(2009) 06 KL CK 0146

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33503 of 2008

Rajeswaran Nair APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:
Kerala Stamp Act, 1959 — Section 2(11), 26, 31, 32, 32(2)

Citation : (2009) 3 ILR (Ker) 36 : (2009) 3 KLT 56 : (2010) 8 RCR(Civil) 750

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K.B. Pradeep, for the Appellant; N. Sudha Devi, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The petitioner got registered Ext.PI partition deed with the appropriate Sub Registrar''s office, which was executed on 25.1.2008. That document was produced before the Munsiff''s Court, Thiruvananthapuram in O.S. No. 872/06, wherein a question arose as to whether that document was properly stamped. To get the stamp duty payable on that document adjudicated u/s 31 of the Kerala Stamp Act, 1959, the petitioner submitted an application dated 3.10.08 before the respondent. The respondent refused to accept the same on the ground that the document was produced after the expiry of one month from the date of its execution, which is the period of limitation prescribed u/s 32 of the Act.

2. According to the petitioner, Sections 31 and 32 deal with two separate functions and the second function comes only after the first is completed. Section 31 relates only to adjudication of proper stamp duty payable on an instrument. No limitation is prescribed for the same. Only if, after adjudication of the proper stamp duty payable on the instrument, the applicant seeks endorsement u/s 32, the limitation prescribed u/s 32 would come into play is the contention of the petitioner. Petitioner therefore submits that the respondent is duty bound to

accept the application and adjudicate the stamp duty payable on the instrument u/s 31 and seeks a direction in that regard.

3. Although no counter affidavit has been filed, the learned Government Pleader contends that Sections 31 and 32 have to be read and applied together as an integrated procedure and the limitation prescribed under the proviso to Section 32, therefore, applies to Section 31 also. Hence, only if the document is produced within the period of one month from the date of its execution, prescribed under the proviso to Section 32, the Collector is bound to accept the application and exercise his powers u/s 31, is the contention raised by the learned Government Pleader.

4. I have considered the rival contentions in detail. Since the issue involved in this Writ Petition relates to the interpretation of Section 31 and 32 of the Kerala Stamp Act, I shall extract both Sections here:

31. Adjudication as to proper stamp:- (1) When any instrument, whether executed or not and whether previously stamped or not is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty, if any, with which it is chargeable, and pays a fee of such amount (not exceeding ten rupees and not less than one rupee) as the Collector may in each case direct, the Collector shall determine the duty, if any, with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract, of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application, until such abstract and evidence have been furnished accordingly:

Provided that:

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding except in any enquiry as to the duty with which the instrument to which it relates is chargeable, and

(b) every person by whom any such evidence is furnished, shall on payment of the full duty with the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. Certificate by Collector:- (1) When an instrument brought to the Collector u/s 31, is in his opinion, one of a description chargeable with duty, and

(a) the Collector determines, that it is already fully stamped, or

(b) the duty determined by the Collector u/s 31, or such a sum as, with duty already paid in respect of the instrument, is equal to the duty so determined, has been paid the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector -shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be, and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse:

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution, or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in the State; or

(c) any instrument chargeable with the duty of twenty paise or less than twenty paise when brought to him, after the execution thereof on paper not duly stamped.

5. As is clear from the wordings in the two sections, Section 31 relates to adjudication of stamp duty payable on an instrument simpliciter. Section 32 goes a further step after adjudication u/s 31 of the proper stamp duty payable providing that after adjudication, if the applicant wants an endorsement as provided in Section 32, then only the limitation prescribed under the proviso to Section 32 becomes applicable. In other words, if after the adjudication of the stamp duty payable on an instrument, the applicant does not want an endorsement as provided u/s 32, the application of Section 32 does not arise at all. That being so, Sections 31 and 32 are distinct and separate and not inter-dependent. Consequently, the limitation prescribed under the proviso to Section 32 does not apply to adjudication as to proper stamp duty u/s 31. But, if the Collector on adjudication u/s 31 finds that there is deficit in stamp duty payable on that instrument and the document had been presented beyond one month from the date of its execution, naturally the Collector cannot make the endorsement even if the petitioner pays the deficit stamp duty and the Collector is bound to proceed u/s 33, which is the only consequence of bringing the instrument for adjudication of proper stamp duty after expiry of one month from the date of its execution.

6. This is all the more so, since u/s 31 an unexecuted document can also be

brought for adjudication. The limitation prescribed under proviso to Section 32 applies only in respect of documents brought after the expiry of one month from the date of its execution. Therefore for attracting the limitation under the proviso to Section 32, the document has to be one which has been executed. That itself shows that the two sections are not interdependent. Further, Section 32 becomes applicable only after the Collector determines either that the instrument is fully stamped or stamp duty is payable or the instrument is not chargeable with duty at all. Therefore the question of application of Section 32 arises only after adjudication u/s 31. Further if the limitation under the proviso to Section 32 is held to be applicable to Section 31 also, then even if an instrument is properly stamped and it is disputed after one month from its execution, it would become impossible for a person to get an adjudication as to the proper stamp duty by the Collector, which cannot be the intention of the law maker while incorporating the limitation in the proviso to Section 32. This is further evident from the language of the proviso. The words "nothing in this Section shall authorise the Collector to endorse" puts an embargo only on the endorsement and not on the adjudication u/s 31. Therefore clearly the limitation prescribed under the proviso to Section 32 is not applicable to adjudication of the proper stamp duty u/s 31.

7. I am supported in this view by a decision of the Supreme Court in Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, dealing with exactly identical provisions in the Indian Stamp Act 1899, as also a Full Bench decision of this Court in The Secretary to Government v. The Gwalior Rayon Silk Mfg. (Wvg.) Co. 1971 KLJ 309 dealing with the same provisions as in this case. The learned Counsel for the petitioner would refer to the decision of the Madras High Court in Sethuraman v. Ramanathan AIR 1946 Mad. 437 also dealing with Section 31 and 32 of the Indian Stamp Act, which are in pari materia. In Raja Mohammed Amir Ahmad Khan''s case, in paragraph 5, the Supreme Court held thus:

5. After an inordinately long delay, the Collector determined the amount of duty payable and impounded the document. Power to impound is given in Section 33 of the Act. Under that section any person who is a Judge or is in-charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped. The question is does this power of impounding arise in the present case ? The instrument in dispute was not produced as piece of evidence nor for its being acted upon, e.g., registration, nor for endorsement as u/s 32 of the Stamp Act but was merely brought before the Collector for seeking his advise as to what the proper duty would be. The words "every person... before whom any instrument... is produced or comes in the performance of his functions" refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them, e.g., registration. They do not extend to the determination of the question as to what the duty payable is. They

do not cover the acts which fall within the scope of Section 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was conceded that if the instrument is unexeucted. i.e., not signed and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the same, that is. when he is asked to give his opinion, he has to determine the duty with which, in his judgment the instrument is chargeable & there his duties & powers in regard to that matter end. Then follows Section 32. Under that section the Collector has to certify by endorsement on the instrument brought to him u/s 31 that fully duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty made up. or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its being brought before the Collector ? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable.

(emphasis supplied)

8. In The Gwalior Rayon Silk''s case the Full Bench of this Court held thus:

"9. If any case whatsoever arising under the Act would come within the scope of a reference under Sub-section (1) of Section 55, that would lead to difficult, indeed impossible, results. Supposing a Collector were to decide that proper stamp duty has been paid in respect of an instrument, whereas in fact it has not, or that the instrument is not chargeable with duty whereas it is, and to certify accordingly by endorsement thereon under Sub-section (2) of Section 32. Then, under Sub-section (3) of the section, the instrument shall be deemed to be duly stamped or not chargeable with duty, as the case may be, and may be acted upon accordingly. Now, if a case wrongly decided u/s 31 in favour of the Revenue is a case coming within the scope of Sub-section (1) of Section 55, a case wrongly decided in favour of the citizen must also be such a case. In such a case, namely, a case wrongly decided in favour of the citizen, what is the Government to do under Sub-section (2) of Section 57 conformably to the judgment the High Court may deliver in pursuance of a reference made to it ? Is the Government to decide the case afresh, u/s 31 or send it to the Collector for making a fresh decision ? There is no provision in the Act that enables it to do so and even if it did so what purpose would that serve ? The certificate endorsed by the Collector u/s 32 can neither be recalled nor cancelled, for the deeming provisions in Sub-section (3) of Section 32 is absolute and is not made subject to any such fresh adjudication. And even if the certificate could be cancelled, in most cases, it would be too late to serve any purpose since the certificate would already have served its purpose and the instrument would have been acted upon. Surely, it cannot be that its reception in evidence, its registration and such other instances of its being acted upon, can be recalled or are rendered null and void. It must be remembered that Section 31 places no obligation on the citizen to pay the stamp duty adjudged by the Collector. It is only if he wants the certificate u/s 32 that he need pay the stamp duty: else, he can decline to pay it and face whatever consequences might flow if. in fact, the instrument is not sufficiently stamped. How then, on the fresh adjudication being made, will be stamp duty be collected?

(emphasis supplied)

9. Since the Madras decision interpreting identical Sections in the Indian Stamp Act, 1899, deals further with the consequences of production for adjudication u/s 31 after one month, with which view I respectfully agree, I shall extract the relevant portion of that judgment in Sethuraman''s case (supra) also.

15. The expression ''duly stamped'' is defined in Section 2(11) as meaning that the instrument bears an adhesive or impressed stamp of no less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in British India. Mr. Sampath Aiyangar has raised a number of questions as to the interpretation of these provisions with a view to show that Section 26 applies to the case notwithstanding the Collector''s certificate endorsed on Ext.Pl and precludes the Court from passing a decree for any sum in excess of Rs. 10,000/-. He argues that the Collector has no jurisdiction to entertain the respondent''s application for adjudication of the proper stamp duty for Ext.Pl u/s 31, as the document was brought to him more than six years after its execution and that the certificate endorsed by him on the bond was void and inoperative. He relies upon the proviso to Section 32 which requires that the instrument on which an endorsement of the Collector''s adjudication is sought should be brought within one month after its execution. It is said that Sections 31 and 32 contained in Chap.III form one integrated procedure for adjudication as to stamps and that the time limit referred to in proviso (a) to Section 32 governs applications made u/s 31. We are unable to agree with this view- Section 31 provides no time limit for an application to the Collector for adjudication as to the proper stamp duty payable in respect of an instrument. There is nothing in the section to prevent a person from resorting to the Collector for an adjudication as to the proper stamp even after the expiry of one month from the date of its execution. If the instrument is brought to the Collector within one month of its execution, the applicant would be entitled to have the Collector''s certificate endorsed on the instrument on payment of the deficit duty, if any: but without having to pay any penalty. But if he seeks the Collector''s adjudication beyond the time limit specified in Section 32 the Collector has, u/s 33 to impound the instrument and proceed u/s 40 to decide whether the instrument is duly stamped and to require the payment of the additional duty chargeable in respect of the instrument together with the prescribed penalty in case he is of opinion that it is not duly stamped, On

payment of such duty and penalty a certificate that the proper duty and penalty have been paid has to be endorsed u/s 42 on the instrument which becomes thereupon admissible in evidence and may be acted upon as if it had been duly stamped. It is under this procedure that the Collector must be taken to have dealt with Ext.Pl, for it is significant that he levied a penalty which he had no power to do u/s 32. We are accordingly of opinion that the Collector had jurisdiction to adjudicate as to the proper stamp duty payable in respect of Ext.Pl although it was not presented within one month of its execution and that, as a result of the certificate endorsed by him on the bond, it can be acted upon as if it had been duly stamped.

(emphasis supplied)

10. As held in that judgment if an executed instrument is produced for adjudication as to proper stamp u/s 31, after one month of its execution, the other consequences applicable to production of an insufficiently stamped instrument before a person in charge of a public office under other provisions of the Kerala Stamp Act would necessarily follow and after adjudication of the proper stamp, if the Collector finds that the same is insufficiently stamped he has to proceed further against that instrument under those provisions. In other words, if an executed instrument is produced before the Collector u/s 31, within one month, even if the Collector finds that the instrument is insufficiently stamped, the instrument would not attract penalty, and the Collector shall make the endorsement u/s 32, if the party pays the deficit stamp whereas if it is produced after one month, it would, and the Collector cannot make the endorsement which is the effect of the limitation prescribed under the proviso to Section 32, instead the Collector has to, after adjudication of the proper stamp, proceed either under Sections 33 and 39 read with Section 41 or u/s 40 read with Section 41.

11. From the above it is abundantly clear that, an application for adjudication of proper stamp duty u/s 31 cannot be refused to be accepted on the ground of limitation prescribed under the proviso to Section 32. In the above circumstances, this Writ Petition is allowed. The respondent is directed to accept the application for adjudication of proper stamp duty on Ext.Pl document submitted by the petitioner u/s 31 of the Kerala Stamp Act and to proceed to adjudicate on the proper stamp duty payable on the same. Petitioner shall re-present the application with the original of Ext.Pl document within two weeks from today. The respondent shall adjudicate the proper stamp duty payable on the same u/s 31 and communicate his opinion to the petitioner within two months from the date of receipt of the same. However, I make it clear that, since admittedly the document has been submitted after expiry of one month from the date of its execution, if the Collector finds that the stamp duty paid is not sufficient, then all consequences flowing from production of an insufficiently stamped instrument shall be applicable to Ext.Pl document and the Collector shall proceed accordingly either under Sections 33 and 39 read with Section 41,

or u/s 40 read with Section 41.

