(2013) 05 AHC CK 0256

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3933 of 2012

Om Prakash Umar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Stamp Act, 1899 — Section 17, 2(14)

Citation : (2013) 05 AHC CK 0256

Hon'ble Judges : PANKAJ MITHAL, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.

Heard learned counsel for the parties.

Pleadings have been exchanged and, therefore, the writ petition is being finally decided.

A document before the Notary was executed on 14.12.2009 by Mahadeo and others by which they withdrew their rights on the abadi land measuring 80ft x 70 ft and transferred them in favour of the petitioner for a consideration of Rs.50,000/ only. The aforesaid document was written on a stamp paper of Rs.150/ only. The Additional Commissioner (Stamp) vide order dated 18.4.2011 held the above document to be an instrument of conveyance and assessing its market value determined the deficiency in stamp duty and imposed a penalty also. The appellate authority has affirmed the aforesaid order vide its order dated 25.11.2011.

The above two order dated 25.11.2011 and 18.4.2011 are under challenge in this writ petition.

The submission of learned counsel for the petitioner is that the aforesaid document is simply a compromise. It is not registered and, therefore, does not purports to transfer any rights in favour of the petitioner. Therefore, he cannot be made to pay stamp duty on it.

Section 17 of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") provides that all instruments chargeable with duty and executed by any person in the India shall be stamped before or at the time of execution. Therefore, stamp duty on an instrument is payable at the time of execution of the instrument. The moment an instrument is executed stamp duty is payable on it. The validity of its execution or its nonregistration has nothing to do with its execution and consequently the payment of stamp duty.

An instrument as defined under Section 2(14) of the Act includes every document and record by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. The above document executed before the Notary, with whatever name it may be called, creates rights in the land in favour of the petitioners, after extinguishing those of the Mahadeo and others therein. It is, therefore, undoubtedly, an instrument as defined under Section 2(14) of the Act.

In view of the aforesaid facts and circumstances, as the aforesaid document dated 14.12.2009 is an ''instrument'' within the meaning of Section 2(14) of the Act and its execution is not denied, it is chargeable to stamp duty. The validity of the transfer made in favour of the petitioner is not a relevant criteria so as to exempt it for payment of stamp duty as it would be antithesis of Section 17 read with Section and 2(14) of the Act.

In view of the aforesaid facts and circumstances, in my opinion, the authorities below have not erred in law in holding the document dated 14.12.2009 as chargeable to stamp duty and to direct for realizing stamp duty on the market value of the property purported to have been transferred therein.

The writ petition is devoid of merit and is dismissed.

