(1967) 05 CAL CK 0034

In the Calcutta High Court

Case No : Civil Rule No. 93 of 1967

Satyendra Nath Chattopadhyaya — APPELLANT

Vs

Narendra Nath Ghose — RESPONDENT

Date of Decision : 16-05-1967

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115
Stamp Act, 1899 — Section 2(24)

Citation : (1967) 2 ILR (Cal) 383

Hon'ble Judges : Chatterjee, J

Bench : Single Bench

Advocate : A.D. Mukherjee and Bijan Behari Mitter, for the Appellant;None, for the Respondent

Judgement

Chatterjee, J.—This is a petition u/s 115 of the CPC against an order impounding a particular document. The learned Judge has treated a deed of settlement as a deed of gift and impounded it as such.

2. I have gone through the deed in question. It is true that some properties were given to certain persons by the deed. Those certain persons are the members of the family of the settlor, but the deed has not stopped there. Not merely certain properties have been given, but certain liabilities have also been imposed. There were certain proceedings against the settlor. The persons in whose favour the settlement was made were made liable for any decree that may be passed against the settlor. There were various other beneficiaries under the deed. The persons to whom the properties were given, namely, his sons and further, various other liabilities regarding the maintenance of certain relations of the settlor and for carrying out the pujas of certain deities. Therefore, it cannot be treated as if it is a deed of gift of certain properties simpliciter. It is indeed true that certain properties were given, but at the same time certain liabilities were also imposed by the very same deed and it is not possible to determine the amount of that liability, as for instance, they have to incur expenses for certain

pujas; they have to maintain certain persons during their life-time, but nobody knows what is the expectation of life of each of them and we cannot determine any particular amount to be the total amount that must be spent for the pujas during the life-time of persons in whose favour the deed was made. Because of such difficulty in determining the total benefit given to a person there is a special provision for such deeds of settlement.

3. A deed of settlement has been defined in Section 2(24) of Indian Stamp Act and that definition is not the same as the same term has been ordinarily understood in other matters. The Indian Stamp Act is a fiscal statute and in that Act the word ''settlement'' has been given a particular meaning and that meaning is the only meaning of the word ''settlement'' for the purpose of that Act. The word ''settlement'' means for the relevant purpose any non-testamentory disposition in writing of moveable or immoveable properties made (a)..., (b) for the purpose of distributing the properties of the settlor among his family or for those whom he desires to provide for. In this case it is a non-testamentary disposition in writing. It relates to moveable and immoveable properties. The purpose of that deed is to distribute the property of the settlor among his family. The sons are the members of his family. They may not be dependent, but they are still the members of the family and in any case there are other persons for whose benefit he desires to make certain provisions. Therefore, this deed is a settlement within the meaning of Section 2(24) of the Indian Stamp Act. It may not be a ''family settlement'' in the sense it is ordinarily understood in law, but that ordinary meaning has not been incorporated in the section. The basis for payment of stamp duty on such document is as if it was a bond for a sum equal to the amount or value of the property settled as set forth in such settlement. As I have stated above, if a Court embarks on an enquiry as to what is the total benefit given by the settlor, the Court would not be able to come to any finding whatsoever, because the liabilities imposed by the document are indeterminate and cannot be determined and it is only the assets the value of which can be determined. Therefore, the net benefit cannot be determined by any process of enquiry and it is for this reason that the statute has provided that the stamp would be on the basis of the bond on the value of the property settled as set forth in such settlement or, in other words, the subjective valuation of the settlor will determine the amount or value for which the stamp is to be paid as if it were a bond.

4. The result, therefore, is that the Rule is made absolute and the order of the trial Court is set aside.

5. There will be no order for costs.

