 1-A of the Indian Stamp Act.

5. Since the High Court is the Court to which appeals lie from the Chief Judge, City Civil Court, Hyderabad and it is also a Court of reference , the applicant, that is to say the Collector , referred this application u/s 61(1) of the Act.

6. There are three provisions under the Act which one has to bear in mind before the forum for such revision petitions is identified. Section 57 relates to a reference made by the Chief Controlling Revenue Authority. Section 57(2) in such cases, expressly enjoins that every such reference shall be decided by not less than 3 Judges of the High Court to which it is referred. Section 60 is the second provision which relates to the reference made by any Court other than the Court mentioned in Section 57 which provides that if such Court feels doubt as to the amount of duty to be paid in respect of any instrument etc., it may draw up a statement of case and refer it with its own opinion thereon for the decision of the High Court to which , if he were the Chief Controlling Revenue Authority, he would under Sec. 57 refer the same. Sub-section (2) of Section 60 then goes on to say that the High Court shall deal with the case as if it had been referred u/s 57. That would evidently mean that such a reference also , like a reference made u/s 57 has to be decided by not less than 3 Judges of the High Court.

7. We then come to Section 61 , which is the third provision relevant for our purpose. This section does not deal with references , but deals with revisions. In the first part of Section 61(1) it is stated that when any court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding, mentioned therein, makes any order admitting any document in evidence as duty stamped or as not requiring a stamp or upon payment of duty and a penalty u/s 35 , then in the second part , it says that the Court to which the appeal lies from such first-mentioned Court (Meaning the Court which made the order under the first part of the sub-section) or to which references are made by such first mentioned Court (meaning the Court which made the order) either of its own motion or on the application of the Collector take the order made by the Court into consideration and decide the same in accordance with law.

8. A reading of this section would make it clear that whenever a Court makes an order relating to stamp duty on any document, then a revision alone lies and there can be no references in such cases where such orders are made. The forum for filing such revisions is the Court to which appeals lie from the orders or decrees of the Court which made that order. A revision also may lie in the alternative to the High Court to which references u/s 60 can be made by any Court. Thus a concurrent jurisdiction has been conferred on the appellate Court if it happens to be a Court other than the High Court and the High Court. The Collector thus has a choice to prefer the revision to the Court to which appeals lie from the order of the first-mentioned Court in sub-section (1) or to the High Court.

9. Since in this case the appellate Court as well as the Court of reference is the High Court, therefore, the revision has been properly filed before the High Court.

10. The question then is whether such a revision should be registered as such and be heard by a learned Single Judge or a Bench or a Full Bench of this Court. It naturally depends upon the subject-matter of the case in which such order is made by the Court. If the appeal from the final order or decree of the Court lies to a single Judge or a Bench of two or more Judges, then the matter should be placed before the respective courts. It is therefore clear that although a revision may lie to the High Court and would be registered as such, the High Court would obviously consider such a case of revision in accordance with the appellate side rules of the High Court because the forum of the appeal is to be identified even though it is a revision. Such a case therefore need not be posted before the Full Bench. It may be that a case of revision although preferred u/s 61(1) of the Act was heard in Referred Case No. 4 of 1891 in (1892) ILR 15 Mad 259 (FB) and *Firm Shyam Lal Bidhi Chand v. Mukundlal*, (AIR 1942 All 147) (FB) by Full Bench, that cannot, however be taken as an authority for the proposition that a revision u/s 61(1) must also be heard by a Full Bench as if it is a reference made either u/s 57 or Section 60. There are no words to that effect in Section 61(1). On the other hand the forum for hearing revision is clearly indicated in Section 61(1) of the Act.

11. Since in this case the subject matter of the O.P. is only Rs. 12,000/- and in any case it does not exceed Rs. 20,000/- this revision shall be placed before a learned single Judge for disposal in accordance with law.

12. Answer accordingly.