(2016) 01 KAR CK 0326

In the Karnataka High Court

Case No : Writ Petition No. 109209 of 2015 [GM-CPC]

Riyaz Ahmad Ismail Saab and Others — APPELLANT

Vs

Romao and Others — RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Karnataka Stamp Act, 1957 — Section 2(e), Section 2(f), Section 33, Section 33 (1), Section 40, Section 41

Citation : (2016) 01 KAR CK 0326

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Anant Hegde and Vishwanath Hegde, Advocates, for the Appellant; A.P. Hegde and Vijay Malali, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—1. Petitioners are defendants 2 and 3 in OS No. 3/2011 pending on the file of Senior Civil Judge, Sirsi. Said suit has been filed by respondents 1 to 3 herein seeking specific performance of the contract based on an agreement of sale dated 24.08.2009 executed by defendant No. 1/respondent No. 4 herein in favour of the plaintiffs. Plaintiffs, during the course of evidence of PW2 produced the said document. Production and marking of the said document was objected by the petitioners/defendants 2 and 3. The Court below has overruled the objections and permitted marking of the document in evidence. Aggrieved by the said order, present writ petition has been filed.

2. The Court below has held that the agreement of sale disclosed that on 03.02.2011 plaintiffs had paid deficit stamp duty of Rs. 44,900/- in respect of the very agreement of sale, hence, objection raised by defendants 2 and 3 urging that the document was insufficiently stamped was not sustainable.

3. Learned counsel appearing for the petitioners Sri Anant Hegde taking me through relevant provisions of the Karnataka Stamp Act and the Rules, submits, at the outset, that for the purpose of Section 33 of the Karnataka Stamp Act,

1957 (for short ''the Act'') particularly clause (2) therein, in order to ascertain whether an instrument has been duly stamped, what the Court is required to look into is the stamp duty that was paid when such instrument was executed or first executed. It is his further submission that even assuming that plaintiffs had paid deficit stamp duty in a sum of Rs. 44,900/- subsequently, as the same had not been paid and accepted in accordance with the provisions contained in Section 40 of the Act, such payment cannot be regarded as due payment of stamp duty. In support of his contention, he relies on the definition of the term ''duly stamped'' contained in Section 2(e) of the Act and the terms "Executed" and "Execution" defined under Section 2(f) of the Act. Reliance is also placed by him on the judgment of Apex Court in the case of NEW CENTRAL JUTE MILLS CO. LTD., AND OTHERS, v. STATE OF W.B. AND OTHERS -, AIR 1963 SUPREME COURT 1307.

4. Learned counsel also points out that in the absence of any certification by the Deputy Commissioner holding that proper duty had been paid, mere payment of deficit stamp duty will not cure the defect as per Section 41. He has also referred to Rule 18-A of the Karnataka Stamp Rules, 1958, to contend that in the absence of any application filed by the plaintiffs before the Deputy Commissioner and the Deputy Commissioner not passing any order by satisfying himself with regard to the payment of sufficient stamp duty, it cannot be said that there was due payment of deficit stamp duty.

5. Learned counsel appearing for the respondent Sri A.P. Hegde strongly supports the impugned order passed by the Court below. He has placed reliance on the judgment of this Court in WP No. 104969/2014 dated 28.11.2014. He submits that the scope of enquiry before the Civil Court was confined to finding out whether sufficient stamp duty was paid on the document.

6. In the light of the respective contentions, after careful consideration of entire material on record, I find that duty of the Court before which a document chargeable to stamp duty has been produced is to satisfy itself whether such instrument has been or has not been duly stamped. So that if it was not duly stamped, the document could be impounded. For the purpose of finding out whether it was duly stamped the Court is invested with a duty to examine every instrument in order to ascertain whether it had been stamped with the stamp of the value and description required by law in force in the State of Karnataka, when such instrument was executed or first executed. At this juncture, it is useful to extract sub clauses (1) and (2) of Section 33 to the extent necessary.

"Section 33 (1) Every person having by law or consent of parties authority to receive evidence, and every person in-charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so

chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of Karnataka when such instrument was executed or first executed."

(underlining supplied)

7. It emerges from a careful reading of the above provision that in order to examine the question whether an instrument has been duly stamped, the Court has to see whether the instrument produced before it has been stamped with a stamp of the value and description required by law in force in our State as on the date when such instrument was executed or first executed. The expression ''when such instrument was executed or first executed'' qualifies the expression of ''a stamp of the value and description required by law in force in the State of Karnataka'' which immediately precedes it. Therefore, it has to be understood that the point of time indicated by the expression ''when such instrument was executed or first executed'', refers to the amount of stamp duty and the description of the stamp that was required to be paid at the time of execution of the document or at the time when the document was first executed.

8. The expressions ''executed'' and ''execution'' as defined in Section 2(f) reads as under:

"2(f) "executed" and "execution" used with reference to instruments, mean "Signed" and "Signature."

These expressions disclose that the document is said to have been executed when the same was signed. It is also clear from Section 2(e) which defines the terms "duly stamped" that the term duly stamped as applied to an instrument means that the instrument bears impressed stamp of not less than the proper amount and that such stamp has been impressed in accordance with law for the time being in force in the territories of the State of Karnataka.

9. Therefore, what is required to be examined by the Court is whether the document bears proper stamp duty which was payable on the instrument as on the date the document was executed. As on the date the present document was executed on 24.08.2009, stamp duty payable was Rs. 45,100/- and the stamp duty paid at the time of execution of the document was only Rs. 200/-. It fell short of Rs. 44,900/-. This deficit stamp duty has been paid by the plaintiffs on 03.02.2011. This is evident from Ex. P7 produced before the Court below which is a receipt issued by the Treasury. It is stated in the receipt that an amount of Rs. 44,900/- had been paid as deficit stamp duty in respect of agreement of sale dated 24.08.2009. Therefore, for the purpose of scrutiny undertaken by the Court as per Section 33 of the Stamp Act to find out whether the document had been duly stamped with a stamp duty that was payable on the date of execution of the document, it is clear that required stamp duty had been indeed paid though not on the date on which the document was executed, but subsequently by making good the deficit.

10. Indeed, there is provision under Section 40 of the Act, which enables a person who has not affixed proper stamp duty to appear before the Deputy Commissioner on his own and offer to pay the deficit stamp duty. The Deputy Commissioner is vested with the power and jurisdiction to receive such amount and issue a certificate certifying that proper duty had been paid in respect of the document.

11. In the instant case, the plaintiffs/respondents 1 to 3 have not moved the Deputy Commissioner before paying the deficit duty. There is no order passed by the Deputy Commissioner or certificate issued by the Deputy Commissioner stating that deficit stamp duty has been paid. It is for this reason, learned counsel for the petitioners contends that payment of deficit stamp duty in the instant case shall not be taken note of for the purpose of exercising power by the Court under Section 33 of the Act and that the document has to be treated as not duly stamped. In other words it is his contention that Court below ought to have impounded the document. This contention cannot be accepted. Section 33 of the Act requires the Court to examine whether proper stamp duty has been paid in respect of the instrument with reference to the value of the stamp duty and description payable at the time the document was executed. In the instant case, Court below has come to the conclusion that stamp duty paid was proper. Petitioners cannot request the Court to undertake an exercise to find out how the deficit stamp duty was paid, whether at all such payment ought to have been recognized as due payment. The Court will not, at this stage, go into the correctness of the manner or method adopted for payment of deficit stamp duty.

12. The Deputy Commissioner has not initiated any action against the plaintiffs. He was satisfied with the payment of deficit stamp duty. Even if the amount had not been paid within the time stipulated in law, the fact remains that the Deputy Commissioner is not aggrieved by such conduct of the plaintiffs and therefore, the procedural omission, if any, on the part of the plaintiffs in paying the deficit stamp duty cannot become the subject matter of enquiry for the purpose of admitting such document in evidence, at the instance of the opposite party. The Court below has satisfied itself regarding the stamp duty payable on the document and having come to the conclusion that proper stamp duty had been indeed paid has permitted the plaintiffs to produce the document and mark the same in evidence.

13. Judgment of the Supreme Court on which petitioners have placed reliance has no application to the facts of the present case, inasmuch as in paragraph 15 of the said judgment to which the attention of the Court has been invited, Apex Court has dealt with the liability to pay stamp duty on an instrument in terms of the law prevailing in the State in which it was executed.

14. In addition, it has to be stated here that the document was admitted for evidence as back as on 05.01.2013 and the present writ petition has been filed on 24.08.2015 i.e., nearly after lapse of 2 1/2 years. Hence, petitioners are also guilty of delay and latches in approaching this Court.

15. Petition is, therefore, dismissed.

