(2013) 05 AHC CK 0257

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37696 of 2003

Rajendra Gupta	APPELLANT
Vs	
Chief Controlling Revenue Authority, U.P., Allahabad/Revising Authority and Others	RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:
Stamp Act, 1899 — Article 55, Schedule 1B

Citation : (2013) 05 AHC CK 0257

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Allowed

Judgement

Pankaj Mithal, J.

The property in question comprising of Bungalow No.362 and part of plots No. 210, 211 and 216 situate in Civil Lines Jhansi was the property of the then Zamindar Smt. Sarju Bai. She executed Dwami Patta some time in the years 19371941 in respect of the above property in favour of Mission Trust Vatarion Church, United States of America. One Khagendra Das and Hari Krishan Lal Atri purchased the rights in the said property from the above Mission Trust. Petitioner along with Jai Chandra Arya and Virendra Gupta purchased the rights in the aforesaid property from the aforesaid Khagendra Das and Hari Krishan Lal Atri vide two separate sale deeds executed on 9.8.1968 and 24.6.1969 respectively and since then is in possession and use of it. On the aforesaid sale deeds full stamp duty as is applicable to a deed of conveyance was paid. No person ever disputed the rights of the petitioner over the said land which he along with two other persons had acquired by the aforesaid sale deeds.

Nonetheless, Reva Shanker Bhayal, son of Onkar Das Bhayal heir of the then Zamindar executed instrument No.4069 of 1990 announcing that the petitioner along with Jai Chand Arya and Virendra Gupta are in possession of the above referred property and that he has no concern with the same and that he renounces all his rights in it, if any, in favour of them.

The aforesaid instrument No.4069 of 1990 which is described in the instrument itself as "Dastbardari" was subjected to proceedings under Section 47A of the Indian Stamp Act, 1899 (hereinafter referred to as the Act) on the complaint made by one Mool Chandra Yadav, a news reporter. An inspection report from the Tehsildar was called for and was submitted on 31.8.1992 stating that the instrument purports to transfer the above property and as such there is evasion of stamp duty. The Collector Jhansi vide order dated 25.7.1996 held the instrument to be a deed of conveyance liable to stamp duty in accordance with Article 23 of Schedule 1B of the Act. The contention of the petitioner that it is a "deed of release" covered by Article 55 of Schedule 1B of the Act was repelled. The order of the Collector found the approval of the Chief Controlling Revenue Authority, who dismissed the revision against it vide order dated 27.5.2003.

The petitioner is aggrieved by both the above orders and has invoked the writ jurisdiction of this court for the quashing of the said orders.

I have heard Sri Krishna Kant Dwivedi and Sri P.C. Shukla, learned Standing Counsel, for the parties.

On the basis of the pleadings and the submissions raised on behalf of the parties the only point raised for consideration in this writ petition is whether the instrument No.4069 of 1990 described as "Dastbardari" is a ''deed of release'' falling under Article 55 of Schedule 1B of the Indian Stamp Act or is a ''deed of conveyance'' on which stamp duty under Article 23 of Schedule 1B of the Act is payable.

It is settled that the nature of the instrument is not dependent upon the title or the nomenclature given to it but is to be gathered from the intention of the executant on the basis of the language used in the instrument. The intention of the executant is the decisive factor about its real nature and character. It is therefore, always safe to read the entire instrument in determining its nature and not to solely depend upon the title thereof.

The instrument in question is annexure1 to the writ petition.

The salient feature of the said instrument as may be gathered by plain and simple reading of it are as follows:

(i) it has been styled as "Dastbardari" by the executant;

(ii) it acknowledges that rights in the property were transferred the then Zamindar to Mission Trust Vatarion Church, United States of America with liberty to get it freehold and to transfer further;

(iii) petitioner and his two associates have purchased freehold rights therein from Khagendra Das and Hari Krishn Lal Atri, the successors of the Mission Trust by registered sale deed and are in possession of the same and have constructed a boundary wall;

(iv) no other person including the executant of the instrument have any right subsisting in the said property and that he had not transferred it to any one else; and

(v) he had received a sum of Rs.8000/ from Jai Chandra Arya, Rajendra Gupta and Virendra Gupta and that he is relinquishing all his rights, if any, in the said property for all times to come.

The word "Dastbardari" or "Dastbardarinama" simply denotes giving up a claim. It amounts to abandonment and relinquishment of rights.

"Dastbardarinama" came up for consideration before the Punjab Chief Court in the case of Musammat Fazlan Vs. Imamuddin 1915 Indian Cases (Vol. 29) 253.Their Lordships held that "Dastbardarinama" means a "dead of release". The Division Bench in deciding the appeal held that where a widow executed and registered a deed styling it a "Dastbardarinama" and stated in it that she renounces all her rights as widow in the estate of her husband which was held by her in favour of the next male reversioner in consideration of certain amount, the deed is not a sale deed but a deed of release by which the widow surrenders her lifeestate in her husband''s land in favour of the male reversioner.

The Supreme Court in Kuppuswami Chettiar Vs. A.S.P.A. Arumugam Chettiar and another AIR 1967 SC 1395 observed that a release can usefully be employed as a form of conveyance by a person having some right or interest to another having a limited estate and the release then operates as an enlargement of the limited estate.

In Govind Das V. Board of Revenue (1971 All LJ 847), a Special Bench of this Court was called upon to consider the question whether the deed of retirement, on account of the payment of Rs.55,000/ from the firm to the retiring partner be termed as a conveyance, as defined in Section 2(10) of the Stamp Act so as to attract duty under Article 23 of Schedule IB or a deed of release. The Bench held that the document was not a conveyance but a release.

The question as to whether an instrument is a deed of release or conveyance came up by reference under Section 57 of the Act before the Full Bench of this court in Board of Revenue Vs. Auto Sales Alld. AIR 1979 Alld. 312. In the said case one of the partners of the firm withdrew from it and in lieu of her share determined therein was given properties of the firm by a deed purported to be a "deed of release" executed by the other partners. Thus, the question was referred to the court as to whether it would be chargeable to stamp duty under Article 23 of Schedule 1B of the Act. The Full Bench noting the essential difference between a conveyance and release opined that in a case of release there is no transfer of interest or right to another as a release is made only in favour of a person who has a preexisting right or claim and by reason of release the said right of the person gets enlarged.

A similar controversy also arose in relation to the properties of one Sardar Waryam Singh, who died leaving behind his widow, a son and two daughters. His two daughters subsequently executed a document in consideration of receipt of a sum renouncing whatever claim they had in the property left by their father in favour of their mother and brother. The matter was referred under Section 57 of the Act by the Chief Controlling Revenue Authority for the opinion of this court. The full Bench of this court vide AIR 1984 All. 107 Smt. Balwant Kaur and others Vs. State of U.P. answered the reference following decision of the Supreme Court in Kuppuswami Chettiar (Supra) that the recitals made by the two sisters in the instrument clearly amounted to renouncement of their interest, if any, in the properties left behind by their deceased father and they have released their undivided interest in the property in favour of their mother and brother and as such the instrument is a release deed chargeable to stamp duty under Article 55 of Schedule 1B of the Act.

In the instant case, the authorities below have treated the instrument in question as a conveyance deed on the sole ground that the petitioner was not a coowner in the property with the Ex. Zamindar.

Learned Standing Counsel has also defended the impugned orders on the above premise and has contended that the relinquishment can only be in favour of a coowner.

The submission and the reasoning adopted by the authorities suffers from patent fallacy inasmuch as there is no dispute that the petitioner had acquired rights in the property in question by two sale deeds of the year 196869 which are not disputed. Therefore, petitioner and his associates were having preexisting rights in the said property. The instrument in question may not have enlarged the petitioner''s rights in the said property as he was not the coowner with the executant but nonetheless it has strengthened his rights thereof. No valid distinction can be between an instrument which enlarges the rights of the coowner or a person having preexisting rights in the property or an instrument which otherwise strengthens the rights of a person having a preexisting rights in the property.

The basic characteristic of the instrument in question is to recognize the existing rights of the petitioner and his associates in the property and to acknowledge the relinquishment of the subsisting rights of the executant, if any, in their favour so as to support or strengthen their rights probably with the intention to avoid any controversy in future.

The instrument of such a nature stands at par with the instrument which enlarges the existing right of the coowner and is in no way different from it for the simple reason that the purpose of both the instruments is to bring repose and peace by setting at rest future controversy by vesting complete rights in favour of the persons having preexisting rights.

In view of the aforesaid facts and circumstances, on the plain reading of the instrument in its entirety and keeping in mind the background in which it has been executed, the instrument in question "Dastbardari" is an instrument of relinquishment of rights which is covered by ''deed of release'' as used in Article 55 of Schedule 1B of the Act and is a not to be treated as a deed of conveyance for the purposes of realizing stamp duty.

The impugned orders dated 24.7.1996 and 27.5.2003 are quashed.

Any stamp duty realized or deposited pursuant to the impugned orders shall be refunded to the petitioner or the person concerned within a period of one month from the date of the production of the certified copy of this order before the authority concerned and in the event any delay in refund, petitioner or the person concerned would be entitle to simple interest @ 8% per annum for the delay period.

The writ petition succeeds and is allowed.

