(1982) 11 MP CK 0011

In the Madhya Pradesh High Court

Case No : M.C.C. No. 159 of 1980

Rao Mahendra Singh and Others — APPELLANT

Vs

Sub Registrar, Indore and Others — RESPONDENT

Date of Decision : 02-11-1982

Acts Referred:
Stamp Act, 1899 — Section 2(15)

Citation : AIR 1983 MP 144 : (1983) JLJ 348

Hon'ble Judges : R.K. Vijayvargiya, J;P.D. Mulye, J;G.G.Sohani, J

Bench : Full Bench

Advocate : Bhargava, for the Appellant; S.R. Joshi, for the Respondent

Judgement

Sohani, J.—This is a reference u/s 57(1) of the Indian Stamp Act (hereinafter referred to as the Act).

2. The material facts giving rise to this petition briefly are as follows :--

The applicants appeared before the Sub-Registrar Indore on 3rd December 1972. for registration of sale deeds executed by them. During the course of registration, another document purporting to be an acknowledgment of an oral partition made by the applicants, who were members of a joint Hindu family, came to the notice of the Sub-Registrar, who impounded it. He forwarded it to the collector of stamps for assessment of duty and imposition of penalty on the ground that the document was an instrument of partition. The collector of stamps by his order dated 3rd January 1977, held that the document in question was an instrument of partition and that stamp duty was required to be paid accordingly. Aggrieved by that order, the applicants preferred appeal before the Board of Revenue. The learned Member of the Board of Revenue was of the opinion that the document in question was not covered by the definition of ''instrument'' of partition'' contained in Section 2(15) of the Act. The learned Member of the Board of Revenue has accordingly referred the matter to this Court for its opinion.

3. Now, the document in question is executed on 23rd November 1972. In that document, the fact that a partition of joint Hindu family property took place on 31st October 1972 has been recited. By that document, the joint family property has not been divided, but a reference has been made to a partition previously effected. Section 2(15) of the Act before its amendment by Act No. 8 of 1975 defined instrument of partition as follows :--

"Instrument of partition means any instrument whereby co-owners of any property divide or agreed to divide such property in severally, and includes also a final order for effecting a partition passed by any Revenue authority or any Civil Court and an award by an arbitrator directing a partition."

The above definition has been amended by Act No. 8 of 1975 with effect from 15th May. 1975, whereby a deed signed by the co-owners recording the terms of previous partition has also been included within the meaning of ''instrument of partition''. But in the instant case, the amended definition is not attracted as the document was executed on 23rd November 1972 and was not intended to divide property, but it merely referred to the terms of previous partition. In our opinion, therefore, the document in question could not be held liable to payment of stamp duty as an instrument of partition.

Reference is answered accordingly. Parties shall bear their own costs of this reference.

