(2004) 07 PAT CK 0094

In the Patna High Court

Case No : CWJC No. 12417 of 2003

Md. Bashiruddin and Another APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : AIR 2004 Patna 131 : (2004) 2 BLJR 1461 : (2004) 3 PLJR 629

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Raghib Ahsan, Azhar Alam and Najeeb Ahmad, for the Appellant; Ramesh Kumar Jha, JC to SC VIII, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to register the sale deed on payment of the stamp duty, on the valuation as mentioned in the agreement to sell.

2. Shorn of unnecessary details, facts giving rise to the present application are that an agreement to sell dated 12.6.1985 was entered between the petitioners and their vendors namely, Syed Muzarfar Hussain and Md. Zubair in respect of the land appertaining to plot Nos. 552 and 553 having holding No. 37 measuring 8 katha 1 dhoor situated in Mauja Madhubani in the district of Purnea for a consideration of Rs. 24,151/-. Petitioners at the time of agreement paid a sum of Rs. 2000/- as an earnest money and the balance consideration money was to be paid by 30th of September, 1985 and on payment thereof, the vendor agreed to execute and register the sale deed, petitioners'' vendor failed to execute and register the sale deed inspite of the petitioners readiness and willingness to pay the consideration money due but the vendor declined to execute the sale deed. Left with no option, petitioners filed title suit No. 19 of 1986 for a decree for specific performance of contract. The competent Civil Court, by judgment and

decree dated 17.6.1991, decreed the petitioners'' suit and directed the petitioners to deposit the balance of the consideration money by 17th of July, 1991 and the vendors in turn were directed to execute and register the sale deed by 13th of August, 1991 failing which the petitioners were entitled to get the sale deed executed through the process of the Court. Petitioners deposited the balance consideration money as directed by the Civil Court but their vendors did not execute the sale deed and accordingly, the petitioners put the decree in execution which was registered as execution case No. 1 of 1993.

3. It seems that during pendency of the execution case, the Executing Court called for a report from the Sub Registrar, Pumea in regard to the valuation of the land for the purpose of payment of stamp duty for registration. The Sub Registrar by its communication dated 2.5.2003, informed to the Executing Court that prevailing valuation of the land shall be applicable for the purpose of registration. The report submitted by the Sub Registrar was placed for consideration before the Executing Court and by order dated 26.5.2003, the Executing Court observed that the Sub Registrar is entitled to charge the stamp duty at the rate fixed by the Government and the petitioners'' plea to charge the stamp duty on the valuation given in the agreement to sell was rejected. Petitioners, thereafter, filed an application for review of the said order but the same was also rejected by the Executing Court by order dated 26.6.2003.

4. Mr. Raghib Ahsan, appearing on behalf of the petitioners raises a very short point. He submits that the sale deed is to be presented for registration in pursuance of the decree passed by the Civil Court in relation to an agreement entered between them prior to coming into force of Section 47A of the Indian Stamp Act, hereinafter referred to as ''the Act'' and as such, the sale deed is to be registered on the valuation mentioned in the agreement to sell.

5. JC to SC VIII, however, appearing on behalf of the respondents, submits that the valuation of the land has to be determined on the date the same is presented for registration.

6. Having considered the rival submission, I find substance in the contention of Mr. Raghib Ahsan. It is common ground that Section 47A of the Act was inserted after the agreement to sell was entered. Here, the sale deed is to be executed on the basis of the decree passed by the Civil Court. In my opinion, Section 47A of the Act shall not be applicable to the document presented for registration in pursuance of a decree for specific performance of the contract executed prior to coming into force of Section 47A of the Act.

7. In that view of the matter, the Executing Court is obliged to present the document for registration on the valuation given in the sale deed for which the decree was passed and the Sub Registrar is obliged to accept the sale deed for registration on that valuation and register the document subject to the fulfilment of other conditions. The view which I have taken finds support from a judgment of this Court in this case of Baiju Singh v. The State of Bihar and Ors., 2004 (2)

PLJR 743 in which I have held-as follows :-- "Having considered the rival submission, I find substance in the submission of Mr. Sharma. In the present case, the agreement to sell was entered between the petitioner and his vendor on 12.5.1974. Further the suit for specific performance was filed in the year 1977 which was dismissed on 26.4.1980, It is on appeal that this Court, by its judgment and decree dated 31st January, 1995, decreed the suit and ordered the vendor to execute the sale deed on payment of balance consideration money. Thus, the agreement to sell was entered between the petitioner and his vendor prior to introduction, of Section 47A of the Stamp Act as amended by Bihar Amendment Act 15 of 1988. In view of the decision of this Court in the case of Smt. Shanti Devi Prasad (supra), Section 47A of the Stamp Act shall have no application in respect of document presented for registration pursuant to a decree for specific performance of an agreement executed prior to coming into force of he inserted provision of the Act.

8. Accordingly, the executing Court is directed to present the document for registration showing the same valuation as was given in the agreement to sell and the Sub Registrar is directed to accept and register the same on that valuation.

9. In the result, the application is allowed with the direction aforesaid.

