(1981) 10 KAPT CK 0019

In the Karnataka Appellate Tribunal

Case No : Appeal Nos. 116 & 236/81(Rev. 3)

Rashtrothana Parishat APPELLANT

Vs

Govt. of Karnataka and Another RESPONDENT

Date of Decision : 14-10-1981

Acts Referred:

Karnataka Stamp Act, 1957 — Section 2(1)(N)

Citation : (1981) 1 KarLJ 173

Hon'ble Judges : K. V. Narayana Raju, Member;B. S. Muddappa, J

Judgement

K.V. Narayana Raju, M.-Both the appeals are under Section 46-A (3) of the Karnataka Stamp Act, 1957 and the facts are more or less identical. Appeal No. 116/81 is from the order dated 6-1-1981 passed by the learned Chief Controlling Revenue Authority, Bangalore in SAP. 2-16/80-81 holding that the document dated 24-1-1974 executed by the appellant Rashtrothana Parishat in favour of the Corporation Bank was a Mortgage Deed liable to stamp duty under Article 34 in the Schedule, and not a mere agreement relating to deposit of the title deeds falling under Article 6.

2. Appeal No. 236/81 relates to a similar order dated 1-6-1981 in No. SAP 2-178/80-81 in respect of document dated 14-10-1974 executed by the appellant K.V. Pai in favour of the same Corporation Bank.

3. The two documents contain the same clauses and therefore we will deal with those in the first Appeal 116/81.

4. The appellant Rashtrothana Parishat has contended that the learned Chief Controlling Revenue Authority, Karnataka erred in holding that the document was chargeable under Article 34; that there was no transfer of right over the lease-hold property; that even otherwise though the amount of loan sought was Rs. 24 lakhs, the appellant had taken only Rs. 10 lakhs, and therefore in any event stamp duty was payable only on Rs. 10 lakhs and not on Rs. 24 lakhs; that 2% additional duty under Section 142 of the Bangalore Corporation Act was not leviable at all, and in fact excess duty had been paid; the appellant raised a

substantial question of law as to the vires of Section 46-A of the Karnataka Stamp Act, and the learned Chief Controlling Revenue Authority ought to have referred the matter to the Hon''ble High Court under Section 54 of the Stamp Act; that the introduction of section 46-A by the Amendment Act with affect from 17-4-80 is ultravires the Constitution etc.....

5. The counsel for the appellants and the learned State Representative were heard. The important question for consideration is whether the documents in question are mortgage deeds as defined in Section 2(1)(n) of the Stamp Act, or whether they are merely agreements relating to deposit of title deeds falling under article 6 of the Schedule to the Stamp Act. The expression ''Agreement relating to deposit of title deeds'' is neither defined nor explained in the Stamp Act. ''Mortgage Deed'' according to Section 2(1)(n) includes every instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of, another, a right over or in respect of specified property.

6. A Full Bench of the Madras High Court in Chief Controlling Revenue Authority v. Pioneer Spinners Private Ltd., AIR 1968 Mad 223 stated.

A mortgage by deposit of title deeds does not require any writing in law. Besides the deeds and the deposit, what is required is an intention that the deeds shall be security for the debt. The existence of the intention is a matter for inference from facts. The existence of the intention may be established by written documents alone, or coupled with oral evidence, or oral evidence only. In a particular case, the circumstances may warrant the inference of a deposit for security from the very fact of deposit. The question whether oral evidence is admissible to explain or establish a deposit of title deeds, would depend on, whether the writing itself has constituted the bargain between the parties. Oral proof cannot be substituted for the written evidence of any agreement which the parties have put into writing. If the writing evidences the agreement, it must be taken that the parties themselves have tacitly considered the writing as the repository and appropriate evidence of the agreement.

7. In A.I.R. 1967 Madras, AIR 1967 Mad 1, Chief Controlling Revenue Authority v. Jawahar Mills, AIR 1967 Mad 1, another Full Bench held:

Where a document merely contains the bargain between the parties with regard to the deposit of title deeds and conditions ancillary to such deposit, the stamp duty on it is payable under Act. 6(2)(a) of Sch. 1 of the Stamp Act. But if the document contains all the provisions normally to be found in a mortgage deed, then, the mere fact that the document also contains the bargain regarding the deposit of title deeds would not make it an agreement for the deposit of title deeds.

8. The Bombay High Court in Re-Indian Stamp Act, AIR 1954 Bom 462 has brought out the difference between the Agreement or Memorandum of Mortgage,

and a deed of Mortgage as follows:

In other words if the document merely contains the bargain between the parties with regard to the deposit of title deeds, then although it creates an interest in immovable property and although it is a mortgage deed, still by reason of the provision of Art. 6, the duty payable is less than the duty which would have been payable if it had been a mortgage deed in the larger sense of the term. It is clear that what was intended by Art. 6 was a document which should merely contain the bargain between the parties with regard to the deposit of title deeds, and, may be, conditions subsidiary and ancillary to the deposit of title deeds. If we have a document which contains all the provisions which one would find in a mortgage deed, then the mere fact that the document also contains the bargain with regard to the deposit of title deeds would not make it an agreement for the deposit of title deeds.

9. The Madras High Court in AIR 1967 Mad. 1 (F.B.) has dissented from some of the observations in that case. In those cases reference has also been made to the decision of the Privy Council in Pranajeevandas v. Chanma Ahee, AIR 1916 PC 155 in which it was held that:

"Charge could be created by such a delivery of title deeds, with nothing else agreed upon between the parties, or reduced to writing; in such a case it is a presumption of law that the scope of the security is the scope of documents of title. Where however the titles are handed over accompanied by a bargain, the terms of that bargain govern the rights of parties with regard to the scope of the security."

10. In Subramanya v. Lutchman, AIR 1923 PC 50, the Privy Council reiterated that such an agreement must be registered to prove a mortgage, and that where the terms are thus to be found in a registered document, "Oral proof of the mortgage is inadmissible".

11. With the above principles in the background we will examine the terms and conditions set out in the deed executed by Rashtrothana Parishat. The Deed opens with the words;

This deed of Equitable Mortgage by deposit of title deeds executed at Bangalore City on this the 24th day of Jan. 1974.. referred to as the Mortgagor and which term shall mean and include its successors in interest... Whereas the mortgagor has sought and obtained a loan of Rs. 24,00,000-(Twenty four lakhs) from the Mortgagee Bank for the purpose of putting up a Multistoreyed building.................. and whereas the Mortgagor has offered to the Bank to secure the said loan by the Fquitable Mortgage by deposit of title deed, namely the above said lease deed and create charge on the lease hold rights granted under the aforesaid deed, the title deed of the superstructure (Multistoreyed building) to be built on the site together with all moveables like furniture, fixtures etc in it.. Now this deed of Equitable Mortgage by deposit of title deeds showeth that in pursuance of the above consideration of the promise of the Bank, to pay to the Mortgagor amounts from to time upto a maximum limit of Rs. 24,00,000/- as and when required by the Mortgagor in the presence of the witnesses the Mortgagor does hereby create charge on the lease hold rights and the title deeds of the proposed superstructure of a Multistoreyed building on site No. 14, more fully described in ''A'' Schedule... The mortgagor does hereby covenant and declares that it has a perfect title to excute this deed and create charge on the lease-hold lights........................... The Mortgagor undertakes to put the Bank in possession of the entire superstructure of Multistoreyed Building in the event of any default in payment of the instalments of loan................................ .... Mortgagor covenants that the Bank may proceed against the assets in ''A'' Schedule to recover the loan in the event of default and also to pay rent to the lessor to keep the tenure of the lease in-tact.................................. .... The Mortgagor hereby undertakes and agrees to do or cause to be done anything or deed and agree to execute documents in favour of the Bank to effectively secure the repayment of the loan.

There can be no doubt the instrument before us is not merely an agreement relating to deposit of title deeds, but in truth and substance a deed of simple mortgage, for the purpose of securing money advanced, the appellant transfered or created right in respect of the property owned by it. The instrument is indeed a mortgage deed falling under Section 2(1)(n) of the Karnataka Stamp Act. No. doubt at more than one place the ins. trument is described as Deed of Equitable Mortgage and no argument may be required to conclude that by such description the instrument does not become a mere agreement relating to deposit of title deeds. The title deeds might have been left with the mortgagee but enough care has been taken to see that the interest in the property was transferred to the Bank and security was created. A mortgage by deposit of title deeds does not require an instrument and an agreement relating to deposit of title deeds cannot create an interest in immovable properties, and at the same time claim exemption from stamp duty payable under article 34 of the Stamp Act, or from registration under Section 17 of the Indian Registration Act.

12. For the foregoing reasons we are of the opinion that the instrument in question has been rightly held as falling under Article 34 of the Stamp Act. We are not impressed by the contention that though the instrument itself is for securing a loan of Rs. 24 Lakhs, the appellant has drawn only Rs. 10 lakhs and therefore there should be a reduction in the stamp value. The liability of the instrument to stamp is according to the value mentioned therein and not according to the amount that may be paid, be the same more or less.

13. This Tribunal is not competent to pronounce on the vires of the amendment incorporating Section 46-A in the Stamp Act giving power to the Chief Controlling

Revenue Authority to levy the proper stamp in respect of documents insufficiently stamped. We are also of the opinion that the Chief Controlling Revenue Authority was under no obligation to refer the lustier to the High Court under Section 54 of the Stamp Act. The Deputy Commissioner had not referred the case to the Chief Controlling Revenue Authority under Section 53(2) of the Stamp Act. Nor do we see any substance in the contention that additional stamp duty under Section 142 of the Bangalore City Corporation Act was not leviable

14. Before closing we should refer to certain authorities cited by the counsel for the appellants. In Padam Chand Jain vs. The Chief Controlling Revenue Authority, AIR 1970 All 644 the Special Bench examined the document by which the Bank agreed to grant cash credit facilities upto a maximum limit of Rs. 1,75,000 at any one time against the pledge of goods in the account of such person''s firm with the bank upon having the repayment secured by a first mortgage by deposit of title deeds of certain land as collateral security. The court held that though the agreement purported to create a first mortgage by deposit of title deeds, clause (1)(ii) of the deed did not charge the property for the payment of the sum of Rs. 1,75,000 borrowed That clause simply said that a charge was contemplated only on law costs, charges and expenses which may be paid or incurred by the Bank in connection with the transaction, and not in respect of Rs. 1,75,000 borrowed. In the case before us the charge is created on property for the whole sum of Rs. 24 lakhs. Therefore the Allahabad case cannot help the appellant.

15. In Shivacharanlal vs. State of Mysore, (1963) 1 Mys L.J. 107 the borrower executed a mortgage in 1956 and on August 28, 1958 obtained further accommodation from the creditor and executed a memorandum on September 1,1958 reciting that the title deeds already with the creditor should be treated as deposit for the Equitable Mortgage in respect of the further advances; and it was held that unless the document was one under which or whereby there was a transfer or the creation of a right over or in respect of a specified property, it cannot be regarded as a mortgage deed within Sec. 2(1)(n) of the Stamp Act, and that the memorandum in question was not an instrument of mortgage, but only an agreement relating to deposit of title deeds. The document before us is not of the kind produced in that case. Murugarajendra Company, vs. The Chief Controlling Revenue Authority, (1974) 1 Kar L.J. 177 also deals with a document referring to what had been done earlier by the constructive delivery of title deeds with the intention to create a Equitable Mortgage and was not an instrument evidencing deposit of title deeds much less a mortgage deed. It cannot be the case of the appellant that the document in question which is styled as a deed of Equitable mortgage only refers to a deposit of title deeds already made. This case also we find is not of any assistance to the appellant.

16. For the foregoing reasons we dismiss Apl 116/81.

17. As said before the instrument which is the subject matter of Apl. 236/81 was executed by the appellant K.V. Pai on 14-10-1974 to secure a loan of Re. 1 lakh. This also is styled as a deed of equitable mortgage by deposit of title deeds and

recites that loan facility was being obtained for putting up a new construction after demolishing the existing building and expressly states:

Whereas the Mortgagor has offered to the Bank to secure the said loan by the Equitable Mortgage by deposit of title Deed, namely the above said lease deed and create charge on the leasehold rights granted under the aforesaid deed and the title deed of the superstructure (Multistoreyed building) to be built on the site together with all moveables .... The Mortgagor does hereby create charge on the title deeds in respect of leasehold rights and on the superstructure to be put up thereon.............................. The mortgagor covenants that the Bank shall be at liberty to proceed against the assets in ''A'' Schedule to recover the loan in the event of default and also to pay rent to the lessor........................

18. It can be seen that this instrument reads like a deed of mortgage and can never be construed as mere agreement relating to deposit of title deeds. It is in fact an instrument whereby the property is transferred as security for the loan and is therefore a deed of mortgage liable to stamp under Art. 34 of the Stamp Act.

19. It is no doubt true that at some places it is said that a charge was being created on the title deeds in respect of the lease-hold rights. It would be meaningless to have a charge on the title deed, and there can be no doubt whatsoever that the charge intended was on the leasehold rights and the construction which the appellant was to put up on the land.

20. The other contention raised by the appellant K.V. Pai is that the action taken was not within time. The Amendment Act empowers the Chief Controlling Revenue Authority to take action in respect of instruments not duly stamped within three years from the date of coming into force of the said Amendment Act which was 3-12-1979. In respect of documents executed after such date, action under Section 46-A could be taken within 3 years.

21. For the foregoing reasons, we see no reason whatsoever to reverse or alter the order of the Chief Controlling Revenue Authority in Karnataka. Both the appeals are dismissed.

