(2019) 02 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5995 Of 2017

Rekhraj And Ors — APPELLANT

Vs

Additional District Judge No.3, Jodhpur Metropolitan And Ors — RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Rajasthan Stamps Act, 1998 — Section 37, 39

Citation : (2019) 02 RAJ CK 0022

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : O. P. Mehta, O. P. Boob

Final Decision : Allowed

Judgement

The present writ petition is directed against the order dated 03.11.2016, passed by learned Additional District Judge No.3, Jodhpur Metropolitan, Jodhpur (hereinafter referred to as the 'trial Court'), vide which the petitioners' application dated 20.01.2016 filed under Section 37 of the Rajasthan Stamps Act, 1998 (hereinafter referred to as the 'Act of 1998') has been dismissed. Calling in question the above referred order dated 03.11.2016, Mr. Mehta learned counsel for the petitioners apprised the Court about the preliminary facts relevant for the present purpose, which run as under :

The plaintiffs-petitioners instituted a suit for possession and mandatory injunction against the defendants-respondents No.1 & 2, interalia stating that the suit property has been gifted to them by Late Shri Madan by way of registered gift deed. In response to the suit aforesaid, the defendants filed a written statement-cum-counter claim alleging interalia that the suit property belongs to them, as the same had been sold through agreement to sell dated 01.12.2005 and registered sale deed dated 05.04.2012 which had been executed in furtherance of the agreement to sell dated 01.12.2005.

He pointed out that the agreement to sell as well as power of attorney dated

01.12.2005 (Annex.6) were unstamped documents and as such they are not only inadmissible in evidence, but were also required to be impounded by the trial Court, as and when such fact came to its notice. Highlighting these facts, the petitioners had filed an application dated 20.01.2016, under Section 37 of the Act and requested the trial Court to impound these documents for determination and payment of appropriate stamp duty; but the trial Court has rejected the said application, while observing that the issue of admissibility of the documents has to be determined at the time of final hearing of the suit.

Assailing the order dated 03.11.2016, learned counsel for the petitioners argued that the admissibility of the document and payment of appropriate stamp duty are two different aspects. As and when unstamped or insufficiently stamped document comes to the notice of the Court or any authority, he is duty bound to impound the same and forward it to the appropriate authority for determination of appropriate stamp duty.

Per contra, Mr. Boob learned counsel for the respondents contended that at the time of executing the registered sale deed, appropriate stamp duty had been paid and hence, it cannot be said that agreement to sell and power of attorney dated 01.12.2005 are inappropriately stamped. He further contended that trial Court committed no error of law in rejecting petitioners' application, inasmuch as it is settled position of law that admissibility of the documents has to be decided at the time of final hearing of the suit.

Having heard learned counsel for the parties and upon perusal of the material available on record, this Court is of the firm view that the trial Court has committed serious error of law in rejecting petitioners' application. Rejection of petitioners' application is a result of rather misreading of provisions of Section 37 of the Act; which enjoins upon any Court to impound an unstamped or insufficiently stamped document and refer it to a competent authority for determination of appropriate stamp duty.

It is true that such objection can be raised at the time of leading the document in evidence and a party can oppose marking of exhibit on such document, and per force the Section 39 of the Act, the same shall not be admissible in evidence. However, Section 37 of the Act operates differently. Once the petitioners have moved an application under Section 37 of the Act, it was incumbent upon the Court below to have examined it and should have impounded the same to be sent to the Collector (Stamps), for determination of appropriate stamp duty.

The agreement to sell dated 01.12.2005 prima facie comes within the ambit of conveyance, as the possession has been handed over to the vendee and prima facie it is not properly stamped.

The impugned order dated 03.11.2016 passed by the Court below being contrary to law, as noticed above, is, therefore, quashed and set aside.

The petitioners' application dated 20.01.2016 stands allowed.

The trial Court is directed to impound both the documents namely; agreement to sell and power of attorney dated 01.12.2005 and send it to Collector (Stamps), Jodhpur for determination of appropriate stamp duty.

Both the parties shall appear before the Collector (Stamps), Jodhpur on 25.02.2019 and make their submissions in relation to applicability and sufficiency of stamp duty, on the contentious documents.

Needless to observe that the defendants relying upon the documents dated 01.12.2005 shall be at liberty to make submissions and produce the relevant document(s), to assert that the appropriate stamp duty has been paid.

The Collector (Stamps) shall complete the requisite exercise within a period of two months from today and remit the documents after the determination and payment of stamp duty, if any, qua the subject agreement to sell and power of attorney.

The writ petition is allowed as indicated above.