
(2008) 04 P&H CK 0075
In the Punjab And Haryana At Chandigarh

Royal Overseas Khosa Pando

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 3, 9
Transfer of Property Act, 1882 — Section 58, 59

Citation : (2008) 4 CivCC 553 : (2008) 3 PLR 201 : (2008) 4 RCR(Civil) 89

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 29.4.2005 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Moga in pursuance to the proceedings initiated u/s 3 of the Indian Stamp Act, 1899 (for brevity "the Act"). The Collector has held that on the basis of instructions dated 11.9.1979 (R-1), any mortgage without delivery of possession and deposit of title deed to secure loan is assessable u/s 9(1)(a) of the Act. Accordingly, a deficiency of Rs. 1,39,800/- has been determined and direction for recovery of the same from the petitioner has ordered.

Brief facts of the case are that the petitioner is a firm which has dealing with the Oriental Bank of Commerce Branch, Dhalke Tehsil District, Moga (for brevity "the bank"). The firm entered into an agreement for availing the facility of loan to the extent of Rs. 80 lacs (30 lacs as cash credit + Rs. 50 lacs as term loan) subject to the condition that it was to return loan amount along with interest and other expenses and it was also to deposit title deeds of properties collateral security for the loan with the bank. The details of the title deed has been given in the agreement title dated 27.12.2000 registered vide Wasika No. 5394 by the office of the Sub-Registrar, Moga in favour of the petitioner-firm for a total

consideration of Rs. 2,25,000/-. Likewise, title deed dated 27.12.2000 registered vide Wasika No. 4924 by the office of Sub Registrar, Moga against consideration of Rs. 1,55,000/-. There were other properties mentioned in the Schedule (Annexure P-1) as well. It is well known that an equitable mortgage is created by surrendering the title deeds for securing the bank loan. The aforementioned document was got registered in favour of the bank on 18.11.2003. The audit raised an objection vide their audit note pointing out deficiency of stamp duty to the tune of Rs. 1,39,800/-. Accordingly, Sub-Registrar, Moga-Respondent No. 2 sent his report to the Additional Deputy Commissioner-cum-Collector, Moga-respondent No. 4, who upheld the demand. It has been pointed out in his order dated 29.4.2005 (Annexure P-2) that the petitioner had affixed stamp duty valuing Rs. 20,200/- at the time of getting the document attested. He referred to notification dated 7.11.1979 issued by the Revenue Department to support the view that any mortgage without possession by deposit of title deed or any loan secured by a mortgage without possession was assessable to stamp duty as per the provisions of Section 9(1)(a) of the Act.

2. Therefore, he upheld the demand of Rs. 1,39,800/- and ordered recovery of aforementioned amount from the petitioner. The order of the Collector was challenged in an appeal and the Commissioner, Ferozepur Division, Ferozepur upheld the view taken by the Collector. Para 5 of the order passed by the Commissioner reads as under:

I have considered the arguments advanced by the learned Counsel for the appellants as well as the State Representatives. A perusal of the report of the Sub Registrar, Moga, shows that the Stamp Auditor of the office of Financial Commissioner (Revenue) Punjab, Chandigarh in the Audit Note for the year 2005 had found deficiency of Stamp duty amounting to Rs. 1,39,800/- in respect of demulcent No. 5431 dated 18.11.2003 shows that the appellant has secured loan of Rs. 8,000,00/- from Oriental Bank of Commerce, Dhalli Ke, District Moga. The Collector, in his impugned order has mentioned that as per Punjab Government notification No. CA 11/99-S9/79/14885A dated 7.11.1979 the stamp duty is to be charged @ 2% and registration fee @ 1% on mortgage deed without possession, deposit of title deed, or mortgage without possession to secure loan or to secure loan from any commercial bank. The Collector, therefore, vide his order dated 29.4.2003, rightly directed the appellant to pay Rs. 1,39,800/- as deficiency of stamp duty as pointed by the Audit Party. I, therefore, see no force in this appeal and dismiss the same.

The petitioner has attacked the orders passed by the Collector as well as by the Commissioner by asserting that there is no notification dated 7.11.1979 in existence which has been made the basis of the impugned order apart from the report of the audit. It has been pleaded that there is no legal provision for imposition of stamp duty on the petitioner who has merely deposited the original title deed without surrendering possession with the bank for securing loan nor any such provision has been relied upon in the impugned orders. Learned

Counsel has also submitted that once audit objection has been raised by pointing out deficiency of stamp duty amounting to Rs. 1,39,800/-, then the conclusion was foregone and the principles of natural justice have also been violated. A reference has been made to various interlocutory orders to substantiate the aforementioned contention. Learned Counsel for the petitioner has referred to circular dated 11.9.1979 (R-1) by claiming that the circular in fact support the petitioner inasmuch as it remit the stamp duty chargeable under any deed of mortgage without possession by deposit of title deeds or on any agreement deed for securing loan from any commercial or banking institution.

3. Mrs. Charu Tuli, learned State counsel, has however, pointed out that notification dated 11.9.1979 is in operation and reference to notification dated 7.11.1979 has erroneously been made. According to the learned State counsel, once a document is offered for registration, then under the Registration Act, 1908, the stamp duty and registration fee is charged as per the provisions of the Act. She has banked upon Section 9(1) of the Act to submit that stamp duty and registration fee is normally leviable. According to the learned State counsel, the view taken by the Collector as well as by the Commissioner, Ferozepur Division, Ferozepur, deserves to be upheld and the petition is liable to be dismissed. She has emphasised that circular dated 11.9.1979 (R-1) is confined only to purchase of inputs like crop loan on fertilizers, insecticides, pesticides, weedicides and seeds.

4. In order to determine the controversy raised in the instant petition it would be necessary to make a reference to the provisions of Section 58(f) of the T.P. Act because it deals with the mortgage by deposit of title-deeds and the same reads thus:

58(f) Mortgage by deposit of title-deeds: Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may, by notification in the official gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create security thereon, the transaction is called a mortgage by deposit of title deeds.

5. It is pertinent to mention that the provisions of Section 58(f) of the T.P. Act has been extended to all the district headquarters of Punjab vide notification No. GSR 88/CA.4A/1882/S.58/75 dated 28.8.1975 and all block headquarters vide notification No. SO 31/CA.4A/1882/S.58/79 dated 23.6.1979. Accordingly, it must be held that Moga where the document is executed and registered is covered by the notifications issued by the respondent-State. A perusal of Section 58(f) of the T.P. Act shows that in a case where a person delivers to a creditor or his agent document of title in respect of his immovable property with an intention to create security thereon the transaction is called transaction by deposit of mortgage title deed. As early as 1950, the provision came up for consideration before Hon"ble the Supreme Court in the case of Rachpal Mahraj Vs. Bhagwandas Daruka and Others, . Their Lordships considered the question as

to whether the memorandum signed and delivered by a borrower and relied upon by the lender evidencing the creation of a mortgage was compulsorily registrable u/s 17 of the Registration Act, 1908. A large sum was found due to the lender and the borrower has raised the demand for its repayment. The borrower handed over to the lender certain title deeds relating to immovable property which belonged to his family for the purposes of being held as security for the amounts then due. A draft memorandum was prepared which the lender took with him duly signed and delivered. It is in these circumstances that the question of creating mortgage by deposit of title deed u/s 58(f) and the question of compulsorily registration u/s 59 of the T.P. Act had arisen before the Supreme Court. The answer was recorded by their Lordships in para 4 of the judgment which reads as under:

A mortgage by deposit of title deeds is a form of mortgage recognised by Section 58(f), T.P. Act, which provides that it may be effected in certain towns (including Calcutta) by a person "delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon." That it is to say, when the debtor deposits with the creditor the title deeds of his property with intent to create a security the law implies a contract between the parties to create a mortgage and no registered instrument is required., u/s 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing the implication is excluded by their express bargain and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration u/s 17. Registration Act, 1908 as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable, as in AIR 1931 36 (Privy Council) Or, it may be delivered at a later date and nevertheless be registrable as in AIR 1939 167 (Privy Council) . The crucial question is : Did the parties intend to reduce their bargain regarding the deposit of the title deeds to the form of a document? If so, the document requires registration. If, on the other hand, its proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, then, there being no express bargain, the contract to create the mortgage arises by implication of the law "from the deposit itself with the requisite intention, and the document, being merely evidential does not require restoration.

(emphasis added)

6. Another opportunity to consider the same proposition based on Section 58(f) of the T.P. Act arose before a Constitution Bench of the Supreme Court in the

case of United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and Others, . The Constitution Bench approved the view taken by the Supreme Court in the case of Rachpal Maharai (supra) and proceeded to consider its application to the letters which were written by the title holder intimating the United Bank of India that the title deed has been handed over to another family member who is to deposit the same for security purposes. It was found by the Supreme Court that since the afore-mentioned letter describes as Ex.7(a) was not to be an integral part of the transaction it was not to operate to create an interest in the immovable property and the same do not require registration. The view of the Constitution Bench is discernible from the reading of para 8 which reads thus:

Applying the principle to the present case, we consider that the letter at Ex.7(a) was not meant to be an integral part of the transaction between the parties. The letter does not mention what was the principal amount borrowed or to borrowed. Neither does it refer to rate of interest for the loan. It is important to notice that the letter does not mention details of Title deeds which are to be deposited with the plaintiff-bank. We are, therefore, of the opinion that the view of the High Court with regard to the construction of Ex.7(a) is erroneous and the document was not intended to be an integral part of the transaction and did not by itself, operate to create an interest in the immovable property. It follows, therefore, that the document Ex.7(a) did not require registration u/s 17 of the Indian Registration Act.

7. The afore-mentioned judgments along with others have been followed and applied by a Division Bench of Karnataka High Court in the case of State Bank of Mysore v. S.M. Essence Distilleries Pvt. Ltd. 1993 I.S.J. 580 and a Division Bench of this Court in the case of Narvir Singh and Another Vs. State of Haryana and Others, .

8. When the facts of the present case are examined in the light of the principles laid down by Hon"ble the Supreme Court in the cases of Rachhpal Maharai (supra) and United Bank of India (supra) it becomes evident that the respondent has not recorded any finding as to whether the agreement dated 14.11.2003 was intended by the parties to reduce their bargain regarding deposit of the title deeds to the form of a document. It appears to us that the agreement contains no such clause which might be construed to mean that it is integral part of the transaction. Be that as it may in the absence of any finding by the respondents to that effect the impugned order cannot be sustained and is thus liable to be set aside. We are also impressed with the other argument raised by the counsel for the petitioner that the report of Sub Registrar, Moga based on the Audit report for the year 2005 had recorded a foregone conclusion and the authorities have proceeded to accept the report. At the time of preparation of report by the Sub Registrar neither any notice was issued to the petitioners nor they were allowed to file objections against the report. It has also caused prejudice to the interest of the petitioners.

9. For the reasons, aforementioned this petition succeeds and the impugned

orders dated 29.4.2005 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Moga and 30.1.2007 (Annexure P-4) passed by the Commissioner, Ferozepur Division, Ferozepur, are hereby set aside.