(2007) 05 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal 2875 of 2005

Naib Tehsildar-cum-Joint Registrar, Chamkaur Sahib and another	APPELLANT
Vs	
Parbhakar Cold Storage, Bela, Tehsil and Distt.Ropar and others	RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Citation : (2008) 2 LLR 634 : (2007) 3 PLR 426 : (2007) 4 RCR(Civil) 259

Hon'ble Judges : Satish Kumar Mittal, J

Advocate : Mr. Lekh Raj Sharma, Addl. A.G. Punjab. Mr. Vivek Suri, Advocate., Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.—State of Punjab and its officers have filed this Regular Second Appeal against the judgment and decree passed by both the Courts below, whereby the suit of the plaintiffs for permanent injunction restraining Naib TehsildarcumJoint Registrar from recovering an amount of Rs. 1,22,000/ on account of stamp duty regarding registration of mortgage deed Nos. 1145 and 1146 has been decreed.

2. The brief facts of the case are that in this case, plaintiffrespondent No. 1 obtained some loan from the bank. To secure that loan, plaintiff No. 1 executed a mortgage deed in favour of the bank. Respondent Nos. 2 to 6 stood as guarantors to the said loan. They also executed the mortgage deed Nos. 1145 and 1146 in favour of the bank as guarantors. However, no loan was taken by these respondents.

3. During the course of arguments, it was not disputed that the aforesaid amount of Rs. 1,22,000/ was claimed as stamp duty and registration fee only with regard to the mortgage deeds (Ex. P2 and Ex. P3) executed by respondents No. 2 to 6 in favour of the bank as guarantors.

4. Both the Courts below have come to the conclusion on the basis of the

admission made by DW1 Balwinder Singh that the guarantor is not required to pay the stamp duty. In this regard, the trial Court has observed as under :

"....This ambiguity in the document is further removed from the evidence of PW1 Sh. C.S. Dhaliwal. It is admitted case of the defendants that no stamp duty or registration fee is chargeable on mortgage deed executed by a guarantor. Once, it is proved on record that plaintiffs No. 2 to 6 executed mortgage deeds Ex. P2 and Ex. P3 only as guarantors, the defendants have no right to recover any stamp duty or registration fee regarding mortgage deeds Ex P2 and P3. Therefore, the demand raised by the defendant No. 1 for recovery of Rs. 1,22,000/ on the basis of stamp fee and registration fee on the said mortgage deeds is illegal and against law. Even no notice has been served upon them before raising demand of Rs. 1,22,000/."

5. In spite of the aforesaid fact, in this case, after registration of the aforesaid mortgage deeds, the Naib TehsildarcumJoint Registrar raised the aforesaid demand on account of deficiency in the stamp duty and registration fee without following the procedure laid down under Section 47A of the Indian Stamps Act, 1899 (hereinafter referred to as the Act). Section 47A was inserted in the Act by the State Amendment. The said Section provides the procedure to deal with undervalued instruments got registered. Section 47A of the Act provides as under :

"47A. Instruments undervalued how to be dealt with. (1) If the registering officer, appointed under the Registration Act, 1908 (Central Act XIV of 1908), while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector, for determination of the value of the property or the consideration as the case may be and the proper duty payable thereon.

(2) On receipt of reference under subsection (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may, suo motu, or on the receipt of a reference from the InspectorGeneral of Registration or the Registrar of a District, appointed under the Registration Act, 1908 (Central Act XIV of 1908), in whose jurisdiction the property or any portion therefore (thereof ?)which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorised by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the

property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if, after such examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under subsection (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, would be payable by the person liable to pay the duty.

(4) Any person aggrieved by an order of the Collector under subsection (2) or subsection (3) may, within thirty days from the date of that order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

6. Subsection (2) of Section 47A of the Act provides that on receipt of such reference, the Collector after giving reasonable opportunity of hearing to the parties and holding an enquiry, shall determine the market value or consideration and the stamp duty payable thereon. The Collector has also been given suo motu power to call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subjectmatter of such instrument and the duty payable thereon and if, after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in subsection (2). It is also well settled that after registration of a document by the SubRegistrar, the State authority is not competent to recover the deficient stamp as has been held by the Division Bench of this Court in M/s Ravindra Pharmaceutical Pvt. Ltd. v. The State of Haryana and others, 1994(2) RRR 332 (P&H) : (19942)107 PLR 614 and Rajinder Kumar Mittal and another v. State of Punjab and another, 1995(2) RRR 685 (P&H) : (19952)110 PLR 411.

7. In this case also, the procedure prescribed under Section 47A of the Act has not been followed and the Registering Authority after registration of instrument itself had created the demand of Rs. 1,22,000/ on the basis of the stamp duty and registration fee on the mortgage deeds (Ex. P2 and Ex. P3) which is not permissible as held in the judgments referred to in preceding paragraph. Therefore, in my opinion, both the courts below have rightly granted injunction in favour of the plaintiffs for recovery of the said amount. Counsel for the appellants could not point out any illegality or impropriety in the findings recorded by both the Courts below.

No substantial question of law has been raised or is involved in this appeal.

