(1985) 03 MP CK 0009

In the Madhya Pradesh High Court

Case No : Civil Revision Case No. 1097 of 1982

Laxman Swaroop Sadaiya — APPELLANT

Vs

Bal Kishan Babulal Garg — RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:
Stamp Act, 1899 — Section 36, 61

Citation : (1985) MPLJ 588

Hon'ble Judges : K.K. Varma, J

Bench : Single Bench

Advocate : R.C. Lahoti, for the Appellant; S.S. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Varma, J.

This is a defendant''s revision from an order passed by the Additional Civil Judge Class II, Shivpuri on 9-10-1982 in C.S. No. 5-A /82 holding that a memorandum of partition dated 24-9-1979 relied on by the plaintiff is duly stamped.

The plaintiff''s learned counsel has taken a preliminary objection that the revision is not tenable. The first limb of the argument in support of the objection is that the matter stands concluded by this Court''s order dated 26-4-1982 in C.R. No. 113/82 by which it was held that the instrument in question needed no registration. That revision was preferred by the plaintiff (non applicant here) against an order passed by the Trial Court on 5-11 1981 holding that the instrument, was inadmissible for want of registration and also required stamp.

A copy of the order dated 26-4-1982 of this Court was shown to me. No doubt the order shows that the revision was allowed. There is, however, nothing in the order that the parties had made any submission to this Court, on the matter of stamp duty. Hence the question of stamp duty cannot be said to have been concluded by the order dated 26-4-1982.

The second limb of the argument is that the instrument had been admitted in evidence in the Court u/s 36 of the Stamp Act. The matter can be raised, it is said, only in accordance with provisions of section 61 of the Indian Stamp Act. Now, the learned counsel for the non- applicant-plaintiff produced from his custody the original instrument during the course of arguments. It is written on stamp papers worth Rs. 5. It does not bear any exhibit mark. It was not disputed before me that its execution has not been proved by any witness on oath. As such, hence, all that can be properly advanced in argument is that the trial Court has recorded a finding that the instrument is duly stamped. The non-applicant''s learned counsel has relied on Vinayak Dattatraya v. Hasanali A I R 1969 M P 6, The learned Judge observed as follows:

In my opinion, the order of the Civil Judge to the effect that the document is admissible (grahya hai) is equivalent to the admission itself.

The aforementioned proposition cannot be regarded as good law in the light of Javer Chand and Others Vs. Pukhraj Surana, . decided on 25th April 1961 where it has been observed:

Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is riot open either to the Trial Court itself or to a Court of Appeal or Revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

I, therefore, over-rule the preliminary objection raised on behalf of the non applicant. Coming to the merits of the finding that the document is duly stamped, all that the learned Civil Judge has said is as follows:

Section 2(15) of the Stamp Act, as amended by a local amendment, reads as follows:

2(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and also includes--

(i) a final order for effecting a partition passed by any revenue authority or any civil Court;

(ii) an award by an arbitrator directing a partition; and

(iii) when any partition is effected without executing any such instrument, any instrument or instrument signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.

It is evident from clause (iii) that a memorandum of partition also comes within the definition of an instrument of partition for the purposes of stamp duty chargeable under the Indian Stamp Act. The fact that an instrument may not require registration under the Indian Registration Act does not exempt it from requiring a stamp duty. The learned Civil Judge, therefore, erred in his reasoning that a memorandum of partition does not require stamp duty.

However, the original instrument was written on stamp paper. If the defendant''s contention is to prevail, he has to show that the instrument should have been written on stamp papers worth more than Rs. 5. The learned counsel for the applicant could not specify the amount of stamp duty that can be demanded on this particular instrument under Article 45 of Schedule (1-A) read with Article 15 of Schedule 1-A of the Stamp Act as applicable in the State of Madhya Pradesh. The instrument in question does not give any valuation of the different shares falling to the parties to the partition. Hence, section 27 of the Stamp Act, as incorporated by local amendment in the State of Madhya Pradesh, comes into play. It runs as follows:

27. Facts affecting duty to be set forth in instrument --

(1) The consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instruments relating to immovable property chargeable with an ad valorem duty on the market value of the property, and not on the value set forth, the instrument shall fully and truly set forth, the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.

Now, if the executants of an instrument disobey the provisions of section 27, they render themselves liable to be prosecuted u/s 64(a) of the Stamp Act which runs as follows:

64. Penalty for omission to comply with provisions of section 27.-- Any person who, with intent to defraud the Government,

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act.

There is, however, nothing in the Stamp Act to show that such an instrument is rendered inadmissible in evidence. In Himalaya House Co. Ltd., Bombay Vs. The

Chief Controlling Revenue Authority, , it has been held as follows:

But a failure to comply with the requirements of that section is merely punishable u/s 64 of the Stamp Act. No provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable.

It is, therefore, clear that the instrument in question cannot be regarded as deficiently stamped.

In the result, I dismiss the revision petition. In particular circumstances of the case there shall be no order as to costs.

