(2006) 08 MP CK 0016

In the Madhya Pradesh High Court

Mohd. Nazeer APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Constitution of India, 1950 — Article 227, 23, 25
Stamp Act, 1899 — Section 35, 38, 40, 47

Citation : AIR 2007 MP 6 : (2007) 1 MPHT 278

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.—This petition, under Article 227 of the Constitution of India, is directed against the order dated 23.3.2004 passed in Civil Suit No. 8-A/2004 by the Second Civil Judge, Class II, Chhindwara, whereby he has impounded the Instrument of agreement for sale dated 9.6.1995 treating it as conveyance and directed the petitioner to pay stamp duty of Rs. 13,150/- together with ten times penalty i.e. Rs. 1,31,500/-; total amounting Rs. 1,44,155/-.

2. Petitioner is plaintiff in the suit for specific performance of contract. His case before the trial Court is that on 9.6.1995 he entered into an agreement with Bahabuddin for sale of the land bearing Khasra No. 487, measuring 1250 sq.ft. situated at Mouza Chhindwara. The petitioner paid sale consideration of Rs. 15,000/- and the sale deed was to be executed on any date when he desired. Document No. 1 dated 9.6.1995 annexed to this petition is the agreement for sale between the petitioner and Bahabuddin. It appears that later Bahabuddin avoided executing the sale deed as agreed upon. Petitioner, therefore, filed the present suit against him wherein he pleaded that the possession of suit land was delivered to him at the time of agreement. During the pendency of suit Bahabuddin died and hence his legal representatives, respondent Nos. 2 to 3H, have been impleaded as defendants. Petitioner, in his statement recorded in the trial Court, reiterated his claim that possession of the suit land was delivered to

him on the execution of the agreement for sale.

3. The respondent Nos. 2 to 3H raised an objection that since the petitioner, in Paragraph 3 of the plaint, has stated that the possession of the suit land was delivered to him at the time of agreement and that he is in possession of the same, the instrument of agreement for sale is conveyance within the meaning of Article 23 of the Indian Stamp Act, 1899 as amended in Madhya Pradesh and as such it cannot be admitted in evidence unless it is impounded and proper stamp duty is paid.

4. At the time of evidence, the petitioner by filing an application dated 1.11.2003 requested the Court to forward the instrument of agreement for sale to the Collector for its examination by him and payment of stamp duty. The respondents objected this prayer of the petitioner. The trial Court called the report from the Collector regarding the valuation of the suit land and stamp payable on the instrument of agreement for sale. The Collector, in his report dated 17.11.2003, stated that in the year 1995-96 the market value of the suit land was Rs. 1.75 lac and the stamp duty payable on it was Rs. 13,175/-. The trial Court relying upon the said report has, by the impugned order, impounded the instrument of agreement for sale treating it as conveyance and directed the petitioner to pay a stamp duty together with ten times penalty as mentioned above.

5. The learned Counsel for the petitioner has argued that as there is nothing in the instrument of agreement for sale regarding delivery of possession, the trial Court committed an illegality in treating it as conveyance. He also argued that while considering the question of stamp duty payable on the instrument, the instrument alone has to be seen because the duty is on the instrument and not on what the parties intend to do. He placed reliance upon the decision of this Court rendered in the case of Goel Industries and Anr. v. Om Prakash Mittal 1993 MPLJ 137. The learned Counsel for the respondent Nos. 2 to 3H, on the other hand, defended the validity of the impugned order and relied upon the decision of the Supreme Court in Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others, .

6. Article 23 of Schedule 1-A to the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") as amended in Madhya Pradesh reads as under:

23. Conveyance, Seven and half per- not being a transfer cent, of such market charged or exempted value: Provided that if under (No. 62) irre the total amount of spective of the mar- the duty payable ket value of the prop- amount of the duty erty which is the payable is not a mul subject-matter of tiple of fifty paise, it conveyance. shall be rounded off to the nearest rupee, half of a rupee or over being counted as one rupee and less than half of a rupee being disregarded. Explanation.? For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of such agreement without

executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provision of Section 47A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance, subject to a mihimum of Rs. 10.

7. This provision is almost identical in terms to Article 25 of the Bombay Stamp Act, 1958 which was construed by the Supreme Court in Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others, , wherein in Para 8 of the order it is observed as follows:

8. The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are if there is an agreement to sell Immovable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof such an agreement to sell is deemed to be a "conveyance". In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to (be) a conveyance shall be adjusted towards the total duty leviable on the conveyance.

8. It is true that the instrument of agreement for sale does not recite that possession has been delivered or will be delivered after its execution to the petitioner. It is also true that the normal rule is that the instrument alone should be-construed for deciding the amount of duty payable on it but there are exceptions to this rule. For example in Somaiya Organics (India) Ltd. Vs. Board of Revenue, U.P., where a sale was, on the face of it, free from encumbrance but declarations of the parties made alter the execution of the sale deed expressed that this recital was wrong and that the sale was subject to the charge created by the vendor in favour of a bank, the Court held that the amount of the charge became a part of the consideration and the duty was payable on the apparent sale consideration plus the amount of the charge. The explanation in Article 23 of the Act which widens the definition of conveyance does not require for its application that the agreement itself must recite that possession has been delivered or will be delivered later. As the petitioner not only in the plaint but also in his statement recorded in the trial Court has clearly admitted that possession of the suit land was delivered to him at the time of execution of the agreement for sale, It has to be held that the instrument satisfies the requirement of the explanation in Article 23 of the Act land is deemed to be a conveyance for the purpose of stamp duty. For these reasons, the trial Court in

my considered opinion did not commit any illegality in treating the instrument of agreement for sale as conveyance and demanding stamp duty with penalty from the petitioner u/s 35(2) of the Act before it could be admitted in evidence.

9. If the petitioner decides not to pay the stamp duty and penalty as adjudicated by the trial Court, the Court has to proceed u/s 38 of the Act. The trial Court will have to send the original instrument to the Collector who in turn will proceed u/s 40 of the Act. After the Collector has dealt with the instrument u/s 40(1)(2) of the Act he will return the same to the trial Court. As the Collector has the power to finally determine the question

