
(1975) 01 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 960 of 1973

P. Appa Rao

APPELLANT

Vs

Additional District Magistrate and Others

RESPONDENT

Date of Decision : 30-01-1975

Acts Referred:

Orissa Stamp Rules, 1952 — Rule 30
Stamp Act, 1899 — Section 29, 47A(3)

Citation : AIR 1975 Ori 209

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : Y.S.N. Murty, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner before us was one of the vendors of a sale deed registered on 30th of April, 1970, in favour of one Smt. Sunakari Narayanamme, wife of Sunkari Satyanarayana of Nawarangpur in the District of Koraput. Under the conveyance, a homestead plot within the said town was transferred for a consideration of Rs. 20,000/-. Upon a reference made u/s 47A of the Indian Stamp Act (as amended in Orissa) (hereinafter referred to as "the Act") by the registering authority, the Additional District Magistrate of Koraput registered a miscellaneous proceeding bearing No. M. C. 75 of 1970. By order dated 23-12-1972, he came to find that the proper valuation of the property conveyed would be Rs. 58,364/- in place of Rs. 20,000/- which was disclosed as consideration for the sale. He assessed the stamp duty payable on the higher amount and required the petitioner to pay the difference of Rs. 2,965.05 vide Annexure-1. A notice was issued under Annexure-2 which the petitioner received on 23-1-1973. In paragraph 3 of the said notice it was specified as follows:--

"If you are dissatisfied with my order you may present an appeal to the District Judge within 30 days from the date of receipt by you of the said order."

On 21-2-1973, the petitioner preferred an appeal to the District Judge which was registered as C, M. A. 2/1973. Along with the memorandum of appeal the petitioner presented an application for condonation of delay. The learned District Judge, by his judgment, dated 4th July, 1973 (Annexure-4) came to hold that the excess stamp duty was not payable in law but found that the appeal was barred by limitation and refused to exercise the discretion vested in him in the matter of condonation of limitation. Ultimately the appeal was, therefore, dismissed on the ground that it was barred by time. This writ application is directed against the said appellate order and the petitioner has asked for quashing of the demand as affirmed by the said decision by issue of a writ of certiorari.

2. Three questions arise for decision on the contentions raised at the Bar.

1. Is the petitioner the appropriate person liable to be proceeded against u/s 47-A of the Indian Stamp Act as amended in Orissa ?

2. Has there been any delay in presentation of the appeal ?

3. Is the learned District Judge right in coming to his conclusion that in the facts of this case the demand was not justified ?

3. Question No. 1. Admittedly the petitioner was one of the vendors in respect of the disputed sale deed. Mr. Murty for the petitioner places reliance on the provisions of Section 29(c) of the Act in support of his contention that the vendor has no liability to pay the stamp duty. As far as material, Section 29 of the Act provides:--

"Duty by whom payable. -- In the absence of an agreement to the contrary the expense of providing the proper stamp shall be borne--

(a) xx xx xx xx (b) xx xx xx xx (bb) xx xx xx xx (c) In the case of a conveyance (including a re-conveyance of mortgaged property) -- by the grantee, in the case of a lease or agreement to lease -- by the lessee or intended lessee;"

In Annexure-1 there is no finding that there was an agreement to the contrary so as to take the matter out of the purview of Sub-section (c).

4. Learned Additional Government Advocate contends that we should not assume that there is no agreement to the contrary because, before the learned District Judge, petitioner had not raised such a contention. We do not accept the objection of learned Additional Government Advocate. It was obviously the duty of the Additional District Magistrate while raising the demand to record that this was a case covered by the exception and not by Sub-section (c). There is no such finding. We must, therefore, proceed on the footing that it was a case to which normal rule applied and being a vendor, petitioner had no liability under Sub-section (c) of Section 29 of the Act. In view of that position, the proceeding against the petitioner was misconceived. Liability if any, in terms of Section 29(c) of the Act would be on the purchaser.

5. Point No. 2:-- The learned District Judge has proceeded on the footing that

"Neither under the Act nor under the rules any provision has been made to the effect that an appeal could be preferred within 30 days of the receipt of the order." Factually, this is not so. A set of rules called the Orissa Stamp Rules have been framed by the State Government in exercise of the powers vested in them u/s 75 of the Act read with the amendment under Orissa Act 35 of 1962. Rule 30 thereof provides:--

"Any person aggrieved by an order of the Collector under Sub-section (2) of Section 47A, within 30 days from the receipt of such order, prefer an appeal to the District Judge against such order.

Section 47-A (3) of the Act provides:--

"Any person aggrieved by any order of the Collector under Sub-section (2) or Sub-section (2-a) may, within thirty days from the date of the 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."

The Appellate Authority proceeded on the footing that limitation of 30 days began to run from the date of the order and, therefore, came to hold that the appeal was barred by limitation though presented within 30 days from the date of communication of the order. Apparently the rule appears to be contrary to the term of the statute. Mr. Murty rightly relies upon a decision of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, wherein a similar position was being examined by the court. Under the Land Acquisition Act, 1894 the party aggrieved by the award in regard to the quantum of compensation is entitled to apply to the Collector under the Act to make a reference to the court in adjudication of the dispute. For doing so, under the Land Acquisition Act, limitation runs from the date of the award. Dealing with this provision the court stated:--

"..... The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."

Referring to precedents at length, the court ultimately formulated the rule thus;--

"..... These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.,....."

The statutory rule referred to above requires that u/s 47-A (2) of the Act the appeal has to be filed within 30 days from the date of receipt of such order. It is

not the contention of learned Additional Government Advocate that the statutory rule is ultra vires the Act. We find the rule to be keeping with the principles of natural justice as indicated by the Supreme Court. The notice issued to the petitioner rightly required the appeal to be filed within 30 days from the receipt of the order. As a fact, the appeal was filed within the period of 30 days. Merely because the petitioner filed an application u/s 5 of the Limitation Act not being sure of the position, does not preclude him from contending that the appeal was in time. We are, therefore, satisfied that the appeal had been presented within time and was not liable to be dismissed on the ground that it was barred by limitation. The learned District Judge was not required to exercise his discretion u/s 5 of the Limitation Act. The second question, therefore must also be answered in favour of the petitioner.

6. Ordinarily after having answered the first question in favour of the petitioner, we would not have dealt with the second question because it was not necessary for the disposal of this writ application but as we were of the view that factual position should be clarified, we went into the matter. We are, however, of the view that the third question need not be examined. Learned Additional Government Advocate requires us to state that the view expressed by the learned Appellate Authority on the question of liability is not correct. Since we are not examining the correctness of the respective contentions on that question, it must be left open to be examined in an appropriate case. We would, however, make it clear that in case the Collector considers to proceed against the appropriate person, he would not be bound by the order of the Appellate Authority in regard to the question of liability.

The writ application is allowed and the amount under the demand is quashed. The petitioner shall have his costs of this case. Hearing fee is assessed, at Rs. 50/-.

K.B. Panda, J.

I agree.