(2011) 04 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7472 of 2010

Jiley Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Citation : (2012) 4 ADJ 548 : (2012) 4 AWC 3816

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Vikrant Rana, for the Appellant;

Final Decision : Allowed

Judgement

Hon''ble Pankaj Mithal, J.—Heard Sri Vikrant Rana, learned counsel for the petitioner and learned Standing Counsel on behalf of the respondents. Pleadings of the parties have also been examined.

2. The petitioner is aggrieved by the order dated 29.9.2009 passed by the respondent No. 4 in Stamp Case No. 107 of 2008-09, the demand notice dated 19.11.2009 and sale proclamation dated 15.1.2010 issued by the respondent No. 3.

3. It appears that the petitioner executed an unregistered agreement to sell immovable property on 3.10.2008 in favour of the respondent No. 5 Raj Kumar only for a sale consideration of Rs. 3,00,000/-. The said agreement to sale was subjected to proceedings under the Indian Stamp Act, 1899 for determining the deficiency in stamp duty. The authorities under the Stamp Act initiated proceedings in the name of respondent No. 5 Raj Kumar and, vide order dated 29.9.2009, determined the deficiency in stamp duty. Subsequently, demand notice dated 19.11.2009 and the sale proclamation dated 15.1.2010 have also been issued in the name of respondent No. 5 for recovery of the deficient stamp duty, penalty and interest as imposed. In the said demand notice and the sale proclamation the immovable property of the petitioner has been mentioned and

described and as such the amount is sought to be recovered by the sale of the immovable property belonging to the petitioner.

4. Thus, the petitioner has invoked the writ jurisdiction of this Court challenging the order dated 29.9.2009, demand notice dated 19.11.2009 and the sale proclamation dated 15.1.2010 with further prayer for directions to respondents not to recover any amount from the petitioners by adopting coercive methods or by the sale of the properties of the petitioner.

5. Learned Standing Counsel does not dispute that the petitioner was not party to the proceedings in Stamp Case No. 107 of 2008-09.

6. The said case was decided against the respondent No. 5 Raj Kumar only. Therefore, the liability to pay the deficiency in stamp duty, penalty and interest under the order dated 29.9.2009 is upon the respondent No. 5.

7. The submission of the learned counsel for the petitioner is that even otherwise under the provisions of the Act the liability to pay the stamp duty is upon the purchaser which submission probably is not disputed by the learned Standing Counsel.

8. In paragraph 23 of the writ petition the petitioner has clearly stated that liability to pay stamp duty rests upon the respondent No. 5 Raj Kumar. The reply to the above has been given in paragraph 11 of the counter-affidavit wherein the liability to pay stamp duty on the part of the respondent No. 5 Raj Kumar has not been denied.

9. A Division Bench in the case of Kunwarpal Sharma and Another Vs. State of U.P. and Others, , while considering a case relating to liability of payment of stamp duty in respect of sale-deed and considering the provisions of 29(c) of the Act, laid down that the deficiency in stamp duty can be recovered only from the person from whom it is due and not from any other person who may be party to the deed and in the case of sale-deed, deficiency in stamp duty can be recovered only from the vendee and not from the vendor.

10. Ordinarily also stamp duty on an instrument is payable by the beneficiary, i.e., the purchaser and not by the seller.

11. In view of the above, the responsibility to pay stamp duty cannot be saddled upon the petitioner in the present case.

12. There is another reason for absolving the petitioner from the payment of stamp duty. The respondents themselves initiated proceedings for determination of the deficiency in stamp duty against the respondent No. 5 only. The order has been passed against him and not against the petitioner. Therefore, logically also the respondent No. 5 alone is responsible for the payment of the deficiency in stamp duty, penalty and interest. The said amount cannot be recovered from the petitioner or from the sale of the properties belonging to the petitioner. In view of the aforesaid facts and circumstances, the writ petition is allowed and writ in

the nature of mandamus is issued to the respondents not to make recovery of any deficient stamp duty, penalty or interest pursuant to the order dated 29.9.2009 passed in Stamp Case No. 107 of 2008/09 from the petitioner or from the properties belonging to the petitioner. However, it will be open for the respondents to recover the deficiency from the respondent No. 5 Raj Kumar in accordance with law.

