(1964) 02 MAD CK 0045

In the Madras High Court

Case No : Writ Petition No. 110 of 1962

S. Rangaraju Naidu APPELLANT

Vs

The Collector of Madras RESPONDENT

Date of Decision : 24-02-1964

Acts Referred:

Stamp Act, 1899 — Section 35, 40, 42, 42(2), 45(2)

Citation : (1965) ILR (Mad) 532

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : T.R. Srinivasan, for the Appellant; V. Ramaswami, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The point involved in this writ petition is fairly simple, though it has a long history behind it. In 1945 the Petitioner became the assignee of half the patent rights belonging to one Dr. Kamesam, since deceased. This Dr. Kamesam filed a suit, Original Suit No. 8 of 1947, in the Sub-Court, Salem, seeking to recover a sum of Rs. 2,00,000 which he claimed was the unpaid consideration for the assignment. Along with the plaint in that suit, a copy of the document was filed and Dr. Kamesam, as the Plaintiff, summoned the original, which was in the custody of this Petitioner, who was the Defendant in that suit. The document was produced by the Petitioner. The Subordinate Judge held that the document which had been executed in Mysore State, which was then a foreign territory, though it complied with the requirements of the Stamp Act in force in Mysore State, should be held to be inadequately stamped or unstamped, in so far as the State of Madras was concerned. It may be mentioned that the document purported also to affect rights in the State of Madras. Accordingly, the Subordinate Judge impounded the document and forwarded it to the Collector. Against this order a revision petition was filed in this Court. It failed. Subsequently, the suit itself was transferred to this Court and at that stage, in pursuance of the order to impound, the document was sent to the Collector. In October 1954, the Collector passed orders u/s 40 of the Indian Stamp Act levying a duty of Rs. 9,000 and a penalty of rupees five upon the document. A writ petition against the direction calling upon the Petitioner to pay the amount as well as a writ appeal therefrom failed. The amounts were realized from the Petitioner in installments and the last of such payments was on 16th February 1960.

2. It may be mentioned at this stage that the suit itself was dismissed before the matter went to trial and before the document, now validated by the levy of stamp duty and penalty, could be admitted in evidence Within six months of the collection of the last installment from him, the Petitioner applied to the Collector for refund of the stamp duty u/s 54 of the Indian Stamp Act. The Collector dismissed the application and it is against that order that the present writ petition has been filed.

3. The contention of Mr. T.R. Srinivasan, learned Counsel for the Petitioner, is that though section. 54 may not at first blush appear to apply to the facts of this case, yet both in letter and spirit that section must meet the situation in the present case. Learned Counsel points out that there are various sections where refund of the penalty is provided for. There is no section which specifically deals with the refund of the stamp duty except Section 45(2). In a case covered by that provision, if the Chief Controlling Revenue authority should find that excess stamp duty had been collected from a party, either u/s 35 or u/s 40, then it is competent to that authority to refund the excess upon an application in writing being made to it within three months of the order charging such duty. It is conceded by Mr. Srinivasan that had the document been admitted in evidence, he could not claim any refund of the duty notwithstanding that the contract itself might have fallen through or the rights created under the document had ceased to exist either before or after the filing of the suit. But in the present case the document was not admitted in evidence. The relevant provision states that when the duty and penalty have been levied u/s 35 or Section 40, the Collector shall certify by an endorsement upon the document that proper duty or the proper duty and penalty have been levied. On that being done, Sub-section 2 of Section 42 states that every instrument so endorsed shall thereupon be admissible in evidence ; but in a case where the document is not actually admitted in evidence, as has happened in the present case, it is claimed by Mr. Srinivasan that that would clearly be a case where the Petitioner has placed the Collector in possession of sufficient funds to cover the deficit stamp duty, that is, he has placed him in possession of stamps of that value and those stamps having been rendered unfit or useless for the purpose intended, Section 54 should apply and the Collector is enjoined under this provision to make a refund deducting the quantum specified in that section. In order to appreciate this contention, it is necessary to net out the relevant part of this section in full. It reads:

When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector, shall repay to such person the value of such stamp or stamps in money, deducting ten naye paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled.

4. Reading the section as a whole, it seems clear to me that it deals with a case where a person is possessed of stamps either by himself or in the hands of the Collector, as in the present case, but for which stamps he has no immediate use that is, it contemplates a position where the stamps would be usable on a future occasion. It does not cover a case where the stamps have been written upon or are useless for any future purpose whatsoever. Apart from the fact that this section deals with a case where a person is in possession of the stamps of the nature indicated, which does not obtain in the present case, it contemplates not a case of a document where the stamps have been written upon or otherwise put to use. That the purpose for which the document was written upon has failed is not the basis for the grant of the refund u/s 54. That is how I understand the section. In the present case the sum of Rs. 9,000, being the stamp duty, must be deemed to have been converted into stamps of that value and incorporated in the document by reason of the endorsement made by the Collector u/s 42 of the Act. The stamps did not exist apart from the document which has been written upon them. In terms, therefore, Section 54 does not apply. I am also unable to appreciate how any underlying intention of any of the provisions of the section can be deemed to cover the Petitioner''s prayer in the present case. I am of opinion that the Collector acted within his powers in rejecting the application for refund. This writ petition seeking a writ of mandamus to issue to the Collector is accordingly without substance and is dismissed. There will be no order as to costs.

