

(1995) 09 MAD CK 0109

In the Madras High Court

Case No : C.A. No's. 8429-30 of 1995 (Arising out of Slp (C) No's. 362-63 of 1995)

Santosh Jayswal and Another

APPELLANT

Vs

State of M.P. and Other

RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

General Clauses Act, 1897 — Section 2(18), 3
Registration Act, 1908 — Section 17, 17(1)(c), 17(1)(d)
Stamp Act, 1899 — Section 2(16)
Transfer of Property Act, 1882 — Section 3, 54

Citation : (1995) 09 MAD CK 0109

Hon'ble Judges : K. Ramasamy, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

1. Leave granted. These appeals by Special Leave arise from the judgment dated 26.8.1994 of the Division Bench of the High Court of Madhya Pradesh in L.P.A. Nos. 21 and 22 of 1994 title. state of M.P. and others v. Santosh Jaiswal and L.P.A No. 21/94 titled State of M.P. and others v. Surendra Shuklar. The question canvassed in the Division Bench was whether the right to catch fish in the tank granted in favour of the appellants was in the nature of a lease or licence, an instrument compulsorily registrable under the Indian Registration Act and liable to stamp duty under the Indian Stamp Act. The Division Bench held that they were leases in respect of Santosh Jaiswal's case (L.P.A. No. 21/94) for a period of nine months and in Surendra Shukla's case (L.P.A. No. 22/94) for more than one year. In the counter-affidavit filed in this Court, it was stated that the lease was for more than two years. Shri Pramod Swarup, learned counsel for the appellants, contended that it is only a licence and that, therefore, it is neither an instrument compulsorily registrable u/s 17 of Registration Act nor liable to stamp duty under the Indian Stamp Act. We do not agree with the learned counsel. It is true that the learned single judge while disposing of the writ petition found that it was a licence but not a lease but before the Division Bench, controversy whether what was granted to the appellant is a licence or a lease was not put in

issue. On the other hand, it proceeded on the premise that they were leases. The appellants have not even raised any contention in the SLP nor have they placed any document before us. Under these circumstances, we would proceed on the premise that they are leases. The contention raised in the High Court was that since profit a prendre is not an immovable property and that, therefore, it is not compulsorily registrable instrument. That contention was rejected by the High court.

2. Section 3 of the Transfer of Property Act defines "immovable property". It does not include standing timber, growing crop or grass. Clause (26) of Section 3 of the General Clauses Act is equivalent to Section 2 (18) of the M.P. General Clauses Act which defines immovable property thus:

2 (18) "immovable property" included land, benefits, to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

3. Section 17(1) (d) of the Indian Registration Act provides that certain documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the specified date. By virtue of Section 17(1) (c) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is compulsorily registrable instrument. This Court considered the controversy in *The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and others* (1977) 4 SCC 145 = (1978) 91 LW 13 SN and held that if the profit a prendre is a tangible immovable property, its sale has to be by means of a registered instrument in case its value exceeds Rs. 100/- If it is intangible, the sale is required by Section 54 of the Transfer of Property Act, 1882, to be effected by a registered instrument, whatever its value. Therefore, in either situation the grant of the profit a prendre has to be by means of a registered instrument.

4. Since the definition of "Immovable Property" in M.P. General Clauses Act includes benefits to arise out of land and things attached to the earth, the question is whether the right to catch fish is a benefit to arise out of the land. It cannot be controverted that catching fish from the tank would be a benefit arising out of the land. Therefore, it is an immovable property. Even though it is profit a prendre, since it is a benefit to arise from the land, it is an immovable property. If its value is more than Rs. 100/- or the lease is on year to year basis, it is a compulsorily registrable instrument u/s 17(1) (c) of the Indian Registration Act. It is an instrument under Article 35(a) of Schedule 1-A Clauses (1) to (3) of the Stamp Act. Therefore, it requires to be engrossed with required stamp duty and registered u/s 17(1) (d) of the Indian Registration Act. 5. Though Shri Pramod Swarup, learned counsel for the appellant, sought reliance on the judgment of this Court in *Ananda Behera and Another Vs. The State of Orissa and Another*, *The State of West Bengal Vs. Shebait of Iswar Sri Saradia Thakurani and Others*, *Board of Revenue and Others Vs. A.M. Ansari and Others*, and *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited*

and Another, they render little assistance to the facts in these cases. Therein the question was whether the right to catch fish is a lease or a licence. In view of the language of documents in those cases, this Court considered that it would be a licence but not a lease. Since the document has not been placed before us, we cannot decipher whether it is a licence or a lease. Since the controversy was not put in issue before the Division Bench, we proceeded on the premise that it is a lease. Under these circumstances, we are of the considered view that the Division Bench of the High Court is right in its conclusion that it is a lease and being of the value of more than Rs. 100/-, and upwards, it is compulsorily registrable u/s 17(1) (d) of Indian Registration Act.

6. u/s 17 of the Registration Act, read with Section 2 (16) of the Indian Stamp Act, "lease" means a lease of immovable property and includes a patta, a kabuliyat or other undertaking in writing, not being a counter-part of a lease to cultivate, occupy, or pay or deliver rent for, immovable property, etc. Right to catch fish is profit a prendre, and a benefit to arise out of land is an immovable property for the purpose of stamp duty. It would, therefore, be clear that since it is a right given to the appellants to catch fish in the tank, it is a profit a prendre attached to or benefit to arise out of the land. Therefore, it is an instrument for the purpose of stamp duty. Since the duration of lease in L.P.A. No. 21/94 is only nine months, it is not compulsorily registrable instrument by operation of Section 17(1) (c) of the Act. The Civil Appeal arising out of L.P.A. 21/94 relating to Santosh Jaiswal is, therefore, partly allowed. It is an instrument which requires to bear the appropriate stamp duty, but is not a compulsorily registrable instrument. In appeal arising out of L.P.A. 22/94 of Surendra Shukla, since the duration of lease is more than a year, it is an instrument and compulsory registrable by operation of Section 17 (1) (c) of the Registration Act and liable to stamp duty under the Indian Stamp Act. Therefore, it cannot be acted upon unless it is duly engrossed with stamp duty and registered. The appeals are accordingly disposed of. No costs.