(2015) 01 RAJ CK 0287

In the Rajasthan High Court

Case No : Civil Writ Petition No. 333 of 2015

Kamlesh APPELLANT

Vs

Ghanshyam and Others RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:
Rajasthan Stamp Act, 1998 — Section 51, 51(4)

Citation : (2015) 2 WLN 65

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : C.S. Kotwani, for the Appellant

Final Decision : Disposed off

Judgement

Arun Bhansali, J—This writ petition is directed against the order dt. 10.12.2014 passed by the trial Court, wherein, a objection was raised by the defendant that the document sought to be exhibited by the petitioner i.e. the sale deed dt. 05.12.2007 executed between Dev Ram, respondent No. 2 and Kamlesh, petitioner, registered with Sub Registrar, Nathdwara, District - Rajsamand was insufficiently stamped. It was, inter alia, observed in the impugned order that the petitioner had not disclosed the true facts affecting the determination of the stamp duty and in view of the fact that the valuation of the property affected by the sale deed dt. 05.12.2007 was Rs. 7,50,000/-, but the document was executed for a sum of Rs. 2,20,000/-, the same was undervalued and was, consequently, inadmissible in evidence.

2. After hearing the parties, the trial Court was prima facie of the opinion that the document was undervalued and directed as under:--

3. It is submitted by learned counsel for the petitioner that the trial Court was not justified in passing the order dt. 10.12.2014, inasmuch as, the document i.e. the sale deed dt. 05.12.2007 was registered document and the stamp duty was properly paid and, thereafter only the document was registered by the Sub

Registrar and it cannot be said that the petitioner has paid insufficient stamp duty and/or the document was undervalued as alleged. It was further submitted that in any case the trial Court could not have directed payment of stamp duty and penalty as under provisions of Section 51 of the Rajasthan Stamp Act, 1998 (''the Act''), it is the Collector (Stamps), who can determine the deficient stamp duty and/or the extent of under valuation, if any.

4. I have considered the submissions made by learned counsel for the petitioner.

5. It is apparent that the power vests in a Court to direct valuation of instruments, which are undervalued, despite the fact that the same have been registered on payment of stamp duty.

6. Provision of Section 51(4) of the Act reads as under:--

"51. Instruments under valued, how to be valued.-

(1) ....

(2) ....

(3) ....

(4) Where it appears to a person having by law or consent of parties authority to receive evidence or a person incharge of a public office, during the course of inspection or otherwise, except an officer of a police, that an instrument is undervalued such person shall forthwith make a reference to the Collector in that matter."

7. A bare look at the provision reveals that if during the course of inspection or otherwise any person having by law or consent of parties authority to receive evidence finds that a instrument is undervalued, such person shall forthwith make a reference to the Collector in that matter. Thereafter the procedure as prescribed under Sub-sections 5 and 7 have to be adopted by the Collector (Stamps) and the consequences would follow.

8. In view of the above provision, it cannot be said that once the trial Court was prima facie of the opinion that the document was undervalued, merely because the document was registered, the prima facie finding regarding the same being undervalued could not have been recorded.

9. However, in view of the provisions of Section 51(4) of the Act, it is apparent that instead of directing payment of stamp duty and penalty with the Collector (Stamps), the Court should have referred the matter to the Collector (Stamps), who would have thereafter determined the issue in terms of the provisions of Section 51 of the Act.

10. Consequently, without disturbing the finding recorded by the trial Court regarding the document being undervalued, the direction issued by the trial Court is modified and it is directed that the document shall be referred by the trial Court under provisions of Section 51(4) of the Act to the Collector (Stamps),

Udaipur, who would determine the said aspect under Sec. 51 of the Act as expeditiously as possible preferably within a period of two months.

11. It is further directed that till the issue is decided by the Collector (Stamps), the trial Court shall not proceed with the matter and only after the decision is received from the Collector (Stamps), the trial Court shall proceed with the matter. With the above modification and directions, the writ petition stands disposed of. The stay petition is dismissed.

