(1998) 11 MAD CK 0042

In the Madras High Court

Sarojini Muthusamy and Others APPELLANT

Vs

The District Registrar and Another RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Citation : (1999) 1 MLJ 113

Hon'ble Judges : Meenakumari, J

Bench : Division Bench

Judgement

Meenakumari, J.—This is a writ of certiorarified mandamus calling for the records of the 2nd respondent made in P.M. 51979/E3/89, dated

15.2.1991 confirming the order of the first respondent made in I.13/A1/89, dated 26.5.1989 and quash the order dated 15.2.1991 made therein

and direct the respondents to register the dissolution deed dated 12.11.1986 and return the same to the petitioners after due registration.

2. The case of the petitioners is that on 12.11.1986, the petitioners have taken a decision to dissolve the partnership firm Shree Laxmi Spinners''

and entered into a deed of dissolution dated 12.11.1986. Their case is that they are the joint co-owners of the partnership property owned by the

firm with an undivided interest along with other partners. The deed of dissolution has been entered into between the partners. The allocation of

properties including the Immovable properties and liabilities of the firm was done under the deed of dissolution itself and the petitioners have paid

the stamp duty of Rs. 16,93 5 on the dissolution deed and submitted for registration. The first respondent called upon the petitioners to pay the

difference of the additional stamp duty of Rs. 2,50,825 as if the deed of dissolution is a conveyance. The petitioners on receipt of the above proceedings, took up the matter by way of appeal before the second respondent, the Inspector General of Registration, Madras.

3. It has been argued by the learned Counsel for the petitioner that the allocation of Immovable properties to the partners under the dissolution

deed dated 12.11.1986 is not a transfer so as to treat the document as a conveyance for paying stamp duty on that basis. He has argued that the

first respondent in his proceedings in I/13/A1/ 89, dated 26.5.1989 sought to construe the dissolution deed dated 12.11.1986 as a document of

conveyance under the Indian Stamp Act and declared that the document should have been affixed with stamps to the value of Rs. 2,52,768 instead

of Rs. 1,955 and deducting that amount the first respondet has directed the petitioners to affix the stamps to the value of Rs. 2,50, 813 and

imposed a further penalty of Rs. 12 and directed the petitioners to pay a sum of Rs. 2, 50, 825 within a period of one month from the date of

receipt of the above proceedings on 22.6.1989. Aggrieved by the same, they have filed the appeal before the second respondent. The Inspector

General of Registration, Madras, u/s 33-A of the Indian Stamp Act. By order dated 15.2.1991 in proceedings P.M. No. 51979/ E3/89, the

second respondent has concurred with the orders passed by the first respondent. It has been argued on behalf of the petitioner that the above

orders are impugned in the present writ petition.

4. The respondents have filed a counter. It has been argued on behalf of the petitioners that the authorities have got the powers to adjudicate as to

the proper stamp duty, if a document is presented for registration as per Section 31 of the Indian Stamp Act. In this case, the fact remains that the

first respondent has passed orders holding that the petitioners are liable to pay the stamp duty to the value of Rs. 2, 50, 813 and a further penalty

of Rs. 12 in all totalling Rs. 2, 50, 825. The above order is purported to be one u/ s 31 of the Stamp Act.

5. It has been argued that aggrieved by the same, the petitioner has preferred an appeal before the second respondent, viz., the Inspector General

of Stamps. The counsel has argued that under the provisions of Section 56 of the Indian Stamp Act, the Collector can exercise the powers under

Chapter IV and Chapter V and under Clause (a) of the first proviso to Section 26 which is subject to the control of the Chief Controlling Revenue

Authority.

6. The reading of Section 56 of the Indian Stamp Act is as follows:

Control of, and statement of case to, Chief Controlling Revenue Authority: (1) 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.

(2) If any Collector, acting u/s 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may

draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to asses and charge the duty (if any)

in conformity with such decision.

So, as per Section 56(2), if any Collector, acting u/s 31, Section 40 or Section 41, feels doubt as to amount of duty with which any instrument is

chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue

Authority. As per Section 56(3) of the Indian Stamp Act, the Chief Controlling Revenue Authority, shall consider the case and send a copy of its

decision to the collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

7. According to Section 57 of the Indian Stamp Act, it reads as follows:

Statement of case by Chief Controlling Revenue Authority to High Court: (1) The Chief Controlling Revenue Authority may state any case referred

to it u/s 56, Sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon-

According to the provisions of Section 57(1) of the Act, The Chief Controlling Revenue Authority may state any case referred to it u/s 56, Sub-

section (2), or otherwise coming to its notice, and refer such case, in its own opinion thereon, if it arises in the Union Territory of Pondicherry to

the High Court of Madras, and as per Sub-sec.(2) of Section 57 of the Act, every such case shall be decided by not less than three Judges of the

High Court to which it is referred, and in case of difference, the opinion of the majority shall prevail. According to my view, Section 57 of the Act must be read with the provisions of Section 56 of the Act.

8. In this case, it is not in dispute that the Chief Controlling Revenue Authority has decided the case on his own, by the impugned order dated

15.2.1991 in P.M. No. 51979/E3/89 in violation of the provisions u/s 57 of the Indian Stamp Act. According to Sub-section (2) of Section 57 of

the above Act the duty is cast upon the Chief Controlling Revenue Authority to refer the matter to the High Court. The Chief Controlling Revenue

Authority, Board of Revenue, Madras, while dealing with the case referred to u/s 56(2) can state a case and refer it to the High Court only if it is

an instrument, namely one that is signed. In this case it is not disputed that the document submitted is an instrument and in such a case it has to refer

it to the High Court. The above proposition of law is laid down in The Chief Controlling Revenue Authority, Board of Revenue Vs. State Bank of

India, Head Office, . In Banarsi Das Ahluwalia Vs. The Chief Controlling Revenue Authority, Delhi, , the Apex Court held that, Section 57(1)

imposes a duty on the authority to state a case when it raises a substantial question of law. The Apex Court also observed that it also must now be

taken as settled that, that duty is not affected by the question whether the case is pending before the authority or not. The principle underlying the

decision is that Section 57 affords a remedy to the citizen to have his case referred to the High Court against an order of a revenue authority

imposing stamp duty and 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. Such a right cannot be construed to depend upon any subsidiary circumstance such as the

pendency of the case before the authority. In view of the above decision, it can be said that as per Section 57(1) of the Indian Stamp Act, the duty

is cast upon the authorities to refer the matter to the High Court. It has also been held by the Supreme Court in Chief Controlling Revenue

Authority and Superintendent of Stamps Vs. Maharashtra Sugar Mills Ltd., that the power to make a reference u/s 57 of the Act is not only for the

appellant. It is coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in

respect of the 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. It has also been interpreted that the word ""may"" in Section

57(1) cannot be construed as merely permissive. When the matter involves questions of law, depending upon the construction to be put on the

deed and two or more constructions are not to be ruled out and when the rights of the party are vitally affected, the authority concerned shall not

decline to refer the matter to the High Court u/s 57 of the Indian Stamp Act. AIR 1985 (Mad.) 25; AIR 1950 S.C. 218.

9. Basing on the above, it has to be said that the second respondent has failed in its duty to refer the matter to the High Court under the provisions

of Section 57 of the Indian Stamp Act. In such a case, basing on the above judgments it can be held that the respondents have violated the

provisions u/s 57 of the Act in not referring the matter to the High Court. In the above circumstances, it would be sufficient if a direction is issued to

the second respondent to take action as per the provisions of Section 57 of the Indian Stamp Act within 2 months from the date of receipt of this

order. With the above direction, the impugned order is quashed. This writ petition is allowed without costs. Consequently, W.M.P. No. 6903 of

1991 is closed.

