

(2005) 12 AP CK 0072
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5812 of 2005

Irukulla Narender

APPELLANT

Vs

Irukulla Shakuntalamma and Others

RESPONDENT

Date of Decision : 02-12-2005

Acts Referred:

Stamp (Amendment) Act, 2005 — Section 5
Stamp Act, 1899 — Article 40, 46A, 49A, 47A

Citation : (2006) 2 ALT 174 : (2006) 1 APLJ 157

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : K.V. Bhanu Prasad, for the Appellant; None, for the Respondent

Judgement

Gopala Krishna Tamada, J.—A short, but interesting point that falls for consideration in this revision is as to whether the stamp duty to be paid at the time of engrossing the final decree is whether the date to be reckoned with is the date of the final decree passed in the suit or the date on which the instrument was made and presented.

2. A few relevant facts of the case are that the plaintiff instituted O.S. No. 7 of 1971 for partition as early as in the year 1971. A preliminary decree was passed, and subsequently, a final decree was also passed on 31-3-2005. In the final decree, the plaintiff was directed to pay necessary stamp duty for the purpose of drafting the final decree, and accordingly, the plaintiff paid the stamp duty on 30-9-2005. As G.O.Ms.No. 1129, dated 13-6-2005 had come into existence reducing the stamp duty from 3% to 1% in respect of partition deeds, release deeds and settlement deeds in favour of the family members under Articles 40, 46-A and 49-A (a) of Indian Stamp Act, 1899, the plaintiff paid stamps worth of 1% only for the purpose of preparation of final decree. However, the office took an objection and returned the same with the following endorsement.

As the final decree for partition of the properties was passed on 31-3-2005, and the stamp duty to be paid at the rate of 3% on the value of the property, and as

the reduction of stamp duty payable in respect of Partition deeds, Release Deeds and Settlement Deeds in favour of family members under Articles 40, 46(A) and 49-A(a) of Indian Stamp Act, 1899 shall come into force with effect from 1-7-2005, the petitioner has to calculate the valuation at the rate of 3% and pay the stamp duty on the value of the properties as on 31-3-2005.

The learned Counsel in the Court below resubmitted it stating that the date on which he presented the stamp duty is relevant, but not the date of decree. However, the office again took an objection in the following manner:

This is a memo filed by the Advocate for the plaintiff praying the Court to permit the petitioner-plaintiff to deposit an amount of Rs. 22,136/- being the stamp duty payable on the 1/4th value of the properties i.e. Rs. 22,83,578.89 as per the valuation certificate issued by the Joint Sub-Registrar Warangal.

The petitioner-plaintiff calculated the stamp duty at the rate of 1% on the 1/4th value of the market value of the suit properties under Article 40 of Schedule-1A of the Indian Stamp Act as applicable in Andhra Pradesh State, per Amending Act No. 19 of 2005, Section 5 and also as per G.O.Ms. No. 1129 Revenue (Registration-1) dated 13-6-2005.

As per the Citation reported in Paramount Co-operative Housing Society Ltd. Vs. Sirajunnisa Begum and Others, ; Paramount Co-operative Housing Society Ltd. Vs. Sirajunnisa Begum and Others, , the petitioner to pay stamp duty as on the date of passing of final decree.

The final decree for partition was passed on 31-3-2005 and as on the date of passing final decree the stamp duty is at the rate of 3% on the value, hence, the memo is returned to calculate the stamp duty at the rate of 3% as on 31-3-2005 and also directed to value the properties as on 31-3-2005.

The Advocate for the petitioner resubmitted the memo by endorsing as under:

it is respectfully submitted that parties execute a deed of partition on whatever date, but present it for registration, the value of non-judicial stamps to be affixed is determined on the basis of rates applicable as on the date of presentation for registration. By the same analogy, the date of passing of final decree would not be the criteria.

Submitted for orders.

On the basis of the above office note, the Court below heard the learned Counsel for the petitioner and passed a docket order on 19-10-2005 stating that it is only the date of passing of the final decree that is relevant, but not the date on which the stamps were presented, and accordingly, returned the papers. As against the said docket order dated 19-10-2005, the Civil Revision Petition is filed. As it is in between the Court and the counsel for the petitioner and no notice need be given to the respondents the said notice is dispensed with.

3. Heard the learned Counsel for the petitioner and perused the material placed

on record.

4. I have gone through the judgment reported in Paramount Co-operative Housing Society Ltd. Vs. Sirajunnisa Begum and Others, and I am sure that the office as well as the Court below misinterpreted the said judgment. What was stated in the judgment is stamp duty payable on the final decree of partition and duty to be paid as per the value of the property on the date of passing of the final decree, but not on the date of filing the suit for partition. The question that arose for consideration in that judgment is as to whether the date for filing the suit for partition is to be taken into consideration or the date of passing the final decree. In fact, when the said analogy is applied in the instant case, it is definite that it is not the date of the final decree that was passed on 31-3-2005, but the dated 30-9-2005 on which the stamps were deposited shall be taken into consideration. This Court has no hesitation to hold that the Court below was wholly misguided. The above finding of mine is further fortified by a decision of the Division Bench reported in Siddula Madhukar and another Vs. Govt. of A.P. and another, , wherein it was held to the following effect:

There cannot be any doubt that the tax imposed is to be calculated on the basis of the rate when the instrument itself is executed. Such an instrument, for the purpose of registration or otherwise in terms of the provisions of the Indian Stamp Act cannot relate back to the date of execution of an agreement for sale. It is now well settled principle of law that there cannot be any intendment in relation to tax.

Only because in relation to such an agreement for sale a suit for specific performance of contract had to be filed and a decree was passed is no ground to hold that in such a case the duty payable would be calculated at the rate which was prevailing at the time of execution of the agreement for sale and not at the rate which was prevailing at the date of execution. The statute does not say so. By reason of an interpretation thereof, no meaning can be attributed which is beyond the scope and purport of the statutory provisions.

There cannot be any doubt whatsoever that the registration authority, in case of dispute as regards the correctness or otherwise of the market value of the land, will have to take recourse to the provisions contained in Section 47-A of the Act. We must also observe that in a given case, the Collector can also take suo motu notice thereof. The petitioners, therefore, may take recourse to the remedies provided for under the Act.

The relevant G.O. specifies that the said notification shall come into force with effect from 1-7-2005. When once the Government Order was brought to the notice of the Court below, in my considered view, the Court ought not to have raised any objection about the payment of the stamp duty and should have simply accepted the stamp duty paid pursuant to the Government Order. If at all there is any grievance, it is for the Department of Registration to raise such an objection and the same may be decided u/s 47A of the Indian Stamp Act, 1899.

5. Hence, in my considered view, the objection taken by the Court below is liable to be overruled, and accordingly, it is overruled and the Court below is further directed to accept the stamp duty paid by the petitioner and prepare the final decree.

6. Accordingly, the Civil Revision Petition is disposed of. No costs.