(1969) 08 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 85 of 1965

Shri Digambar Jain and Others APPELLANT

Vs

Sub Registrar, Stamps, Indore RESPONDENT

Date of Decision : 04-08-1969

Acts Referred:

Indore Stamp Act, 1907 — Article 17, 17A, 2(9)
Transfer of Property Act, 1882 — Section 8

Citation : (1969) 08 MP CK 0002

Hon'ble Judges : Bishambhar Dayal, C.J;Shiv Dayal Shrivastava, J;A.P. Sen, J

Bench : Full Bench

Advocate : V.S. Dabir, for the Appellant; Kumari Rama Gupta, Government Advocate, for the Respondent

Judgement

A.P. Sen, J.

The Chief Controlling Revenue-authority, Madhya Pradesh (hereinafter referred to as ''the Revenue-authority'') has stated this case u/s 55(1) of the Indore Stamp Act (No. II of 1907) (hereinafter referred to as ''the Act''), referring the following questions for the opinion of this Court:--

(1) Whether the trust-deed dated 11-9-57, as on record, is to be held to be a ''declaration of trust'' of or concerning any property, or a ''conveyance'' within the meaning of Section 2(9) of the Act; and

(2) Whether the stamp duty leviable on the document will be governed by Article 47-A of Schedule I to the Act or by Article 17 of the Schedule.

The circumstances giving rise to this reference, briefly stated, are these. By a deed executed on 11th September 1957, seven persons, describing themselves as the Panchas managing the affairs of ''Shri Digambar Jain Tera Panthi Mandir of Indore'' and its properties, transferred the management thereof to a committee of eleven trustees named in the deed, defining their functions, powers and duties. The deed recited, inter alia, that after the constitution of this committee of management, the entire property of the temple valued at Rs. 1,18,651.00 would no longer be in the supervision and control of the Panchas but the management thereof would stand ''transferred'' to the trustees. It was engrossed on a stamp-paper worth Rs. 18.75 Paise and was presented by the trustees before the Sub-Registrar, Indore for registration. According to the Sub-Registrar, the deed amounted to a ''conveyance'' and, as such, should have borne stamp worth Rs. 1,462.50 Paise. Therefore, u/s 37 of the Act, he forwarded the deed to the Collector along with his opinion, for an adjudication as to the proper stamp duty payable thereon. The Collector, agreeing with the Sub-Registrar, held the instrument to be deficiently stamped; and, upon his determination that it was chargeable with a duty of Rs. 1,462.50 Paise as a deed of conveyance, directed u/s 39(1)(b) of the Act that the trustees should make good the deficit of Rs. 1,443.75 Paise, and since the matter concerned a trust, a nominal penalty of Rs. 5.00 was imposed. Being aggrieved by the decision of the Collector, the trustees preferred a revision before the Board of Revenue, Madhya Pradesh, which has been invested with the powers of the Chief Controlling Revenue authority. The members of the Board of Revenue dealing with the revision as the Chief Controlling Revenue-authority for the time being expressed conflicting views on the question. Shri K. Radhakrishnan, President of the Board of Revenue, held that the document was a conveyance as defined in Section 2(9) of the Act and not a mere declaration governed by Article 47-A of Schedule I to the Act. His successor-in-office Shri Y. Bhargava reviewed that decision at the request of the trustees for the purpose of making a reference and found that there were errors apparent on the face of the record. The result was that the revision, was re-heard by Shri R. C. Rai Poddar, President, Board of Revenue, who was of the view that the deed in its recitals tends to show that what was intended by the Panchas was not merely to make a declaration of trust but also to transfer their rights of ownership in specific trust property. In other words, the learned President indicated that the document in question effected both a declaration of trust as well as a conveyance of the trust property to the trustees, and, therefore, being an instrument comprising of two distinct transactions, it was governed by Article 47-A of Schedule I to the Act. However, since the matter regarding the proper stamp duty leviable was not free from doubt, he has made this reference.

The answer to the questions referred depends on whether the instrument in question was a conveyance within the meaning of Section 2(9) or one making a declaration of trust under Article 47-A of Schedule I to the Act.

The recitals in the instrument which are material for answering the questions are these:

^^ge mijksDr iapksa us vius rkjh[k 2''&?&??'''' ds izLrkokuqlkj fuf''pr fd;k gS fd bl laLFkk dh lc dh lc vpy tk;nkn vkSj laif?k tks fd ifjf''k"V c esa vkSj py laif?k ? ifjHkwfr;ksa uxnh] tk;nkn] bR;kfn? tks fd ifjf''k"V c esa fufgr gSa rFkk tks fd bl nLrkost dk ,d tks Lo:i blds lkFk uRFkh gS vkSj ftl esa fd bl laLFkk dk vHkh rd dk;ZHkkj lqpk: :i ls pykus ds QyLo:i iapksa dk iw.kZ :i ls dkuwuh vf/kdkj Fkk] mls vkt ge /kkfeZd HkykbZ fn? tSu ds Kkuo`f)] lekftd] uSfrd] vkS|ksfxd ,oa /kkfeZd mRFkku ds gsrqq izpfyr fof/k fo/kku ds vuqlkj mijksDr V?LVh;ksa dks vius laiw.kZ vf/kdkjksa ,oa nkf;R;ksa ds lkFk laHkkyus] lqO;oLFkk djus] j{kk djus ;k dk;Z lqpk: :i ls pykus ds fy;s lkSairs gSaA

bl le; tks vf/kdkj ekydkuk ok okjlkuk mijksDr iapksa dk Fkk ogh lc vf/kdkj ekydkuk ok okjlkuk vkt ls V?LVh;ksa dk gksxkA

oSls rks ;g igys ls gh ,d fjyhtl vkSj pSfjVscy V?LV gS ijUrq dksbZ fyf[kr vkSj oSKkfud :i ls MhMds u gksus ds dkj.k ;g dk;Z fd;k tk jgk gS bl V?LV ds dk;ZHkkj dks lqpk: :i ls pykus gsrq ge mijksDr iap bl V?LV ds fuEufyf[kr m?s";] fu;e] ;kstuk ,oa ''krsZ cukrs gSaA

bl V?LV dk uke Jh fnxacj tSu rsjk iaFkh eafnj V?LV ''kDdj cktkj bUnkSj jgsxkA

tks tk;nkn bl nLrkost ds vuqlkj V?LVh;ksa dks V?LV dh gSfl;r ls nh tkrh gS] ml ij V?LVh;ksa dk iw.kZ vf/kdkj gksxk ijUrq lkFk gh mudk ;g nkf;Ro gS fd tgka rd gks lds os bl ckr dk /;ku vo''; j[ksa fd V?LV ds ewyou ;kus py vkSj vpy laif?k esa deh u gksus ikosA**

The entire controversy turns on the meaning of the expression ^^ekydkuk ok okjlkuk** appearing in the deed.

Before dealing with the questions referred, it would be convenient to refer to the provisions of Section 2(9) and Articles 17 and 47-A of Schedule I to the Act:

"Section 2 (9).

In this Act, unless there is something repugnant in the subject or context, ''conveyance'' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically-provided for by Schedule I".

"Article 17.

Conveyance (as defined by Section 2 (9)), not being a Transfer charged or exempted under No. 45 --where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs. 900/ but does not exceed

Rs. 1,000

...

Twelve rupees eight annas;

and for every Rs. 500 or part thereof in excess of Rs. 1,000

...

Six rupees four annas".

"Article 47-A.

Declaration of Trust of or concerning any property when made by any writing not being a will

...

The same duty as on a Bond (No. 12) for a sum equal to the amount or value of the property concerned as set forth in the instrument but and twelve annas."

These provisions are in pari materia with Section 2(10), Article 23 and Article 64-A respectively of the Indian Stamp Act (No. II of 1899), which, with such modifications as felt necessary, seems to have been extended by the Holkar Darbar to the erstwhile Indore State.

In stating the case, the Revenue-authority has indicated that in its opinion, the document was one creating a trust which involved transfer of specific property to the trustees, and, therefore, it had to be stamped both as a conveyance as well as a declaration of trust and was chargeable under Articles 17 and 47-A of Schedule I to the Act. It states:

"The recital in the document tends to show that what was intended was not merely the declaration of a trust but also the transfer of rights of ownership and succession ?^^vf/kdkj ekydkuk o okjlkuk? of the specified properties from the seven Panchas to the eleven trustees named in the document. The authors of the trust are evidently different persons from the trustees, and the properties given in trust are also quite specific ..... It will not be altogether unreasonable to hold that the document in question effects a declaration of trust as well as a conveyance to the trustees of the specified trust property, and thus it being an instrument comprising two distinct transactions is governed by both Article 47-A and Article 17 of the Schedule for its taxation. If the temple and the Jain community were the real owners of the property in question they did not at least come in the picture in the transaction that was being made in the document in question. For the purpose of determining the stamp duty leviable on the document we have to go by the facts recited in the document itself and it is not possible to go into other facts which do not appear in the document that is to be taxed."

It would be noticed that the Revenue-authority arrived at that conclusion having regard to the expression ^^vf/kdkj ekydkuk o okjlkuk** appearing in the instrument.

We are unable to agree with the Revenue-authority on the interpretation of the document in question. From the recitals appearing therein, the instrument is one declaring the pre-existence of a trust coupled with transfer of management from one set of trustees to another. The cardinal rule of construction is that a document must be read as a whole, each clause being read in relation to the other parts of the document, and an attempt should be made to arrive at an interpretation which will harmonise and give effect to the other clauses thereof. It is not legitimate to pick out an expression torn from its context and try to interpret the document as a whole in the light of that expression. Such a forced construction on the document in question cannot but defeat the very object which its excutants had in view. In our opinion, the expression ^vf/kdkj ekydkuk o okjlkuk* has hot been used in its usual sense as signifying rights of ownership in property or heritability of such rights.

The document is undoubtedly inartistically drafted. It is, therefore, the duty of the Court to give to the expression its true meaning. It is competent for a Court to disregard the literal meaning of the words used in a document and to give to them their real meaning, if they are sufficiently flexible to bear that interpretation. In our view, the expression ?vf/kdkj ekydkuk o okjlkuk? must be Interpreted, in the context in which it appears, as meaning ''authority, power and control'' which the Panchas had over the management of the trust and the properties endowed to the temple. Indeed, the Panchas of Shri Digamber Jain Terapanthi Mandir had no kind of ownership in the endowed properties. They were merely holding the same in trust for the beneficiaries, i.e., the Digamber Jain Terapanthi sect, for the worship of the Tirthankars enshrined in the temple. From the recitals in the document, it appears that the Panchas were only making a declaration of a pre-existing trust and were not transferring their ownership in any specific trust property because they had none. Nor were they creating a trust by executing the deed in favour of the trustees.

It, accordingly, follows that the deed in question does not fall within the definition of the term ''conveyance'', as defined in Section 2(9) of the Act, because there was no ''transfer'' of any property by the Panchas to the trustees as envisaged in that section. What had been transferred was only the management of the trust. On a plain reading of the recitals, no other construction is possible than that the instrument merely declares the existence of trust coupled with the transfer of its management. Such a document can, by no stretch of reasoning, be , treated as a conveyance. Even otherwise, the definition of the term ''conveyance'' as contained in the Section excludes such a document from its purview, because, even as a transfer, if any, it is ''otherwise specially provided for'' by Schedule I to the Act, viz., by Article 47-A as ''Declaration of Trust'' and was, therefore, not liable to be stamped as ''conveyance'' under Article 17.

In that view, our answer to the first question is that the deed dated 11th September 1957, executed by the Panchas of. Shri Digambar Jain Terapanthis was a ''Declaration of Trust'' and not a ''Conveyance'' within the meaning of Section 2 (9) of the Act. The answer to the first question answers the second. The stamp duty leviable, thereon will, therefore, be governed by Article 47-A of Schedule I to the Indore Stamp Act, 1907, and not under Article 17 thereof. The trust will be entitled to its costs of these proceedings. Hearing fee Rs. 150.00, if certified.

