

(1981) 10 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 2266 of 1979

Mohammed Nachiar

APPELLANT

Vs

The District Registrar, Chidambaram

RESPONDENT

Date of Decision : 20-10-1981

Acts Referred:

Stamp Act, 1899 — Section 31, 33, 33(1), 62

Citation : AIR 1983 Mad 19 : (1982) 95 LW 208

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : T.V. Balakrishnan, for the Appellant; C. Chinnaswami, for Govt. Pleader, for the Respondent

Judgement

Sathiadev, J.—The petitioner herein presented a document of the year 1978 to the Sub-Registrar, Portonovo, claiming that she was the owner of certain properties in Sirkali and Chidambaram Taluks and in 1965 she had created a wakf dedicating all the properties for charitable purpose and in the year 1978, she executed the document in question providing for appointment of mutavalli to succeed her and the same was presented to the Sub-Registrar on 1-6-1978. Thereafter, the Sub-Registrar referred the document to the District Registrar, Chidambaram, who has been invested with the powers of the Collector under the Indian Stamp Act (II of 1899) (hereinafter referred to as 'the Act') and that he had to take a decision as to whether the document is a settlement requiring stamp duty under Article 58 of the Act or the Act or otherwise. Since the document was presented before the Sub-Registrar, Portonovo, a Public Officer, for registering the instrument, the Sub-Registrar has impounded the document u/s. 33(1) of the Act and sought for guidance of the District Registrar u/s. 38(2) of the Act. It was considered by the District Registrar, being the respondent herein, that the instrument calls for payment of deficit duty and penalty u/s. 40(1)(b) of the Act, and therefore, the petitioner was called upon to pay the deficit duty of Rs. 1,889/-. It is at that juncture, the petitioner sought for withdrawal of the document, which was refused. Hence, the present writ petition by the petitioner.

2. Mr. T. V. Balakrishnan, learned counsel for the petitioner, would at the outset state that, when the executant of the document has the right to seek for withdrawal, there being no specific provision made either in the Act or in the Rules framed thereunder, the public authority is bound to return the document and it is not open to him to insist on payment of stamp duty and compel him to have the document registered. In essence, his contention is, no person, who is not desirous of having the document registered, can be compelled by the registering authority to complete the registration, and if at all stamp duty is to be paid, it will be payable only if the document is to be registered. When the petitioner had already expressed her desire not to have the document registered, the Sub-Registrar is duty bound to return the document. In support of this contention, he relied upon not only the provisions of the Registration Act, but also R. 29 of the Rules framed under the Act, which provides that if the registration fee is not paid in respect of an impugned document which has been received from the Collector, then the presentment would not be entitled to have the registration completed as provided under R.29 (4) of the Rules. Though these rules do not provide for the return of the document, as an analogy he referred to the Rules framed by the Uttar Pradesh Government. the present case is not concerned with payment of registration fees, but the duty payable under the Act and therefore, the need to rely upon any of the provisions of the Registration Act or the Rules framed thereunder, does not exist and it is too premature to deal with the situation which may develop under the provisions of the said Act.

3. When the present claim is confined only to the payment of stamp duty, and after the document is impounded, whether the petitioner can ask for the return of the document is the main point to be considered. The respondent has sworn to in the counter-affidavit that the Sub-Registrar has impounded the document. This claim was refuted by the petitioner, which resulted in the file being produced into Court and they show that the Sub-Registrar has (matter in vernacular omitted - Ed.) impounded the document, and the document has then been sent to the respondent. Therefore, when neither the provisions of the Act nor the rules framed thereunder envisage return of the impounded document without payment of the stamp duty whether by relying upon Section 31 of the Act, the petitioner can seek for return of the document alone has to be looked into. As soon as the document was received, while forwarding it to the respondent, the statement accompanying the document itself mentions in column 3 that it has been impounded on 23-2-1979.

4. Mr. Balakrishnan refers to the decision in Govt. of U. P. v. Mohd. Amir, AIR 1962 SC 787 which dealt with a situation which arose u/s. 31 of the Act. Therein it was held that if a document is presented to the Collector for adjudication as to the proper stamp duty, then even in respect of instruments which have been executed, the Collector can only determine the duty and he cannot treat it as a complete document demanding compulsive payment of stamp duty. This decision could be of no assistance to the petitioner, since the petitioner herein has presented the document not for adjudication u/s. 31 of the Act, but for

registration treating it as an executed document and the escaped stamp duty had come to the knowledge of the Public Officer, before whom it was presented. The Sub Registrar, Portonovo, is a Public Officer who could come within the scope of S. 33(1)(a) of the Act. Therefore, when a Public Officer, on receipt of a document, particularly when it is for registration, is of the opinion that the duty paid is insufficient and impounds the document, thereafter, unless the deficit stamp duty is paid, it will not be open to the petitioner to seek for the return of the document as if it is not an executed document and that the petitioner has only asked for opinion to be given as to what would be the required stamp duty payable on the instrument. Though, Mr. Balakrishnan would persuasively plead that the petitioner, is a lady aged more than 85 years, and that there was no need for her to execute a settlement as such, and even the terms of the document do not make it a settlement deed, and that she is not possessed of sufficient funds to pay stamp duty ; once an executed document is presented to a registering authority and he proceeds to impound the document, there being no provision made for return of such an impounded document without collection of stamp duty, which has already visited upon it, and furthermore, there being provision made u/s. 31 of the Act, for adjudication of stamp duty under different circumstances, it has to be held that once a document is impounded, the executant of the document is bound to pay the stamp duty, whether he or she desires further to register the document or not.

5. It is not the registration of the document which is a relevant factor to be taken into account for payment of stamp duty. Even after payment of stamp duty, a document may not be registered and parties may not be desirous of registering it. Hence, the incidence on the liability to pay stamp duty having already arisen by the document being executed and impounded, it cannot be avoided once it is a document which falls within the scope of Chap. IV of the Act.

6. The Government Pleader relied upon Section 62 of the Act to contend that an executant of a document with deficit duty can be prosecuted. It goes to show that as soon as a document is executed, the liability to pay proper stamp duty thereon has already occasioned.

7. In the instant case, when the document has been admittedly executed and also presented for registration it will not be open to the petitioner to claim as if the document has been presented for adjudication or even otherwise she can demand return of the document which belongs to her, without paying stamp duty. Under the provisions of the Act, any person executing an instrument bearing deficit duty is liable to be prosecuted u/s. 62 of the Act and hence, after a document is impounded and the procedure u/s. 33 having been put into force, the liability to pay stamp duty cannot be avoided by an executant of an instrument under the provisions of the Act. It is in this view, this writ petition is liable to be dismissed.

8. In the counter -affidavit it is stated that the petitioner ought to have filed a revision petition to the Board of Revenue u/s. 56(1) of the Act. Mr. Balakrishnan

would state that the file in this case discloses that the document has already been sent to the Board of Revenue for securing the necessary opinion, but it does not preclude the petitioner to avail of the remedy which is available to her under the Act. Therefore, in the event of the petitioner filing any revision to the Board of Revenue or the successor authority as the case may be, the time taken during the pendency of the writ petition deserves to be excluded as proceedings have been initiated bona fide.

9. Mr. Balakrishnan attempted to place the necessary materials to contend that the document can in no sense be treated as a settlement deed. It is premature at this stage for this Court to go into the nature or the character of the document, because after the revision is disposed of by the Board of Revenue or the successor authority, in the context of the Board of Revenue having been dissolved, a right to ask for a reference to the High Court, is available u/s. 57 of the Act, and then alone the need may arise for interpreting the document. When such a course is prescribed under the Act, the petitioner cannot be heard to contend regarding the nature or the character of the document, and, therefore, this aspect is not dealt with in this order. In this view, for the reasons above stated, the writ petition is dismissed. No costs.

10. Petition dismissed.