(2003) 01 MP CK 0166

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1165 of 2002

Rambabu Agrawal APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:
Stamp Act, 1899 — Section 47A, 47A(1)

Citation : (2003) 01 MP CK 0166

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : P.C. Chandil, for the Appellant; J.D. Suryavanshi, Government Advocate, for the Respondent

Judgement

Rajendra Menon, J.—Shri P.C. Chandil, Advocate for the petitioner.

Shri J.D. Suryavanshi, Government Advocate for the respondents.

Petitioner, by this petition feels aggrieved by the orders, Annexure P/7 dated 4-5-2002 and Annexure P/8 dated 14-9-2002 by which respondent No. 3 has initiated proceedings for assessment of current market value of the property in question and payment of stamp duty on the sale deed in question accordingly. Shri P.C. Chandil, learned counsel for the petitioner has submitted that the agreement for sale was entered into on 14-3-1984 for the shop in question and at the time of the agreement, the sale was for Rs. 50,000/- based on the value of the shop in question on the date of the agreement. Subsequently, when certain dispute arose with regard to implementation of the said agreement, a suit for specific performance was filed vide civil suit No. 14-A/86 which was later on renumbered as 209 A/94. The said suit was decreed on 8-12-1999. In this regard, Annexures P/3 and P/4 were placed on record.

2. When the judgment-debtor did not comply with the decree, the petitioner filed an application for execution and during the process of execution proceedings, proposed sale deed and map of shop was prepared vide Annexure P/5 and

executed sale deed for Rs. 50,000/- on 29-11-2001 vide Annexure P/6. The proper stamp duty on the basis of the aforesaid value was affixed on the sale deed and the same were presented for registration before the respondent No. 2. It is the case of petitioner that the said respondent refused to register the document and accept the registration fee. Instead it was recorded in the minutes book prepared at serial No. 606 on 1-12-2001 that proper market value has not been assessed for the property in question. On the basis of the aforesaid, the matter has been referred to the Collector, Stamps vide Annexure P/7 and a show cause notice, Annexure P/8 has been issued by the Collector of Stamps for the purpose of assessing the current market value for the property in question and payment of the stamp duty accordingly.

3. It is the case of petitioner that valuation of the property has been done on the basis of the current market rate which is not proper in the facts and circumstances of the present case, as in the present case, the agreement to sale has been entered into in the year 1984 and subsequent to the judgment and decree passed in the suit for specific performance of the agreement, the sale deed has been executed. That being so, it is the case of petitioner that the market value as it exist on the date of execution of the agreement in question has to be assessed and stamp duty of the property to be paid on that basis only. In the present case, current market value has been taken into account and thereafter, referred the same for valuation u/s 47-A(1) of the Stamp Act is not sustainable. It has also been argued by Shri Chandil that the amended provision of section 47-A of the Stamp Act, will not apply in the facts and circumstances of the present case because in the present case the valuation has to be done on the basis of the law as applicable on the date when the agreement in question was entered into for sale of the property. This fact has not been taken note of while passing the impugned orders by the respondents.

4. In that view of the matter, the submission of the learned counsel for the petitioner is that the respondent/ authorities have committed material irregularity in assessing the current market value of the property at Rs. 70,495/- vide Annexure P/7 which is unsustainable. In support of his contention, he has placed reliance on the judgment of the Madras High Court in the case of S.P. Padmavathi Vs. State of Tamil Nadu and Others, , judgment of the Andhra Pradesh High Court in the case of Sub-Registrar, Nalgonda Dist. Vs. Amaranaini China Venkat Rao and others, and a judgment of the Patna High Court in the case of Smt. Shanti Devi Prasad and Another Vs. The State of Bihar and Others .

5. Shri J.D. Suryavanshi, learned Govt. Advocate in support of his contention has submitted that only a show cause notice has been issued and the petitioner has to file his reply to the same and at this stage no interference is called for.

6. I have heard the learned counsel for the parties.

7. In the judgments referred to by the learned counsel for the petitioner and in particular in the judgment of the Patna High Court in the case of Smt. Shanti

Devi Prasad (supra) it has been held that the provisions of section 47-A will not apply in respect of documents presented for registration pursuant to a decree for specific performance of an agreement in case the agreement is executed prior to coming into force of the amended provision. That apart, the Madras High Court in the judgment referred to by the learned counsel for the petitioner, it has been held that for the purpose of assessing the value of a property on the basis of the agreement for sale, executed in pursuance to a decree of the Civil Court, the market value should be the date on which the agreement in question is entered into. Similar views have been expressed by the Andhra Pradesh High Court in the judgment referred to by the learned counsel for petitioner.

8. Considering the aforesaid, there is much force in the submission made by the learned counsel for the petitioner that the assessment of the value of the property in question on the basis of the current existing market value is unsustainable, and therefore, it was not proper for the respondents to value the property as has been done vide Annexure P/7 taking into account the current market value of the property. Further, as the matter is pending consideration before the Collector of Stamps, the petitioner could raise all these objections before the said authority and the authority concerned has to value the property in question in accordance with law.

9. Accordingly, it is directed that on the petitioner filing a certified copy of this order along with a detailed objections with regard to valuation of the property in question, as done by the Collector, Stamps, the respondent No. 3 where the proceedings are pending shall proceed to assess the correct market value of the property after taking into consideration the objections and the legal position as detailed hereinabove and without being influenced by the valuation done vide Annexures P/7 and P/8. The authority concerned shall proceed to assess the market value of the property taking note of the fact that the agreement to sale was executed in the year 1984 and in accordance with the law laid in the cases referred to hereinabove, the valuation has to be done and not according to the current market value of the property.

10. The petition is disposed of with the aforesaid directions.

