(2018) 01 KAR CK 0132

In the Karnataka High Court

Case No : 29645 of 2010 (GM-ST of RN)

RASTROTHANA TRUST APPELLANT

Vs

DISTRICT REGISTRAR & Ors RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

Karnataka Stamp Act, 1957, Article 20(1), Article 54(d), Article 52(d), Article 48(A)(i), Section 2(1)(q)(iii) - Conversion of amount e

Citation : (2018) 01 KAR CK 0132

Hon'ble Judges : A S Bopanna

Bench : Single Bench

Advocate : KSHAMA NARGUND B, M B NARGUND, M A SUBRAMANI

Final Decision : Disposed off

Judgement

1. The petitioner is before this Court assailing the orders dated 12.06.2009 and 08.09.2009 impugned at Annexures-E and F to the petition. The

petitioner in that view is seeking for a declaration that the documents in question fall under Article 54(d) of the Schedule to the Karnataka Stamp

Act, 1957 (""the Stamp Act"" for short).

2. The document as at Annexure-A dated 05.01.2004 is styled as a ""Deed of Merger"" between the Jnana Bharathi Trust and the Rashtrothana

Trust. The former is described as the Merging Trust and the latter as the Merged Trust. Since the former has extinguished itself by merging with the

latter, the said document came to be executed and since the property of the Jnana Bharathi Trust, the Merging Trust was purchased in the name of

its Managing Trustee, a declaration as also the General Power of Attorney were executed. The transaction being one of merger, the petitioner keeping in view the provision contained in Article 52(d) of the Stamp Act had paid the stamp duty and completed the transaction. The respondents

having taken note of the transaction has thereafter passed the order dated 12.06.2009 holding that the stamp duty as paid is inappropriate but, the

transaction would have to be considered as a transfer as provided under Article 20(1) of the Stamp Act.

3. The Authority on finding that certain of the observations contained in the conclusion reached through the order dated 12.06.2009 had preferred

the appeal. In the said proceedings, after providing an opportunity to the petitioner also of being heard in the said matter, the order is passed

holding that the stamp duty payable is in terms of Article 48(A)(i) of the Stamp Act and the payment thereof was ordered therein. It is in that view

the petitioner claiming to be aggrieved is before this Court.

4. The respondents have filed their objection statement seeking to justify their action and contend that since the transaction would amount to

settlement as provided under Section 2(1)(q)(iii) of the Stamp Act, the stamp duty was required to be paid under Article 48(A)(i) of the Stamp

Act and in that view the conclusion reached through the impugned order is justified. The respondents no doubt have referred in detail with regard

to the nature of the documents and in that light to contend that the documents would amount to a ''''settlement'''' and therefore the stamp duty is

required to be paid.

5. In the light of the rival contentions, having heard the learned counsel for the petitioner and the learned Government Advocate, I have perused the

petition papers.

6. At the outset, it is to be taken note that the document in question is dated 05.01.2004 and in that view, the provision providing for stamp duty as

contained in the schedule prior to the subsequent amendment which was made on 01.04.2011 would have to be taken into consideration. The

provision as contained in Article 52(d) of the Stamp Act would provide that in respect of a transfer, with or without consideration of any Trust

property from the Trustee to another Trustee or from a Trustee to a Beneficiary, the stamp duty at Rs.200/-. Keeping in view the said provision, a

perusal of the Deed of Merger which is the document in issue herein would indicate that the Jnanabharathi Trust which held the properties in question in their name have merged themselves in the Rashtrothana Trust. The relevant clauses thereto is extracted as hereunder:

3. It is agreed by and between the parties that all assets and disclosed liabilities of the Merging Trust shall be the assets and liabilities of the

Merged Trust as from the appointed day mentioned above.

10. The Janana Bharathi Trust - The Merging Trust, shall stand dissolved and the Trustees of the merging Trust stand relived of all their obligations

under the Deed of Trust dated 17-04-1979 of Merging Trust subject to their fulfilling all their obligations set out herein above.

7. A perusal of the same would leave no doubt that Jnanabharathi Trust which was a existing Trust has through the said document sought to

extinguish itself and merge in the Rashtrothana Trust due to which the properties held by it was to be held by the Merged Trust viz., Rashtrothana

Trust. It is no doubt true that as contended by the learned Government Advocate the declaration which was also sent by one of the Trustees was

executed on the same day which refers to the details of the property. In that regard also, a perusal of the said document would indicate that the

properties which had been acquired for the benefit of the Jnanabharathi Trust was standing in the name of the Managing Trustee and it is in that

view a declaration has been made by the Managing Trustee to the effect that the property which stood in his name was the property which in fact

was purchased for and on behalf of Jnanabharathi Trust which was said to extinguish itself and merge in the Rashtrothana Trust.

8. If that be the position, the same is not in the nature of a ''''settlement'''' to constitute a Trust as the transaction is merely a merger of one Trust

with another Trust and the properties owned by the Merging Trust is being transferred to the name of Merged Trust. If that aspect of the matter is

kept in view, the transaction would not fall within the definition as contained in Section 2(1)(q)(iii) of the Stamp Act. To more clearly arrive at this

conclusion, what is also to be taken note is a consideration that had been made by Full Bench of this Court in the case of Chief Controlling

Revenue Authority vs. H.Narasimhaiah Sub Registrar (ILR 1991 Kar 1041). In the said case, though a question had arisen to consider as to

whether the transfer of the property to the Trust would fall under Article 52 (d) of the Stamp Act or not, the situation being considered was where a society registered under the Societies Registration Act which continued to subsist was transferring a property to a newly created Trust. In that

regard, this Court was of the opinion that the same would amount to settlement and had held that it would fall under Section 2(1)(q)(iii) of the

Stamp Act.

9. If that consideration is taken for guidance the situation is not similar in the instant facts since the nature of the transaction as has already been

referred to above is merely the merger of one Trust with the other. In this regard it would also be appropriate to refer to the Full Bench Judgment

of Madhya Pradesh High Court in the case of Sri Digambar Jain and ors vs. Sub Registrar, Stamps Indore (AIR 1970 MP 23) relied on by the

learned counsel for the petitioner. In the said case, the Hon''''ble Full Bench after referring to the nature of the transaction and on a harmonious

consideration of the documents therein, the transaction is noted to be considered as a merger and has held that a mere indication of certain words

in the document taken out of contest cannot change the right that is created therein. The said decision was rendered while considering a similar

provision arising under the Indore Stamp Act.

10. Therefore, keeping in view the facts arising in the instant case and also the transaction that is referred to in the said documents, the conclusion

as reached by the authorities in the orders impugned is not justified. They are accordingly quashed. It is held that the stamp duty as paid in respect

of the Deed Of Merger as at Annexure-A is in terms of the provision as contained in the Karnataka Stamp Act and no further duty is payable.

The petition is accordingly disposed of.

