(2011) 07 KL CK 0139

In the High Court Of Kerala

Case No : W.A. No. 990 of 2011 arising out of W.P. (c) No. 9342 of 2008

P.A. Hamsa — APPELLANT

Vs

The District Registrar General and Others — RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Kerala Stamp Act, 1959 — Section 33(1), 37(2)
Registration Act, 1908 — Section 71, 72, 73, 74, 75

Citation : (2011) 3 KLJ 485

Hon'ble Judges : P.R. Ramachandra Menon, J;Chelameswar, J

Bench : Division Bench

Advocate : V. Chitambaresh ; C. Devika Rani Kaimal and N.M. Madhu, for the Appellant; S.V. Balakrishna Iyer (Sr.); K. Meera (GP); Jayanandan Madayi ; E.M. Unnikrishnan ; T.P. Saeed and K.V. Pavithran, for the Respondent

Final Decision : Dismissed

Judgement

J. Chelameswar, C.J.—Aggrieved by judgment dated 14.03.2011 in W.P.(C) No. 9342 of 2008 by which the writ petition was dismissed with costs quantified at Rs. 25,000/- to be paid to the 3rd respondent therein, the unsuccessful petitioner preferred the instant appeal. The appellant herein in his capacity as the Chairman and Managing Director of a Private Limited company and also in his individual capacity sold certain parcels of land in favour of another Private Limited company of which the 3rd respondent herein is the Managing Director. The said sale transactions were duly registered under the Registration Act, 1908. The documents so registered are dated 31.08.07 and marked as Exts.R3(a) and (b) in the writ petition. Subsequently, the appellant sought to get two documents, styled as cancellation deeds, (marked as Exts.P1 and P2 in the writ petition) registered.

2. When such documents were presented for registration, the 2nd respondent herein impounded the documents and referred the documents to the District Registrar, Kozhikode ostensibly in exercise of the power under Sections 33(1)

and 37(2) of the Kerala Stamp Act.

3. The 1st respondent District Registrar issued Exts.P3 and P4 notices dated 02.02.2008 to the appellant intimating that the documents are liable for stamp duty calculated at 10% of the consideration shown in the sale deeds which are purported to have been cancelled under the deeds in question. It was indicated that such a duty is payable under Article 21 of the Kerala Stamp Act. The notice also demanded a penalty at 10 times the value of the stamp duty, which in the opinion of the 1st respondent, sought to be evaded by the appellant. The appellant disputed such liability and filed his objections.

4. On 03.03.2008, the 1st respondent passed two orders (Exts.P7 and P8) directing that the Stamp duty on the abovementioned documents is payable under Article 21 of the Kerala Stamp Act at 10% of the consideration shown in the sale deeds, i.e., R3(a) R3(b) and also a penalty of Rs. 500/- each. It was further indicated in the said order that in the event of failure by the appellant to make remittances referred to above, necessary steps in law would be taken to realise the abovementioned amounts.

5. Challenging the abovementioned documents, Exts.P7 and P8, the appellant herein approached this Court by way of W.P.(C) No. 9342 of 2008 which was dismissed by the judgment under appeal.

6. The issues before the learned Judge were that (1)whether a concluded sale could be unilaterally cancelled by the vendor (2) whether such a document purporting to cancel a sale deed which was duly executed and registered earlier is bound to be registered without any question by the registering authorities and (3) if the answer to the second issue is - yes - what is the relevant Article of 1st Schedule to the Kerala Stamp Act which applies to such a document, whether it is Article 21 as opined by respondents 1 and 2 or Article 15 of the Kerala Stamp Act as contended by the appellant herein. Incidentally the question is whether the registering authorities are legally competent to embark upon the enquiry into the question of legality of the documents or the legal authority of the executant of the document etc.

7. The learned Judge by the judgment under appeal opined that a duly executed and registered sale deed cannot be unilaterally cancelled by paying the stamp duty invoking either Article 15 or 21 of the Kerala Stamp Act. The relevant portion of the judgment reads as follows:

The sale being complete on the execution and registration of the sale deed, it cannot be unilaterally cancelled by the seller thereof. Such a cancellation deed of a sale deed cannot be registered invoking Article 15 of the Kerala Stamp Act. Even if stamp duty is paid under Article 21 of the Kerala Stamp Act, a duly executed and registered sale deed cannot be cancelled unilaterally by the seller. On execution of the sale deed, title to the property passes to the vendee. The vendee cannot be divested of his title by the unilateral act of cancellation of the sale deed by the vendor. Even on cancellation of the sale deed, the vendor would not get title to the property and only the vendee can confer title to the vendor. Such conferment amounts to conveyance. The view taken by the District Registrar (General) that stamp duty is payable under Article 21 of the Kerala Stamp Act, to that extent, may be correct, but it is not correct to the extent that the unilateral cancellation deed of the sale deed executed and presented for registration by the vendor can be registered on payment of stamp duty under Article 21 of the Kerala Stamp Act.

8. The learned Judge also opined that the authorities acting under the Registration Act are not obliged to blindly register every document produced for registration unmindful of the validity and legality of a document. The relevant portion of the judgment reads as follows:

It is not the duty of the Sub Registrar to register every document presented before him for registration, unmindful of its validity and legality. Only if a valid document is duly executed and presented for registration, the Sub Registrar is bound to register the document. Part XII of the Registration Act containing Sections 71 to 77 would clearly indicate that there is no duty cast on the Registrar to register a document which is not legally executable and registrable.

9. The learned Judge relied upon an earlier judgment reported in Pavakkal Noble John & Anr. v. State of Kerala & Ors., ILR 2010(3) Kerala 979 in support of his abovementioned conclusion.

10. It may also be mentioned here that during the pendency of the said writ petition, pursuant to an interim direction, the disputed documents came to be registered by the respondents. In the circumstances, by the judgment under appeal the learned Judge, while dismissing the writ petition, issued certain directions. The relevant portion of the judgment reads as follows:

Now the question remains as to what should be done since the cancellation deeds were registered on the basis of the interim order passed by this court. It is trite that an act of court should prejudice none. The cancellation deeds were not liable to be registered at all. However, the cancellation deeds were registered only on the basis of the interim order passed by this court. The error has to be rectified Therefore, I direct the Sub Registrar, Kozhikode to cancel/strike off/ revoke the cancellation deeds referred to above by making appropriate entries in the relevant registers. There will be a direction to the second respondent that under no circumstances, the cancellation deeds which happened to be registered in the circumstances mentioned above, should be shown as an encumbrance in the encumbrance certificate that may be issued in future in respect of the properties in question. Hence the appeal.

11. Heard Sri. S.V. Balakrishna Iyer, the learned Senior counsel appearing on behalf of the 3rd respondent. The learned Senior counsel, Sri.V. Chitambaresh, appearing for the appellant, relying upon a Full Bench decision of Andhra Pradesh High Court reported in Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, argued that even a deed purporting to be a deed of cancellation (of

an earlier sale transaction) unilaterally executed by the vendor is bound to be registered when presented before the registering authority and the registering authority has no authority in law to enquire into either the legality or validity of such document. But, it must be mentioned that, the abovementioned Full Bench judgment is no more good law as the same was declared to be so by the Supreme Court in Civil Appeal No. 317 of 2007 dated 13.07.2010 (since unreported). The relevant portion of the Supreme Court judgment reads as follows:

It is only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the concerned parties. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration there of were wholly void and non est and meaningless transactions.

12. In the circumstances, an enquiry into the question in the instant appeal should normally come to an end in view of the law declared by the judgment of the Supreme Court. However, the learned counsel argued that the judgment of the Full Bench of the Andhra Pradesh High Court and the Supreme Court were rendered in the context of the rules framed by the State of Andhra Pradesh and the rules framed under the Registration Act by the State of Kerala, more particularly Rule 67 which clothes the registering officer with a duty to enquire into the validity of the document did not fall for consideration of the Supreme Court and therefore the decision of the Supreme Court is not an authority for the proposition in the State of Kerala that the registering officer has no discretion to enquire into the legality or validity of the documents presented for registration.

13. We reject the submission for the reason that the Supreme Court categorically held that the cancellation deeds, such as the one in question before us as well as before the Supreme Court, executed unilaterally by the vendor of a property which had been duly transferred and conveyed earlier are documents which are void, non est and "meaningless transactions". Therefore, such documents obviously are not documents falling within the provisions of the Registration Act, 1908. If a document is beyond the purview of the Registration Act, the rules prescribed under the Act cannot confer a better status on such documents. In the circumstances the submission of the learned counsel is rejected.

14. We may also mention for the sake of the completion of the history of the proposition of law that a Full Bench of Madras High Court in WA. No. 592 of 2009 (M/s. Latif Estate Line India Ltd. v. Hadeeja Ammal) also took a categoric view similar to the view taken by the Supreme Court. It appears that the abovementioned unreported judgment of the Supreme Court was not brought to the notice of the Madras High Court.

15. The net result is that the writ appeal is only required to be dismissed confirming the dismissal of the writ petition. However, the learned counsel for the

appellant brought to our notice that notwithstanding the fact that the documents in question need not be registered in view of the law declared by the Supreme Court, in view of Exts.P7 and P8 there is a possibility of the respondents proceeding to recover the amounts mentioned therein, therefore appropriate directions may be issued in that regard. We see some justification in the prayer made by the learned counsel for the appellant. We, therefore, direct the respondents not to proceed to recover any amounts, either towards the Stamp duty or towards the penalty pursuant to Exts.P7 and P8, from the appellant. We also, in the circumstances of the case, deem it inappropriate to mulct the appellant /writ petitioner with the liability of costs. Hence, the judgment under appeal, in so far as it pertains to the award of costs, is set aside.

The learned counsel for the appellant also submitted that independent of the legal position that a unilaterally executed cancellation deed of a concluded sale transaction has no legal validity, the appellant, in law, does has a right to seek a declaration that the past sale transaction to which he is a party (as vendor) is illegal and not binding on him before the Civil Court in an appropriate suit and such a right of the appellant may be preserved. The right of a party to avoid a transaction of transfer of property under certain conditions is well recognized in this country. If the appellant believes that he is, in law, entitled to avoid the legal consequences of the sale transactions covered by Exts.R3(a) and R3 (b), it is open for him to take such steps as are available to him in law in this country.