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(1984) 03 GUJ CK 0017

In the Gujarat High Court

Case No : Stamps Reference No. 2 of 1977

Jesangbhai Desaibhai Patel and Others APPELLANT

Vs

Chief Controlling Revenue Authority RESPONDENT

Date of Decision : 19-03-1984

Acts Referred:
Bombay Stamp Act, 1958 — Section 33

Citation : AIR 1984 Guj 144 : (1984) GLH 1146 : (1984) 1 GLR 485

Hon'ble Judges : P.S. Poti, C.J;I.C. Bhatt, J;G.T. Nanavati, J

Bench : Full Bench

Advocate : R.A. Patel, for the Appellant; J.U. Mehta, instructed by Ambubhai and Diwanji, for the Respondent

Judgement

P.S. Poti, C.J.—The Jambusar Taluka Co-operative Purchase and Sale Union took a sale of a property from. Shri Pranjivandas Sakarlal Thakkar and Shri Harshvadan Sakarlal Thakkar, both being partners of a firm, for a consideration of Rs, 62,000 by a document executed on 27th Oct. 1972. No stamp duty was levied on the document but the Sub-Registrar, jambusar, impounded the document under S. 33 of the Bombay Stamp Act, 1958 (Bombay Act No, LK of 1958) and forwarded to the Collector, Broach, for recovery of deficit stamp duty. The Collector determined this deficit stamp duty as Rs. 6,150 and together with the penalty of Rs. 5/- sought recovery from .the Society.

2. The Chief Controlling Revenue Authority, Gujarat State, before whom an appeal was filed, passed an order rejecting the appeal and thereupon on a motion for reference, the question of payment of proper stamp duty has been referred to this Court.

3. The simple question that calls for an answer is whether an exemption Notification dt. 28th March, 1968, Exhibit 7 .in the ease, applies to the facts-. The above said Notification reads.

"No. GHM/314/M/STP/1608/6976-H:- In exercise of powers conferred by cf. (a)

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of S. 43 of the Gujarat Co-operative Societies Act, 1961 (Guj. X of 1962) the Government of Gujarat hereby amends the Government Notification, Revenue Department No. GHM/902/M/STP/1008/6976-H dt. 28th March, 1968, as follows, namely:-

"3. Instruments executed by individual members (other than societies registered or deemed to be registered under the said Act, namely primary credit, marketing, industrial and consumers societies, processing and federal bodies of all such societies at district and State level or any other societies registered or deemed to be registered under the said Act in respect of transactions of loans or advances, the value of which exceeds Rupees 5,000/-.

Schedule is omitted, for it is-not in dispute that the Schedule has application if the case falls within the main part of the notification, the instrument will be exempted from stamp duty.

4. In order that the benefit of remission of stamp duty is available in the case, it must be found:

(1) The instrument has been executed by or on behalf of a Co-operative Society, or

(2) The instrument has been executed by any officer or member of any such Society ; and

(3) It relates to the business of such Society in respect of which such Society, or as the case in may be, such officer or member would be liable to pay duty but for the remission granted. .

Evidently, the exemption is intended to cover cases of execution of instruments relating to the businesses of the Society. It may be executed by or on behalf of the society. It may also be that in certain cases such instrument relating to businesses of society is executed by any officer or member of a society. Since the facts stated in the additional reference were, inadequate to determine the question in issue before the Court, additional statement was called for and that has been furnished by the chief Controlling Revenue Authority.

5. It is seen from the facts that the sale was taken by the Co-operative Society. No doubt, it was executed by the members of a firm who happened to be members of that society. It was not as qua members that they executed the sale. It was a private sale by a firm to the Co-operative Society. . It is further seen that. the sale did not relate to the business of a. society. Merely because a Co-operative Society takes a sale the exemption would not apply. The reference to execution by a member of the society in the notification adverted to may be seen further clarified by a subsequent, notification dt. 29th Jan 1970, which particularly mentions instruments executed by individual members at societies, registered or deemed to be registered under the said Act in respect of transactions of loans or advances, the value of which exceeds Rs. 5,000/-. In the course of business of the society and in relation to such business, the society

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may have to execute instruments. It may be that an officer has to execute such an instrument or a member has to execute such an instrument. But, here is a case where Partners of a firm executed a sale in favour of the society. The mere fact that the Society has also joined in the sale deed does not mean that it is a sale executed by the society. It is a sale taken by the society. The sale was executed by the partners of a firm~ who executed the same as private parties. The instrument does not therefore fall within the scope of exemption. Consequently, the document is liable to stamp duty- as found and we answer Question No. 1 referred to, in the affirmative and Question No. 2 in the negative. Reference is disposed of as above. No costs.

6. Answer accordingly.

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