(2003) 02 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30012 of 1998

Paladugu Ramesh	APPELLANT
Vs	
District Registrar, Registration and Stamps Department and Another	RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:
Stamp Act, 1899 — Section 35, 38, 40

Citation : AIR 2003 AP 315 : (2003) 3 ALT 125

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : K.V. Satyanarayana, for the Appellant; GP, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This Writ Petition is filed by the Petitioner aggrieved by the proceedings of the District Registrar, Registration and Stamps Department, Nalgonda, the 1st Respondent herein, dated 3.10.1998 under which the District Registrar felt that in view of the opinion or the decision taken by the Court by adjudicating the stamp duty and penalty leviable, he need not adjudicate the same again and returning the original instrument for necessary action.

2. The brief facts leading to the filing of the Writ Petition be noted briefly as under: The Petitioner filed O.S. No. 146 of 1992 on the file of the District Munsif at Kodad, Nalgonda district seeking relief of permanent injunction restraining the defendants, their men, etc., from in any way interfering with his peaceful possession and enjoyment of the suit schedule property. While the trial was in progress, the petitioner sought to mark the document which is styled as an agreement of sale as an exhibit. At that stage, the defendants raised objection that the document is only an agreement executed by the vendor of the Petitioner on 15.2.1990 by selling the land in S. Nos. 495, 496 in an extent of Ac. 12.00 for a total consideration of Rs.1,95,000/- and the executant of the agreement received part payment of Rs. 1,82,000/- and the remaining amount of

Rs.13,000/- has to be paid. However, according to the defendants, the said document cannot be treated as an agreement between the vendor and the Petitioner as the transaction was complete on the date of execution of the document as delivery of possession of the land was also effected. According to the defendants, proper stamp duty in accordance with the provisions of the Indian Stamp Act (for short, the Act) has to be paid apart from the requirement of registration. Thereafter, the learned District Munsif, Kodad went into the merits of the matter and held that the document is a sale deed and, therefore, the Petitioner is liable to pay stamp duty and penalty treating the agreement as the sale deed and accordingly ordered him to pay deficit stamp duty and penalty of Rs. 2,35,895/- (Rs. 21,450/- towards deficit Court fee and 10 times of the same i.e., Rs.2,14,450/- towards penalty) within a week u/s 35 of the Act. Aggrieved by the said order of the learned District Munsif, the petitioner sought for referring the said document for adjudication in terms of section 40 of the Act to the District Collector. When the matter was referred in terms of section 38 of the Act, the District Collector who is also designated as the District Registrar of Stamps passed the impugned order stating that in view of the order of the Court adjudicating the issue regarding payment of stamp duty and penalty payable by the petitioner in respect of the disputed instrument, he need not adjudicate the same. Hence this Writ Petition assailing the validity of the said order of the District Registrar.

3. The learned counsel for the Petitioner assailing the validity of the impugned order submitted that the view taken by the 1st respondent is illegal and not sustainable in view of the decision of this Court in B.V.R. Reddy Vs. The Adoni Co-operative Central Stores Ltd. and Another, . According to the learned counsel, when once there is a dispute as to the levy of stamp duty and penalty, it is the duty of the Collector, referred to in section 40 of the Act, to adjudicate the same. The learned counsel also contended that if the Petitioner was agreeable to pay the deficit stamp duty and penalty as determined by the Court, no further adjudication is required, but as the Petitioner did not agree with the adjudication made by the Court and sought for reference of the instrument to the District Collector for adjudication of stamp duty and penalty u/s 40 of the Act, it is the duty of the District Registrar specified u/s 40 of the Act to adjudicate upon the issue and determine the proper deficit stamp duty and penalty payable by the Petitioner.

4. The learned Government Pleader for Revenue has fairly conceded as to the legal position in view of the provisions of section 40 of the Act. Learned Government Pleader also sought to rely on a decision of the Supreme Court in Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle and Another, wherein the Supreme Court, while considering the relevant provisions as to the adjudication of stamp duty and penalty held as follows:

"If the trial Court finds that the instrument is insufficiently stamped, it should have asked the appellant as to whether he would remit the deficient portion of the stamp duty together with penalty amounting to ten times the deficiency. If the appellant agrees to remit the said amount the Court has to proceed with the trial after admitting the document in evidence. In the meanwhile, the Court has to forward a copy of the document to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty as provided in S. 40(a)(b) of the Act. Only if the appellant is unwilling to remit the amount the Court is to forward the original of the document itself to the Collector for the purpose of adjudicating on the question of deficiency of stamp duty. The penalty of ten times indicated therein is the upper limit and the Collector shall take into account all factors concerned in deciding as to what should be the proper amount of penalty to be imposed."

5. Heard both sides and considered the material on record.

6. In view of the above contentions, the only question that falls for consideration and decision is whether the District Registrar, Nalgonda is justified in holding that he need not adjudicate upon the issue in the light of the opinion or the decision of the Court as to deficit Court fee and penalty payable by the Petitioner.

7. As per section 35 of the Act, the Court while adjudicating the deficit stamp duty and penalty has no discretion when the deficit stamp duty exceeds Rs.15/-. The penalty has to be levied at 10 times the deficit stamp duty if the deficit portion of the stamp duty exceeds Rs.15/-. On the other hand, u/s 40 of the Act, the Collector cum District Registrar has got discretion to levy penalty as he thinks fit not exceeding 10 times the amount of proper duty or deficit portion thereof. Therefore, the District Registrar has got power to levy lesser amount of penalty than the maximum provided under the provisions of the Act. In that view of the matter, the opinion of the 1st respondent that he need not adjudicate upon the issue in view of the opinion or decision taken by the Court cannot be sustained.

8. In the light of the binding decisions of this Court and the Supreme Court referred to above, the impugned order of the 1st respondent cannot be sustained and is liable to be set aside.

9. In the result, the Writ Petition is allowed and the impugned order of the 1st Respondent dated 3.10.1998 is set aside. The 1st Respondent is directed to adjudicate upon the issue and pass appropriate orders as to the amount of stamp duty and penalty payable by the petitioner in respect of the disputed document within a period of three months from the date of receipt of a copy of this order. No costs.