

(2016) 08 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19087 of 2015

Manoj Kumar Mishra

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Bihar Stamp (Amendment) Act, 1991 — Section 47 A
Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Section 17, 27, 3

Citation : (2017) 169 AIC 374 : (2016) AIR(Patna) 155 : (2016) 3 PLJR 1019

Hon'ble Judges : Mr. Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Binod Kumar Singh, Advocate, for the Petitioner; Kumari Amrita, G.P.3, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Mungeshwar Sahoo, J.- I have heard the learned counsel, Mr. Binod Kumar Singh on behalf of the petitioner and Ms. Kumari Amrita, G.P.3 on behalf of State of Bihar.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 04.09.2015 passed by learned Sub Judge VII, Vaishali at Hajipur in Execution Case No.6 of 2011 whereby the petitioner was directed to purchase the stamp papers and deposit the fees as reported by Sub Registrar, Vaishali at Hajipur by his letter No.532 dated 24.06.2015.

3. It appears that the plaintiff-petitioner-decree holder filed Title Suit No.592 of 2004 for specific performance of contract dated 26.12.2003 executed by the judgment debtor. The suit was decreed. Thereafter, execution case was filed by the present decree holder for execution and registration of sale deed by the judgment debtor. The judgment debtor failed to execute and register the sale deed. A stay application was filed by the judgment debtor praying for stay of

execution case in First Appeal No.162 of 2011. This Court only stayed the delivery of possession but did not stay the execution and registration of the sale deed. The Court below thereafter called for a report from the Sub Registrar regarding the stamp duty and registration fees etc. which the plaintiff-petitioner is required to deposit for registration of the sale deed. By the letter No.532 dated 24.06.2015, the Sub Registrar informed the Executing Court about the registration and court fee chargeable with other charges. On the basis of this report, the Court below directed the petitioner to deposit the fees and to purchase the stamp.

4. The grievance of the petitioner is that there was agreement between the parties for purchasing the property measuring 5? kathas only and pursuant to the judgment, the petitioner has already deposited Rs.8 lacs but the Sub Registrar considered the present market value of the suit land and fixed the same at Rs.37,12,500.

5. The learned counsel, Mr. Singh submitted that according to the Division Bench decision of this Court in Brij Nandan Singh v. The State of Bihar & Ors., 2006(3) PLJR 538, it would not be right to strain the person, liable to pay the stamp duty, by calling upon him to pay on the basis of the current market value of the property, for circumstances beyond his control. In the present case, if the vendor had not resiled from the agreement and had accepted the balance of the consideration money and executed the instrument of conveyance as per the agreement for sale, the petitioner would have paid the court fee as on the date of presentation of the document, way back in the year 2004. According to the learned counsel, the petitioner is liable to pay the stamp duty on the basis of the valuation mentioned in the agreement between the parties and this view has been taken by the Division Bench. On this ground, the learned counsel submitted that the orders impugned be set aside and the authorities may be directed to register the document on the valuation mentioned in the agreement and not the present market value.

6. On the other hand, the learned G.P.3 for the State submitted that in fact, under Section 47-A of the Stamp Act the petitioner is liable to pay the stamp duty on the present market value of the property and for considering the stamp duty and registration fee, the valuation mentioned in the agreement is irrelevant. A counter affidavit has been filed in detail.

7. In view of the contentions of the parties in this present case, the point which is to be decided is "whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into agreement to sale".

8. Section 17 of the Stamp Act reads as follows:

"17.Instruments executed in India-All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution."

9. The term "executed" and "execution" has been defined under Section 2(12) of the Stamp Act which means "signed" and "signature".

10. Section 3 of the Indian Stamp Act is the charging Section. This charging Section has to be read along with Section 17 of the Stamp Act.

11. Section 27 of the Act reads as follows:

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

12. Now, from a composite reading of Sections 3, 17 and 27, it becomes clear that the valuation given in an instrument is not the conclusive valuation and the registering authority is not bound by the valuation mentioned in the deed sought to be registered.

13. The registering authority if finds that the instrument is undervalued then according to Section 47-A of the Bihar Amendment Act, the instrument can be sent to Collector for determination of the correct market value. Therefore, if all these Sections are read together then there will be irresistible conclusion that the registering authority has to ascertain the correct valuation given in the instrument regarding market value of the property at the time of the sale because all these instruments chargeable with duty and executed by person in India shall be stamped before or at the time of execution. In view of the definition of "signed" and "signature", the document which is sought to be registered has to be signed by both the parties. Till then the document does not become a document fit for registration. The document should be complete in all respect i.e. both the parties should have signed it with regard to the transfer of the immovable property. It is irrelevant whether the matter had gone in for litigation or not.

14. In the present case at our hand, the sale deed was never executed i.e. it was never signed either prior to the filing of the suit for specific performance or after that. It is settled principles of law that a taxing statute has to be construed as it is. All the contingencies that the matter was under litigation and the value of the property by that time became high cannot be taken into account for interpreting the provisions of a taxing statute. A taxing statute has to be construed strictly and for construing the taxing statute, the contention of the petitioner herein that it took long time to get a decree for specific performance cannot weigh with the court. Therefore, simply because the matter has been in the litigation for the long time cannot be the ground for accepting the market value of the instrument when the agreement to sale was entered.

15. The learned counsel, Mr. Singh heavily relied upon Division Bench decision of this Court 2006(3) PLJR 538(Brij Nandan Singh v. The State of Bihar & Ors.). The Division Bench held that the Bihar Amendment Act, 1988 is not retrospective and

further held that the original Section 47-A obliged the registering authorities to register a document and then refer the matter to the Collector for determination of the market value of the property and the duty payable thereon in the circumstances mentioned in Section 47-A. This provision has been partially amended by Amendment Act No.8 of 1991 and the expression "after registering" and its replacement by the words "at the time of admitting" appears to mean that the registering authority can raise the question of determination of the market value of such property and the proper stamp duty payable thereon before registering the instrument. It has been further held that if the vendor had not resiled from the agreement and had accepted the balance consideration money and executed the instrument, as per the agreement for sale, the petitioner would have paid the court fee as on the date of presentation of the document way back in 1987. He would not have been forced to pay at the higher rate because the other party to the agreement did not fulfil his obligation under it. He should also not be required to pay at the higher rate because of the tardy pace at which civil litigation in India proceed.

16. So far this Division Bench decision is concerned, I may point out here that the Hon^{ble} Supreme Court in the case of State of Rajasthan and others v. Khandaka Jain Jewellers, (2007)¹⁴ Supreme Court Cases 339 has already decided the question "whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into agreement to sale" and in answer to this question considering Section 2(12), 3, 17, 27 and 47-A of the Rajasthan Amendment Stamp Act which is in para materia with Bihar Amendment Stamp Act held that a taxing statute has to be construed strictly as it is and if it is construed strictly then the plea that the instrument took a long time to get a decree for execution against the vendor that consideration cannot weigh with the court for interpreting the provisions of the taxing statutes. Therefore, simply because the matter has been in the litigation for a long time that cannot be a consideration to accept the market value of the instrument which the agreement to sale was entered. The valuation is to be seen at the time when registration is made. It appears that in the decision before the Supreme Court also there was two agreement of sale of the year 1983. When the terms of the agreements were not complied with by the vendor, the vendee filed suits for specific performance of contract. Both the suits were decreed in 1994 and the defendant-judgment debtor was directed to execute the sale deed. Then execution cases were filed wherein the decree holder was directed to submit the stamp papers for execution of two sale deeds. Accordingly, Rs.14,100 in one case and Rs.5,000 in another case were filed for execution of sale deeds in respect of the properties purchased for Rs.1,41,000 and Rs.50,000 respectively. Sale deeds were executed by the executing court and it was sent to the Sub Registrar for registration. In view of Section 47-A of Stamp Act these two sale deeds were sent to Collector for determining the market value. In one case, the value was assessed at Rs.5,60,000 and in the other case at Rs.3,87,580 and the deficit stamp duty was demanded. Writ

applications were filed which was allowed by the High Court in 1998. The L.P.A. filed before Division Bench was also dismissed. Before the Supreme Court, all these arguments which are being raised before this Court in this writ were raised and the Supreme Court considering all the provisions and decisions held that the learned Single Judge of Andhra Pradesh High Court felt persuaded on account of 30 years long litigation and therefore, declined to send the papers back to the Collector for valuation at the market value. With great respect, the view taken by the learned Single Judge is against the principles of interpretation of taxing statutes. Accordingly, the judgment of learned Single Judge as well as Division Bench was set aside and the Supreme Court directed that the Collector shall determine the valuation of the instrument on the basis of the market value of the property at the date when the document was tendered for registration and the respondent shall pay the stamp duty charges.

17. In view of the decision of the Supreme Court, the Division Bench decision of this Court Brij Nandan Singh (*supra*) is no longer a good law as has been impliedly overruled.

18. In the result, in my opinion, the learned Court below has rightly directed the petitioner to pay the stamp duty at the present market value of the property for registering the document. In such view of the matter, no case for interference in supervisory jurisdiction under Article 227 of the Constitution of India is made out.

19. Accordingly, this writ application is dismissed.