**(2001) 08 KAR CK 0059**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 15015 of 2001

Parvindar Kaur Chawla APPELLANT

Vs

Divisional Commissioner, Bangalore Division, Bangalore and Others RESPONDENT

**Date of Decision :** 09-08-2001

**Acts Referred:**
Karnataka Stamp Act, 1957 — Section 45 A

**Citation :** (2001) 6 KarLJ 449 : (2001) 4 KCCR 231 SN

**Hon'ble Judges :** R. Gururajan, J

**Bench :** Single Bench

**Advocate :** S. Shekar Shetty, for the Appellant; Shobha Patil, Governement Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

R. Gururajan, J.—Petitioner in the case on hand is seeking for the following prayers:

"1. to issue a writ of certiorari to quash Annexures-B and D and the entire proceedings emanated from the respondents 1, 2 and 3, and

2. to issue writ of prohibition against respondents 1 to 3 from proceeding against the writ petitioner under the colour of Karnataka Stamp Act, Section 45A, beyond Indian Registration Act, since the respondents 1 to 3, have acted without jurisdiction, and

3. to declare or strike down the proviso to Sub-section (5) of Section 45A, as unconstitutional".

2. Petitioner presented a sale deed 19-1-1998 in which the market value of the property was shown for 6 acres and 18 guntas valued at Rs. 4,40,000/-. Respondent 3, the Sub-Registrar received the document and accepted the market value without raising any objection whatsoever. The document was

 

registered on 19-1-1998. Subsequently the respondent referred the matter to the Deputy Commissioner on the ground of under valuation of the document for investigation in terms of Section 45A of the Karnataka Stamp Act, 1957 (for short "the Act"). The Deputy Commissioner accepted the same and passed an order on 2-9-2000. Petitioner aggrieved by the same filed an appeal before the Divisional Commissioner in Appeal No. UV APPEAL 107/2000-01. The Appellate Authority heard the petitioner with regard to maintainability and with regard to grant of stay in the impugned order. After hearing he ruled that the appellant is to deposit 50% of the deficit stamp duty in terms of Rule 9(1) of the Rules and granted time for complying in the matter. It is this order directing the petitioner to pay 50% of the amount is questioned by the petitioner on various grounds.

3. Petitioner''s essential contention is that the 50% in terms of the rule is not applicable to the facts of this case. The relevant date if properly taken into consideration viz., 19-1-1998 the question of the proviso cannot be made applicable to the facts of this case. Before concluding, no arguments are advanced with regard to constitutional validity of Sub-section (5) of Section 45A, hence, no finding is given on this. With these facts and grounds the petitioner is before me.

4. Notices have been ordered and respondents have entered appearance through the Counsel.

5. Sri Shekar Shetty, learned Counsel appearing for the petitioner, while reiterating the facts again emphasised with vehemence that the proviso to Section 45A(5) has come into force in terms of the Act No. 24 of 1999, dated 18-8-1999. Counsel emphatically argues that the cause of action has arisen prior to 18-8-1999 viz., the year 1998 registration, the 50% condition is not applicable to his case. Counsel relies on a judgment of Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, and also the judgment of this Court in W.A. No. 3509 of 2000.

6. Learned Government Advocate with equal vehemence relies on the Division Bench judgment to contend that the imposition of 50% is proper and legal. According to the Counsel the proviso is attracted to this case as well.

7. After hearing the Counsel on either side I pass the following order:

8. To appreciate the rival contentions of the parties I would rather quote Section 45A for proper understanding of the case on hand:

"Section 45-A.--(1) If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, gift, exchange, settlement, partition, dissolution of partnership, release, or an agreement to sell covered under Sub-clause (i) of Clause (e) and Clause (f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (ii) of Sub-clause (c) of Clause (1) of Article 30, a power of attorney covered under Clause (ea) or (eb) of Article 41 or any conveyance under a decree or final order of any Civil Court, has reason to believe, having regard to the estimated market value published by the Committee constituted u/s 45B, if any, or otherwise, that the market value of the property which is the subject-matter of such instrument has not been truly set forth, he shall after arriving at the estimated market value, communicate the same to the parties and unless the parties pay the duty on the basis of such valuation, shall keep pending the process of registration and refer the matter along with a copy of such instrument to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereon.

(2) On receipt of a reference, under Sub-section (1), the Deputy Commissioner shall, after giving the parties reasonable opportunity of being heard and after holding an inquiry in such manner as the State Government may by rules prescribe, determine by order as far as may be within ninety days from the date of receipt of such reference the market value of the property which is the subject-matter of conveyance, exchange, gift, settlement, partition, dissolution of partnership, release, an agreement to sell covered under Sub-clause (i) of Clauses (e) and (f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (ii) of Sub-clause (c) of Clause (1) of Article 30, or a power of attorney covered under Clause (ea) or (eb) of Article 41 or every decree or final order of any Civil Court and the duty payable thereon. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Deputy Commissioner, may suo motu within two years from the date of registration of any instrument of conveyance, exchange, gift, settlement, partition, dissolution of partnership, release, an agreement to sell covered under Sub-clause (i) of Clauses (e) and (f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (ii) of Sub-clause (c) of Clause (1) of Article 30 or a power of attorney covered under Clause (ea) or (eb) of Article 41 or every decree or final order of any Civil Court not already referred to him under Sub-section (1), 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 subject-matter of conveyance, exchange, gift, settlement, partition, dissolution of partnership, release, an agreement to sell covered under Sub-clause (i) of Clauses (e) and (f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (ii) of Sub-clause (c) of Clause (1) or Article 30 or a power of attorney covered under Clause (ea) or (eb) of Article 41 or every decree or final order of any Civil Court 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 by order the market value of such property and the duty payable thereon in accordance with the procedure provided for in Sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

 

Provided that nothing in this Sub-section shall apply to any instrument registered before the commencement of the Karnataka Stamp (Amendment) Act, 1975.

(4) The order of the Deputy Commissioner under Sub-section (2) or (3) shall be communicated to the person liable to pay the duty. A copy of every such order shall be sent to the registering officer concerned.

(5) Any person aggrieved by an order of the Deputy Commissioner under Sub-section (2) or Sub-section (3) may, prefer an appeal before the Divisional Commissioner of the Revenue Division and all such appeals shall be preferred within such time and be heard and disposed of in such manner as the State Government may by rules prescribe:

Provided that no appeal shall be admitted unless the person aggrieved has deposited, in the prescribed manner, fifty per cent of the difference in the amount of duty as determined by the Deputy Commissioner under Sub-section (2) or (3):

Provided further that where after the determination of the market value by the Appellate Authority or determined again by the Deputy Commissioner on a remand of the case the stamp duty borne is found to be sufficient, the amount deposited shall be returned to the person concerned:

Provided also that where after the determination of the market value of the Appellate Authority or by the Deputy Commissioner on a remand of the case, such person shall pay the deficient duty so determined along with interest at twelve per cent per annum on the amount of the difference of stamp duty calculated from the date of execution of the document".

9. Section 45A provides for a Registering Officer appointed under the Registration Act while registering any instrument of conveyance, gift, exchange, settlement, partition, dissolution of partition release or an agreement to sell, covered under Sub-clause (i)(e)(f) of Article 5 and lease covered in item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (ii) of Sub-clause (c) of Clause (1) of Article 30. Power of attorney covered under Clause (ea) or (eb) of Article 41 or any conveyance under a decree of final order of any Civil Court, has reason to believe having regard to the estimated market value published by the committee constituted u/s 45B, if any, or otherwise, that the market value of the property which is the subject-matter of such instrument has not been truly set forth, he shall after arriving at the estimated market value, communicate the same to the parties and unless the parties pay the duty on the basis of such valuation, shall keep pending the process of registration and refer the matter along with a copy of such instrument to the Deputy Commissioner for determination of the market value of the property and proper duty payable thereon. Sub-section (2) provides for a reasonable opportunity by the Deputy Commissioner. Sub-section (3) provides for suo motu action by the Deputy Commissioner, Sub-section (4) provides for communication of the order by the Registering Officer. Sub-section (5) with which I am concerned in this case provides for an appeal within such

 

time in terms of the rules. A proviso has been inserted by Act. No. 24 of 1999, dated 18-8-1999. It provides for deposit of 50% of the difference in the amount of duty as determined by the Deputy Commissioner under Sub-section (2) or (3). This question/provision was noticed by the Division Bench of this Court in W.A. No. 3509 of 2000. Division Bench in the light of the law laid down by the Supreme Court in Garikapati Veeraya''s case, supra, has ruled as under:

"This submission of the learned Counsel for the appellant is well-founded for the reasons that Apex Court in the case referred to above has clearly laid down the law in support of the legal contention urged by him for the reason that as on the date of the impugned order challenged in the writ petition passed by the District Registrar levying additional stamp duty upon the document directing the appellants to pay the same, there was no provision in the Act to make predeposit 50% of the amount determined by the District Registrar before the Appellate Authority to enable him to file an appeal. In this view of the matter it would be proper and reasonable for this Court to modify the order of the learned Single Judge only to the extent of the direction given by him to the appellant with regard to the deposit of 25% of the levied stamp duty amount, as the same is not necessary to be deposited in view of the law declared by the Apex Court and for the reason that there was no provision in the Act at the time of passing the order by the District Registrar determining the additional stamp duty payable by the appellant for making deposit of that amount to facilitate him to file an appeal by availing the substantive statutory right of appeal".

10. Since there is rival contentions with regard to the applicability of the judgment of this Court in writ appeal, it is also necessary for me to notice the judgment of the Supreme Court cited above which is relied upon by the Division Bench in the above case. The Supreme Court has ruled in Garikapati Veeraya''s case, supra, in para 23 as under:

"The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

The right of appeal is vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal".

11. From the directions of the Apex Court it is clear that the suit, appeal and second appeal are really but steps in a proceedings and are to be regarded as one legal proceedings. Again it is clear from the decision that the suit carries with it the implications that all rights of appeal that are in force. The Apex Court has made it clear that the law governing on the date of his suit governs his appeal. The Division Bench after noticing this judgment of the Apex Court ruled that no

 

deposit is necessary for the reason that there was no provision at the time of passing the order by the District Registrar.

(emphasis supplied)

12. The scheme of Section 45A provides for under valuation and subsection (1) provides for a reference of the matter to Deputy Commissioner. Therefore, a reading of Section 45A read with Section 45A(1) shows that the law that was in force on the date of commencement of lis in terms of the judgment of the Supreme Court is to be made applicable to a given case. In the case on hand the lis commenced on 19-1-1998, the date on which the document was accepted by the respondent and the date of reference is 22-6-1999. The amending Act came into force on 18-8-1999. Since the lis viz., the date of document and the date of reference are before the amending Act it is not available to the respondents. Deputy Commissioner in the impugned order has given retrospective operation to the amending Act to a lis where the amending Act is not available as referred to above.

13. A harmonious reading of Section 45A(1) with Section 45A(5) in the light of decisions quoted above makes it clear to me that proviso is not to be made applicable to case on hand since the lis is prior to the date of amendment Act. It is golden rule of construction in the absence of anything in the enactment to show that it has to have retrospective operation it cannot be so construed as to have effect of altering the law applicable to claim in the litigation at the time when the Act was passed.

14. In the circumstances while accepting the argument of the petitioner I find myself unable to accept the reasonings of Appellate Authority particularly in the light of the judgment of the Apex Court. In the circumstances the impugned order is quashed and a direction is issued to the respondent to accept the appeal without insisting on proviso to Section 45A(5) in terms of the amending Act and pass orders on merits and in accordance with law.

 