(2003) 02 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4101 of 2003

Shri Abdul Waheed and others APPELLANT

Vs

U. P. State RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2003) 02 AHC CK 0076

Hon'ble Judges : SUSHIL HARKAULI, J

Final Decision : Dismissed

Judgement

SUSHIL HARKAULI, J.—A sale deed dated 1152001 was executed in favour of the petitioners. According to the recital in the sale deed it was in respect of land alone. The Sub Registrar after the date of registration of the sale deed sent a reference to the Collector under S. 47A of the Indian Stamp Act, 1899 by his letter dated 1772001. In that letter it was written that the spot inspection was carried out in which the land was found to have a three storey building standing over it, which appeared to be more than ten years old.

2. On the basis of this information, proceedings were started in the form of Case No. 131/200102 under Ss. 33/40/47 of the Indian Stamp Act. Stamp duty and penalty was imposed by an order of the Additional District Magistrate dated 2732002. It was stated in that order that the Additional district Magistrate had himself inspected the property on 1732002 and found three storied old house on the land in question, which appeared to be ten or twelve years old. The petitioners preferred a revision under S. 56 (1) of the Stamp Act, being Revision No. 36 of 200102, which was allowed by the Commissioner by order dated 852002 and the matter was remanded back with an observation that the matter be decided after spot inspection. After the remand the Additional District Magistrate, Moradabad again repeated his order. In the order he again mentioned that spot inspection was done by him which corroborated the report of the Sub Registrar dated 1772001 which was based upon inspection of spot done on

1172001. The order also says that it was not possible to get three storied building constructed in such a short time between the date of sale deed and the date of inspection by the Sub Registrar. The order further says that the petitioners have not produced any evidence to prove that the construction was done after the sale deed. The order also says that despite opportunity the petitioners did not appear to argue out the case.

3. An appeal was preferred by the petitioners under S. 56 of the Stamp Act, being appeal No. 33 of 2002, which has been dismissed by the learned Commissioner by order dated 11122002, which is under challenge in this writ petition. The Commissioner has disbelieved the contention of the petitioners

that no inspection was done of the spot. He has also held that there is no requirement under the Act or the Rules for preparing a formal inspection note.

4. Essentially the concurrent findings recorded by the subordinate authorities i.e. Additional District Magistrate and the Commissioner are pure findings of fact.

5. Learned counsel representing the petitioners has raised following three contentions :

(i) It is the option of the vendor and vendee to sell only the land leaving out the building standing on the land and in such an event it is the value of the land, alone which is to be examined for the purposes of determining the stamp duty payable on the sale deed.

(ii) On the facts of this case the building was not standing on the land at the time of sale deed and the finding to that effect recorded by the subordinate authorities suffers from an error of law.

(ii) the reference under S. 47A could not have been made by the SubRegistrar after the sale deed had been registered and therefore all consequential proceedings are vitiated.

6. Each of the above contentions is dealt with below.

POINT No.1

7. Learned counsel for the petitioner has contended that S. 3 of the Indian Stamp Act 1899 read with Item23 of Schedule IB and Rules 340 and 341 of the Indian Rules, 1925 and Rule 3 of U.P. Stamp (Valuation of Property) Rules, 1997 would indicate that the land below a standing building can be sold without including the building and in such an event the value of the structure is not relevant for the purposes of determining the stamp duty payable on the sale deed, in as much as the standing building embedded to earth, which is immovable property, will not stand transferred, not being included in the registered saledeed and the title of the same will remain the same with the vendor.

8. The argument is more attractive than sound. Such matters have to be decided

on practical considerations and not in pure theoretical terms. Practically in the situation, as above, the building or the structure is bound to pass with the land in respect of its use and enjoyment and for all practical purposes it would not be possible for the vendor to use or enjoy the building for that matter exercise any right in respect of the structure except perhaps carrying away of the debris.

9. Besides Rule 340 is reproduced below.

Rules for determining the market value of certain instruments."

R340. In the case of an instrument of conveyance, exchange gift, settlement, award or trust relating to immovable property chargeable with an ad valorem duty on the market value of the property, the following particulars shall also be fully and truly given in the instrument in addition to the market value of the property in compliance with subsec. (2) of S. 27 of the Indian Stamp Act as amended in its application to Uttar Pradesh :

(1) In case of land :

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures :

(i) the khasra number and area of each plot forming part of the subject matter of the instrument;

(ii) whether irrigated or unirrigated;

(iii) If under cultivation whether do fasli or otherwise;

(iv) land revenue or rent whether exempted or not and payable by such tenure holder; and

(v) classification of soil, supported in case of instruments exceeding Rs. 10,000 in value, by the certified copies, of extracts from relevant revenue records issued in accordance with law.

(b) being land other than land referred to in clause (a), the assumed annual rent/ land revenue of rent revenue free, grain rented and unrented land;

(c) being non agricultural land situate within the limits of any local body constituted under the U.P. Nagar Mahapalika Adhiniyam, 1959, U.P. Municipalities Act, 1916 or U.P. Town Areas Act, 1914, as the case may be, the area of the land in square meters with the average price per square meter prevailing in the locality in which the land is situate on the date of the instrument

(2) In case of grove or garden :

(a) the nature, size , number and age of trees;

(b) annual recorded land revenue or where the grove is not assessed to any revenue or is exempted from it, the annual rent and/or premium if left out, otherwise, the annual average of income which has arisen from it during the three years immediately preceding the date of the instrument.

(3) In case of building;

(a) Total covered area and open land, if any in square meters;

(b) Number of storeys and area of each storey in square meters;

(c) whether Pacca or Katchha;

(d) Actual annual rent or assumed annual rent;

(e) Annual rent assessed by any local body and the amount of house tax payable thereon, if any."

10. Rule 341 of 1925 Rules and Rule 3 of 1997 Rules are almost identical to the above quoted Rule 340, and the words of subrule (1) and subrule (3) of Rule 340 would clearly indicate that where a structure is standing on the land it would not fall within the expression "land" as used in subrule (1) but would fall within the expression "building" as used in subrule (3) and will have to be sold as "building". This interpretation, which has been given above, is essentially to avoid evasion of tax of stamp duty and defrauding of revenue.

11. Learned counsel for the petitioner has relied upon following decisions:

(1) Maydhan Gupta v. Board of Revenue 1969 All LJ 333

(2) Kadorilal v. Sukhlal, AIR 1968 (Madh Pra) 4

(3) Chief Controlling Revenue Authority v. K. Manjunatha Raj, AIR 1977 Madras 10.

12. None of these decisions deals with the situation like in the present case. The question to be examined here is whether parties should be permitted to record only part of the property sold in a sale deed, which has the practical effect of transferring the entire property in respect of its total perpetual enjoyment, though perhaps technically not transferring the title in the remaining part of the property and thereby evade payment of the stamp duty. The answer obviously must be "no". In fact, the Legislature has throughout been making amendment to prevent this kind of mischief by unscrupulous persons by agreement for sale with possession and irrevocable powers of attorney with possession.

13. Thus the law appears to be that every instrument of transfer must truly set forth the entire property which, from the point of view of practical considerations, is the subject matter of transfer. Therefore where a structure is standing on land, the land alone can not be transferred without the structure unless before transferring the structure is removed. However, the converse may not be correct, as it may be possible to transfer the structure alone without transferring the land.

POINT No.2

14. Regarding the second point it has already been mentioned above that the

finding that structure existed at the time of sale deed is a finding of fact recorded concurrently by the subordinate authorities and that finding of fact cannot be interfered with in this writ petition, in as much as is not perverse, and it is also not a case where the finding can be said to be based on no evidence.

15. The alleged error of law relied upon by the learned counsel for the petitioners to challenge the said finding of fact is said to be the failure on the part of inspecting authorities to prepare a formal inspection note. The revisional order mentions that the rules do not require preparation of formal inspection note. As against this learned counsel for the petitioners has relied upon the decision of the Board of Revenue (in its capacity as Chief Controlling Revenue Authority) in the case of Smt. Shakeela Khatoon v. State of U.P. reported in 1995 All WC 2053. I have examined the said decision and it appears that the learned Member of the Board of Revenue, who decided the case proceeded on the wrong hypothesis that the provisions of Code of Civil Procedure apply to the proceedings under Indian Stamp Act. Due to its total misconception of law the said decision is obviously incorrect and can not help the petitioners.

16. Learned counsel for the petitioners has relied upon certain amendments made to S. 47A by which the power of Sub Registrar to make a reference after registration of the sale deed is alleged to have taken away.

It has been argued that the SubRegistrar could have made the reference only prior to the registration of the sale deed and the subsequent reference is not valid. Therefore, the argument proceeds, all proceedings consequent upon such invalid reference are vitiated.

17. The contention is not acceptable for two reasons. The first reason is that there is a power under sub sec. (4) of S. 47A [now numbered as sub sec. (3)], which empowers the collector to Act suo motu. Therefore, the reference made by the Sub Registrar can be treated to be a mere information to the Collector, in the present case.

18. The second reason is that the petitioners are before this court in discretionary and equitable jurisdiction. I am not inclined to exercise such a jurisdiction to assist the petitioners in their attempt to evade the tax.

19. In view of aforesaid circumstances, this writ petition fails and is accordingly dismissed.

Petition dismissed.