
(1998) 01 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 3286 of 1993

Sarat Ch. Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Stamp Act, 1899 — Section 56, 56(1), 56(2)

Citation : AIR 1998 Ori 193

Hon'ble Judges : Susanta Chatterji, J;C.R. Pal, J

Bench : Division Bench

Advocate : B.K. Boura, S. Sethi and A.C. Badu, for the Appellant; A.S. Naidu, P. Mohanty, A.K. Rath, A.K. Naidu and Additional Government Advocate, for the Respondent

Judgement

Susanta Chatterji, J.—The writ petitioner has challenged the decision dated 29-12-1992 made by the Board of Revenue, Orissa, Cuttack in Stamp Revision Case No. 1 of 1989 in the matter of a petition under Sections 56 and 57 of the Indian Stamp Act. Alternatively he has prayed to treat the writ petition as one to determine the proper stamp duty payable on the deed of dissolution of partnership pending registration before opposite party No. 4. Sub-Registrar. Berhampur and necessary direction for registration.

2. Briefly speaking, the dispute had arisen while partners of M/s. Ganapati Sahu & Sons, a partnership firm, had decided to dissolve the partnership. The petitioner was a partner of the said firm. Accordingly a deed of dissolution of partnership was made and the same was executed. The said deed was presented for registration under the Indian Registration Act before the Registering Officer, opposite party No. 4. The registering authority finding the document not duly stamped, referred the document to the Collector, opposite party No. 2, for proper adjudication as to levability of proper stamp duty. The Collector in exercise of his power u/s 40(1) of the Stamp Act directed to realise the deficit stamp duty of Rs. 15,302.75 along with a penalty of Rs. 2/- by his letter dated 3-4-1984.

3. The petitioner moved the Court of the District Judge, Ganjam in appeal. However, finding the forum erroneous, he withdrew the appeal and moved the Member, Board of Revenue the Chief Controlling Revenue Authority. The said authority disposed of the Revision petition of the petitioner by upholding the order of the Collector instead of referring the same to the High Court for proper consideration and disposal on merit. The petitioner challenges the said order as bad in law and liable to be quashed.

4. It is contended that the petitioner is a partner of the partnership firm M/s. Ganapati Sahu and Sons with its registered office at Berhampur town. The partners having decided to dissolve the partnership, made a deed of dissolution in respect of such firm, agreed to the terms of dissolution, executed the same and presented for its registration under the Indian Registration Act before the Registering Officer. The Registering Officer having impounded the document of the petitioner, classified the same as "deed of dissolution of partnership" and for adjudication u/s 40(1)(b) as to proper stamp duty to be paid sent the same to opposite party No. 2.

5. By the impugned order the Member, Board of Revenue simply dismissed the petition observing that the petitioner might seek other remedy. It appears that the petitioner claims that the stamp duty was leviable as in the case of a deed of dissolution of partnership and not for a deed of conveyance, as has been done. The stamp duty payable on a deed of dissolution under item 468 was only Rs. 23.75. The Member, Board of Revenue has held that the Chief Controlling Revenue Authority exercising jurisdiction under Sub-section (1) of Section 56 was not competent to exercise appellate powers. It was also not possible for the Member to interfere u/s 56(1) as well as u/s 56(2) since no reference had been made to him by the Collector. It was recorded that the Collector, Ganjam had no doubt that the deed was not a deed of dissolution but a deed of conveyance. It was not possible that the Chief Controlling Revenue Authority to take action u/s 57 as no case had been referred to him u/s 56(2). The Member, Board of Revenue had ultimately concluded that when the registering authority had clearly considered the deed as one of conveyance, which was confirmed by the Collector u/s 46(1), the Chief Controlling Revenue Authority had no scope to exercise powers u/s 56(1) or Section 57 of the Act. It was observed that the petitioner might, therefore, seek other remedy. The petition was dismissed accordingly.

6. Being aggrieved and dissatisfied with the order of the Member. Board of Revenue, the petitioner has presented the writ petition seeking the relief as indicated above.

7. In the Counter affidavit filed by opposite parties 1 to 4, it was disclosed, inter alia, that the deed of dissolution of partnership executed by Biswanath Sahu and others along with Sarat Chandra Sahu was presented before the Sub-Registrar, Berhampur town on 15-7-1983 for registration. The Sub-Registrar impounded the document and sought clarification of the Stamp Collector, Ganjam regarding classification of the document in question. The Stamp Collector in his order dated

3-3-1984 classified the document as one of conveyance u/s 23 along with Sections 35(b) and 46(1) of the Indian Stamp Act chargeable u/s 5 of the said Act. The appeal was erroneously filed before the learned District Judge and the same having been withdrawn, a Revision Petition was filed before the Member, Board of Revenue u/s 56 of the Indian Stamp Act. On scrutiny it was found by the Sub-Registrar that the deed though styled as a dissolution of partnership embodied several distinct matters such as conveyance for Rs. 1,13,500/-, release of good will for Rs. 5000/- and for those recitals stamp duty of Rs. 15,302-75 was required to be paid.

8. Under Chapter IV starting from Section 33, there is procedure for examination and impounding of instruments not duly stamped. Chapter VI starting from Section 56 of the Act deals with reference and revision. Section 56 envisages control of, and statement of case, to the Chief Controlling Revenue Authority. Section 56(1) lays down that the powers exercisable by a Collector under Chapter IV and Chapter V and under Clause (a) of the first proviso to Section 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

9. The question whether the deed in question was a deed of release or a deed of partition cannot be referred within the scope of Section 56(1) if the deed was already registered as held by, the Madras High Court in AIR 1989 Mad 257 (P. Balakrishnan v. District Registrar, Tuticorin, Tirunelveli District). In the instant case such question does not arise as the deed was neither registered nor was mere a reference by the Collector u/s 56(2). The Member, Board of revenue refused to consider the merit of the case finding, inter alia, that there was neither any reference u/s 56(1) nor any reference u/s 56(2) of the Act.

10. Our attention is drawn to the case respected in AIR 1965 SC 497, Banarasi Dass Abluslia v. Chief Controlling Revenue Authority, Delhi. The scope of Section 57 was also considered and it was held that Section 57 afford a remedy to the citizen to have his case referred to the High Court against an order of Revenue Authority imposing Stamp duty and/or penalty provided the application involves a substantial question of law and imposes a corresponding obligation on the authority to refer it to the High Court for its opinion.

11. In Vinay Construction and Development Company, Hyderabad Vs. Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad and Another, the Full Bench had held that out of several matters referred to the Chief Controlling Revenue Authority the Chief Controlling Revenue-Authority referred only one of such matters to the High Court and the High Court could not express any opinion on the matters not referred.

12. In AIR 1950 SC 218. Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd., the Supreme Court considered the scope of Section 57 as to statement of case by the Chief Controlling Revenue Authority to High Court. The power to make a reference u/s 57 is not only for the benefit of the Chief

Controlling Revenue Authority but enures also to the benefit of a party affected by the assessment and can be demanded to be used also by such a party. It is coupled with a duty east on him as a police Officer to do the right thing and when an important and intricate question of law in respect of construction of a document arises, as a public servant it is his duty to make the reference. If he omits to do so it is within the power of the Court to direct him to discharge that duty and make a reference to the Court.

13. In Mata Rama Rao and sons, Srikakulam Vs. The Chief Controlling Revenue Authority, (Board of Revenue), Hyderabad, a Special Bench of Andhra Pradesh High Court considered the scope of the Stamp Act and Schedule I, Articles 45, 46-Partition of partnership. It has been held that the document in question was only a partnership deed and not a partition deed. No partition was effected by the document in question. It only declared that a partition of the joint family business had been effected a day before i.e. on 31-3-1964 and these very assets which once formed part of the joint family business were brought into the partnership as the capital of the fire. Severance of joint status had already taken place before the document in question was executed.

14. In another case reported to in AIR 1948 Bom 254. The Chief Controlling Revenue Authority, Bombay v. Maharashtra Sugar Mills Ltd. the scope of Section 45 and also Section 59 as to High Court exercising advisory jurisdiction and not original jurisdiction has been considered.

15. The ratio of the aforesaid decision is very much helpful for adjudication of the point raised in the instant case. In the case at hand, the Member, Board of Revenue found that there was no reference u/s 56(1) of the Indian Stamp Act nor was there any reference u/s 56(2) of the Act. The Sub-Registrar impounded the document and referred it to the Collector for adjudication and the Collector had impounded the document indicating that, the document was not a deed of dissolution but was a deed of conveyance. The order of the Collector-was subject to the order of the Chief Controlling Revenue Authority, The ratio of the decisions as indicated above, is that in case the Chief Controlling Revenue Authority does not find any substantial question of law to be decided, the party aggrieved may ask for an appropriate relief of direction to the Chid Controlling Revenue Authority to refer the matter u/s 57 to the High Court. By applying the said test, if we find that there is no specific provisions to prefer either appeal or revision against the order of the Collector but the order of the Collector is subject to over-alt power of the Chief Controlling. Revenue Authority. The party aggrieved can certainly ask the Chief Controlling Revenue Authority who in the present case is the Member. Board of Revenue to ask the Collector to refer the matter u/s 56(1) and go into the merit of the case. We further find that the Chief Controlling Revenue Authority has not considered the case on merit and asked the party to seek other remedies. A party cannot have a remedy unless it is provided under the Statute. By going through the entire scheme of the Act and in the light of the decisions of the Supreme Court as indicated above, we are of the view that in

case where the Collector has adjudicated on a document impounded, either the Collector himself can refer u/s 56(2) or on a proper application the Chief Controlling Revenue Authority can consider the scope of reference on the revision petition by the aggrieved party. Chapter VI refers to reference and revision. We lay emphasis under the word "revision." Section 56(1) is having combined force of both reference as well as revision.

16. For the foregoing reasons, we quash the order of the Chief Controlling Revenue Authority i.e., the Member, Board of Revenue under Annexure-3 and remit the matter back to him for considering the points on merit whether the document in question is simply a deed of partnership and necessary stamp duty is to be paid, the document being treated as one of conveyance in view of the recitals therein. The ultimate prayer, we do not consider, is within the scope of Section 57 of the Act, nor can we consider the same without any reference. No costs.

C.R. Pal, J.

15. I agree.