
(2013) 08 MP CK 0291

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12760 of 2012

Rakesh Agrawal

APPELLANT

Vs

Brijesh Goutam and Nirmal Kumar Chourasia

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Stamp Act, 1899 — Section 33, 35

Citation : (2013) 08 MP CK 0291

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Manoj Sanghi, for the Appellant; Sharad Gupta, Advocate by Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—By this petition under Article 227 of the Constitution of India, the petitioner is challenging the validity of impugned order dated 10.11.2011 as well as order dated 16.05.2012 (Annexure-P/7) by which the application of plaintiff-petitioner to impound the document of agreement of sale dated 10.01.2007 has been rejected and consequently when the document of agreement of sale was tried to get admitted in the evidence, the prayer has been turned down. A suit for specific performance of contract has been filed by the plaintiff-petitioner against the defendants-respondents in respect of the immovable property, the description whereof has been mentioned in the plaint. The basis of the suit is the agreement of sale dated 10.01.2007 said to have been executed by first defendant in favour of plaintiff on Rs. 100/- stamp duty.

2. The plaintiff submitted necessary application under Sections 33 and 35 of the Indian Stamp Act, 1899 (in short "Act") to impound the document so that deficit stamp duty may be deposited. But vide order dated 10.11.2011 said application was rejected and thereafter on 16.05.2012 the said document of agreement of sale was refused by Trial Court to admit in the evidence.

3. The contention of learned counsel for the petitioner is that there is no bar if a party submits necessary application to impound the document so that it may become admissible in evidence after depositing deficit stamp duty but in total contravention to Sections 33 and 35 of the Act the impugned order dated 10.11.2011 was passed by learned Trial Court rejecting the application and later on the document was not admitted in evidence on 16.05.2012. Learned counsel submits that entire case of plaintiff rests upon the agreement dated 10.01.2007 and therefore the application under Sections 33 and 35 of the Act has been wrongly rejected.

4. On the other hand, Shri Sharad Gupta, learned counsel for respondent no. 2-defendant submits that first defendant was not having any title of the land in question which was agreed to be sold by him in favour of plaintiff and if that is the position, learned Trial Court rightly rejected the application. Hence, it has been prayed that this petition be dismissed.

5. Undisputedly, the plaintiff has filed the suit for specific performance of contract by basing the document of agreement of sale dated 10.01.2007 said to have been executed by first defendant in his favour. Whether first defendant was owner of the land or not which he agreed to sell it to plaintiff is a matter of inquiry of the suit and nothing can be said here in this petition although it has been stated by Shri Sharad Gupta learned counsel for respondents no. 2 that it is an admitted fact. Thus, now the question rests on the pivot as to whether learned Trial Court rightly rejected the application of plaintiff-petitioner filed u/s 33 and 35 of the Act. To me, there is no prohibition if a party submits application to get the document impounded on account of deficit stamp duty. On bare perusal of the Schedule 1-A item 5(e) (ii) (State Amendment) this Court finds that when the possession of the property is not given through the document of agreement of sale 1% stamp duty upon the total consideration of the property set-forth in the agreement or memorandum of agreement is to be paid. Hence, I am of the view that learned Trial Court has acted illegally with material irregularity in exercise of its jurisdiction while rejecting the application of the plaintiff. Thus, the application of plaintiff filed under Sections 33 and 35 of the Act stands allowed.

6. Resultantly, this petition succeeds and is hereby allowed. The impugned orders dated 10.11.2011 and 16.5.2012 are set aside. Learned Trial Court is hereby directed to impound the document and send it to the Collector (Stamps) where the deficit stamp duty etc. would be paid by the plaintiff-petitioner and thereafter the document may be admitted in evidence. Looking to the facts and circumstances of the case, the parties are directed to bear their own costs.