(2003) 11 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 13383 of 2002

R. Narayanaswamy Reddy — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Karnataka Stamp Act, 1957 — Section 2 (1) (q), 45 A

Citation : AIR 2004 Kar 119 : (2004) 1 KCCR 670

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S. Nanjundaswamy and K. Sridhar, for the Appellant; B.P. Puttasiddaiah, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Though this matter is listed for hearing on Interlocutory application, with the consent of Counsel on both sides, is taken for hearing on the main matter as pleadings are completed and the learned Counsel are ready for addressing arguments on merits and the matter is heard for disposal,

2. Petitioner in this writ petition has called in question the legality of orders passed by the third respondent Deputy Commissioner of Stamps & Headquarters Asst. to the District Registrar, Bangalore Urban, District, calling upon the petitioner to pay an additional stamp duty in a sum of Rs. 86,050/- as per an order dated 23-6-2000 passed u/s 45-A of the Karnataka Stamp Act, 1957 (''the Act'' for short) (copy at Annexure-D) and the appellate order dated 6-3-2002 passed in S. A. P. 7/2001-02 by the Inspector General of Registration and Commissioner for Stamps i.e. the Chief Controlling Revenue Authority in Karnataka, the second respondent herein, affirming the order passed by the Deputy Commissioner and dismissing the appeal. Petitioners have sought for quashing of these two orders on the premise that the stamp duty of a sum of Rs. 6000/- paid on the instrument dated 10-7-1999 which they had termed as a

''Partition Deed'' and presented for registration on 15-3-2000 was the correct stamp duty and there was no question of any under-valuation being involved in the payment of stamp duty on the partition deed dated 10-7-1999; that the fourth respondent Sub-Registrar was not justified in referring the matter to the third respondent Deputy Commissioner of Stamps & Headquarters Asst. to the District Registrar, Bangalore Urban District, on the premise that there was under-valuation and for determination of the proper stamp duty. It is contended that the Impugned orders are illegal in law and are liable to be quashed.

3. Sri Nanjundaswamy learned Counsel appearing for the petitioner has submitted that the impugned orders at Annexures ''D'' and ''F'' are not sustainable in law; that the authorities concerned have proceeded on an erroneous assumption that the instrument in question is one which is to be treated as a part settlement deed and a part annuity and that the authorities are clearly in error in demanding duty from the petitioner on the premise that the transaction involved is in the nature of an annuity and a settlement combined in the deed. Learned Counsel submits that the instrument clearly indicated that the properties which were the subject matter of partition were all joint family properties and that it was partitioned amongst the members of the family namely the petitioner, the ''Kartha'' of the family, his wife and children in accordance with the terms agreed amongst them; that there is absolutely no scope to read an instrument of this nature as either an instrument depicting a transaction of annuity or a transaction of settlement; that the third respondent Deputy Commissioner has misread the instrument and the implications of the terms therein; that it could never have been treated as an instrument depicting an annuity or an instrument in the nature of settlement and mulcting liability on the petitioner to pay stamp duty on the instrument either in the nature of annuity or an instrument in the nature of settlement, is clearly unsustainable in law.

4. Statement of objections have been filed on behalf of the respondents. It is asserted that the action on the part of the Registering Authority in invoking the provisions of Section 33 of the Act was perfectly justified; that on a reference by the concerned. Registering Authority, the Deputy Commissioner of Stamps, the third respondent, has correctly determined the duty payable on the instrument as per his order dated 23-6-2000; that the Appellate Authority has also affirmed the order being satisfied that the order passed by the Deputy Commissioner was perfectly in accordance with law; that there is no scope for interference in this writ petition; that the orders passed by the Deputy Commissioner as well as the Appellate Authority, the Inspector General of Stamps are well reasoned orders and are to be affirmed; that the contentions urged in support of the petition are not tenable; that the authorities were justified in treating the instrument as a document of settlement as defined in Section 2(1)(q) of the Act; that the instrument essentially revealed the ingredients of a deed of settlement and as such the duty demanded by the authorities is justified if the transaction is to be treated as a deed of settlement; that as the petitioner had paid stamp duty on

the instrument treating it as a partition deed, the deficit stamp duty has been demanded from the petitioner and accordingly the respondents have sought for dismissal of the writ petition.

5. Sri Nanjundaswamy, learned Counsel for petitioner has drawn my attention to the definition of "an instrument of Partition" as defined u/s 2(1)(k) of the Act particularly Clause (3) of Section 2(1)(k), which reads as under :--

" "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severally and includes --

(i) a final order for effecting a partition passed by any revenue authority or any civil Court;

(ii) an award by an arbitrator directing a partition; and

(iii) when any partition is effected without executing any such instrument, any instrument or instruments, signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners".

and has submitted that when there Was no dispute that the property is a joint family property and it is partitioned amongst the members of the family, the instrument can only be read and construed as an instrument of partition and it could neither have been treated as an instrument for creating an annuity nor as a settlement deed and the authorities have totally misdirected themselves in this regard.

6. Sri B. P. Puttasiddaiah, learned High Court Government Pleader has sought to support the orders passed and has drawn my attention to Article 48 (A) in Schedule to the Act and has submitted that the authorities were justified in levying duty as indicated in Article 48 (A)(i) which is the stamp duty as in respect of a deed of conveyance on the market value and as such has sought to support the order demanding payment of additional stamp duty. Learned Government Pleader has also submitted that the instrument clearly indicated that even after allotting certain properties to the share of one of the sons, a further liability is created on the sharer who is to pay a sum of Rs. 50,000/-every year towards the maintenance of his parents for their lifetime and if this annuity is to be capitalised as treating one for twelve years, the value works out to Rs. 6,00,000/- on which the proper stamp duty is levied and demanded. In the circumstances, learned Government Pleader submits that the impugned orders are proper and valid in law and no interference is called for in exercise of writ jurisdiction by this Court.

7. I have given my anxious consideration to the submissions at the Bar and I have also perused the impugned orders. The Deputy Commissioner as well as the inspector General of Stamps have totally misdirected themselves in understanding the instrument as a deed of settlement in the first instance. The Deputy Commissioner is also clearly in error in treating part of the Instrument of

partition deed as an instrument providing for an annuity. The provisions of either Section 2(1)(k) or the provisions of Section 26 are clearly not attracted to the instrument in question. It is nowhere indicated in the order or disputed that the property was not in the nature of a joint family property. The claim of the petitioner is that he was the kartha of the family and the properties of the family have been partitioned as per the instrument in question. It is not for authorities functioning under the Karnataka Stamp Act to indicate or determine in what manner the properties belonging to a joint family should be shared or partitioned. It is a matter amongst the members of the family, Even assuming that a part of the arrangement can be read as settlement or even as an annuity, that is of no consequence as the instrument is one which indicates the manner in which the joint family properties are shared amongst the members of the family and subject to the terms and conditions agreed amongst themselves. The function and the duty of the authorities functioning under the Stamp Act is only to realise the proper stamp duty payable on an instrument by applying the relevant provisions of the Act. An instrument of partition as defined u/s 2(1)(k) of the Act cannot be converted into either an instrument of settlement or an instrument for creating an annuity. The moment it is accepted that it is an instrument of partition amongst the members of a Joint family property, the matter ends there. The order passed by the Deputy Commissioner for Stamps & Headquarters Asst. to the District Registrar, Bangalore Urban District, the third Respondent, is clearly in contravention of the provisions of the Act and on a misinterpretation of the instrument presented for registration.

8. The Appellate order is an apology for a reasoned or speaking order. The appellate order only recites that the order appealed against is in accordance with law and the arguments advanced on behalf of the appellant are untenable in law. Except for these two observations, there is absolutely no indication in the order as to the application of mind on the part of the Appellate Authority either to the facts of the case or to the legal provisions which are attracted to the facts. The Appellate order is clearly a nonspeaking and arbitrary order. Neither the appellate order nor the original order are tenable in law and are required to be quashed. They are hereby quashed by issue of a writ of certiorari.

9. Before parting, I must place on record my observation that the authorities functioning under the Karnataka Stamp Act, particularly the authorities connected with registration of documents, invariably pass such unrecognizable and untenable orders more for harassing the hapless citizens and persons who go to the office of the Sub-Registrar for presenting their documents for registration. It can only be inferred that the authorities are misusing the powers vested in them for ulterior purposes and to coerce the citizens to succumb to their unreasonable demands. The present case is clearly an example of arbitrary and unreasonable exercise of power by all the authorities namely the Sub-Registrar, the Deputy Commissioner of Stamps & Headquarters Asst. to the District Registrar, the third respondent, as well as the Appellate Authority, the Inspector General of Stamps and the Chief Controlling Revenue Authority in

Karnataka, the second respondent. It is high time that the Government takes some corrective measures in these aspects and relieves the hapless citizens from the harassment that they are subjected to.

10. The respondents are directed to return the document executed on 10-7-1999, which had been presented for registration to the fourth respondent and which had been withheld for realisation of the stamp duty, now that this Court has held that the duty that had been paid by the petitioner at the time of presentation for registration was the proper stamp duty and petitioner was not liable to pay any further stamp duty on the same. The document should be returned to the petitioner within four weeks from the date of receipt of a copy of this order.

11. In the result, the writ petition is allowed levying costs of Rs. 5,000/- on the respondents. Rule issued and made absolute.