**(2009) 05 AHC CK 0724**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 3118 of 1993

Shri Nand Kumar Agarwal and Anr — APPELLANT

Vs

State of U. P. and Ors — RESPONDENT

**Date of Decision :** 15-05-2009

**Acts Referred:**

Stamp Act, 1899 — Section 2(16), 33, 40
Transfer of Property Act, 1882 — Section 105

**Citation :** (2009) 05 AHC CK 0724

**Hon'ble Judges :** PRAKASH KRISHNA, J

**Final Decision :** Allowed

# Judgement

1. Challenging the legality and validity of the two orders dated 2721992 passed by the Additional District Magistrate (Finance and Revenue), Firozabad and dated 1211993 passed by the Chief Controlling Revenue Authority, Board of Revenue, U.P. at Allahabad in a proceeding under section 33/40 of the Indian Stamp Act, initiated against the petitioners demanding a sum of Rs.59,656,50 towards deficiency in stamp duty and Rs.500/ towards the penalty, the present writ petition has been filed.

2. The facts of the case may be noted in brief :

During audit inspection for the period of March, 1989 to December, 1989 it was found by them that a lease deed being document No.4505 dated 1051989 was executed for a period of 10 years on annual rent of Rs.400/ on which stamp duty of Rs.90/ was paid. Proceedings were initiated against the petitioners with regard to the lease deed of 15,000 sq. ft. area of plot No. 187 executed by Smt. Premwati wife of Nand Kumar Agrawal. The said lease deed was executed in favour of the present petitioners who were partners in M/s. Seema Plastic Industries, Mainpuri Road, Shikohabad. The lessor is wife of the petitioner No. 1 and mother of the petitioner No. 2. The said lease deed was treated as a document of sale in view of Section 164 of U.P.Z.A. and L.R. Act by the Stamp Department. Since the plot so leased out is surrounded by commercial establishments, the District Magistrate opined that the stamp duty as applicable to commercial land is chargeable. The Additional District Magistrate (P and R) by the order dated 2721992 held that the report submitted by the Sub Registrar, Shikohabad in the light of the objections raised by the audit party that stamp duty is payable treating the said document as sale deed in view of section 164 of the U.P.Z.A. and L.R. Act is perfectly justified. The said order has been confirmed in revision No.783 of 19911992 by the authority below.

3. Shri Manish Goyal, learned counsel for the petitioners, submits that the document in question is, a lease deed and the authorities below were not justified in view of section 164 of the U.P.Z.A. and L.R. Act in treating the said document as a sale deed. The submission is that the lease as defined under the Stamp Act should be taken into account for the purposes of determining the stamp duty on the instrument in question. He further submits that in view of various provisions contained in the U.P.Z.A. and L.R. Act, lease of an agricultural land unless made by a disabled person is void and there is no transfer of right, interest or title in pursuance of the said document and therefore no stamp duty is payable. The learned standing counsel, on the other hand, supports the impugned order.

4. Considered the submissions of learned counsel for the parties and perused the record.

5. It may be noted that lease of immovable property has been defined in section 105 of the Transfer of Property Act which means transfer of right to enjoy such property, made for certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms.

6. "Lease" as defined under Section 2(16) of the Indian Stamp Act, is as follows :

"Lease means a lease of immovable property and includes also

(a) a patta;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for lease intended to signify that the application is granted;

(e) any instrument by which mining lease is granted in respect of minor minerals as defined in Clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957."

7. A conjoint reading of the definitions of lease as given under the Transfer of Property Act as also given under the Stamp Act would show that under the

 

Stamp Act, lease has been widely defined.

8. In Banney Khan v. The Chief Inspector of Stamp, U.P. : AIR 1976 Allahabad 475 it has been observed that the Stamp Act has been framed to consolidate and amend the law relating to stamps. It has been held that its provisions; should be treated as complete in themselves and in order to determine the nature of a document for the purposes of an Act, reliance should be placed on the provisions of the Act and not on any other enactment.

9. The authorities below proceeded to hold that the document is insufficiently stamped on the ground that such a lease of agricultural land is not permissible under the provisions of U.P.Z.A. and L.R. Act. If a lease deed is executed in violation of the provisions of U.P.Z.A. and L.R. Act, the lessor will become bhumidhar with non transferable right if the total area of land held by him together with land held by his family including the land let out to him does not exceed 121/2 acres and where the total area exceeds 121/2 acres the provisions of Sections 154 and 163 of U.P.Z.A. and L.R. Act will apply.

10. Section 154 of the U.P.Z.A. and L.R. Act provides that no bhumidhar shall have the right to transfer by sale or gift any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, becomes entitled to land which together with land if, any, held by his family will, in the aggregate, exceed 12.50 acres in Uttar Pradesh.

11. It has been found that in the present case the lessor has executed the lease deed in violation of the provisions of Section 156 of U.P.Z.A. and L.R. Act, the consequence as provided under sections 156 and 157 of the U.P.Z.A. and L.R. Act will ensue. It has been found that the said lease deed in view of the various provisions of U.P.Z.A. and L.R. Act, already referred to above, will amount to a sale deed and, therefore, the stamp duty shall be payable on the market value of the subject matter of the instrument, as applicable to a deed of conveyance.

12. Challenging the aforesaid orders, the learned Counsel submits that the provisions of U.P.Z.A.and L.R. Act cannot be taken into consideration while deciding a dispute under the Stamp Act. Reliance has been placed on a Special Bench decision of this Court in Banney Khan v. The Chief Inspector of Stamp, U.P., AIR 1976 Allahabad 475. In this case the question was with regard to the applicability of the correct Article in respect of toll auction. The case of the auction purchaser was that such a transaction does not amount to lease as defined under Transfer of Property Act while on the other hand, the case of the stamp department was that it amounts a lease as defined under Section 2(16) of the Indian Stamp Act and the duty was chargeable under Article 35(b) of Schedule 1B of U.P. Stamp (Amendment) Act, 1962. The court posed the question whether the document is a lease deed falling under Section 2(16) of the Indian Stamp Act or is a licence and also a bond under Section 2(5) of the Stamp Act and is chargeable with duty as a bond under Article 15 Schedule 1B of the Act. In the above context, the following observations, which were relied upon by

the learned Counsel here, were made :

"....Therefore, the Stamp Act also being an Act to consolidate and amend is exhaustive and indicates that all the former Acts on the subject of stamps have been collected and the law embodied therein altered and for determining the nature of a document, the provisions of this Act alone will be taken into consideration."

13. Ultimately, it was held that in view of definition of lease given in Section 2(16)(C) of the Stamp Act, duty is chargeable under Article 35(b) of Schedule 1B of the Stamp Act, as amended in U.P.

14. It is an acknowledged legal position that there are two guiding principles for

applicability of the Stamp Act in respect of a particular document. They are :

(1)The Court is not bound by the apparent tenor of an instrument, it shall decide according to the real nature or substance of the document; and

(2) The duty is on the instrument and not on the transaction.

15. To answer as to under what Article the instrument falls, the first things to be looked into is the document itself in order to determine the character thereof. Applying the above principle of law, in my considered view, for the purposes of determining the stamp duty, the document should be taken into account and not the transaction. If the said principle is applied on the facts of the present case, on a plain reading of the instrument, evidently it is nothing but a lease deed. It has not been found by any of the authorities below that from the tenor of the document it is other than a lease deed. What would be the effect of a particular statute on such instrument is another question which does not fall within the purview of the Stamp Act.

16. Stamp Act, as pointed out above by Special Bench decision in the case of Banney Khan (supra) is exhaustive on the subject relating to chargeability of stamp duty. The word lease for the purposes of the Stamp Act would mean lease as defined under the Stamp Act. The lease as understood in any other Act is completely out of context for the purposes of controversy involved under the Stamp Act.

17. It is equally well settled that stamp Act is a taxing statute. It must be construed strictly, and if two meanings are equally possible, the meaning in favour of the subject must be given effect to. (See Board of Revenue v. Rai Saheb Sidhnath, AIR 1965 SC 1092).

18. In interpreting a taxing statute, it has been said time and again, that equity has no role to play. Equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as

 

to supply any assumed deficiency. (See Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd., AIR 1961 Supreme Court 1047).

19. The stamp duty payable upon an instrument must be determined by referring to the terms of the document and the Court is not entitled to take into consideration evidence de hors the instrument itself. In determining whether a document is sufficiently stamped with reference to its admissibility in evidence the document itself must be looked at as it stands without having recourse to collateral circumstances to be proved by extraneous evidence.

20. The word instrument has been defined under Section 2(14) of the Act which includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

21. In Bal Krishna v. Board of Revenue, AIR 1970 MP 74, it has been held that the following principles govern the application of Stamp Act to the instrument :

"(i) The first rule is that duty is payable on the instrument and not on the transaction.

(ii) The second rule is that the Court is not (sic) by the apparent tenor of the instrument, it is the real nature of the transaction which will determine the stamp duty.

(iii) The third rule is that the Court must look at the document itself as it stands and it is not permissible to show, by evidence, any collateral circumstances.

(iv) The fourth rule is that in determining the stamp duty, the substance of the transaction as disclosed by the whole of the instrument has to be looked to, and not merely the operative parts of the instrument.

(v) The fifth rule is that stamp duty is payable on an instrument according to its tenor and it does not matter that it cannot be given effect to for some independent cause.

(vi) The sixth rule is that there can be no objection to a device effectuating a transaction in a manner that lower rate of duty is attracted.

The goodness or badness of a vendors title in no way affects the question of stamp duty. The instrument has to be stamped according to its true intent and meaning of the transaction which it represents."

22. Keeping in mind the above proposition of law, I find sufficient force in the argument of the learned Counsel for the petitioner

that the instrument in question is a lease deed of agricultural land. The fact that the said lease has been executed in violation of the provisions of U.P.Z.A. and L.R. Act will not affect the relevant Article relating to the lease for the purposes of determining the stamp duty. The said lease may be void or invalid under the provisions of U.P.Z.A.and L.R. Act or under any other Act, but so far as the Stamp Act is concerned, the instrument shall be chargeable as a lease deed.

 

23. Viewed as above, the definition of lease as given under the Stamp Act only should be looked upon for the purposes of chargeability of stamp duty on such instrument. The said document may be treated differently under any other enactment, it is of no consequence so far as the question of payment of stamp duty is concerned.

24. In the result, the writ petition succeeds and is allowed with costs. The impugned orders are hereby set aside. Any amount deposited in pursuance of the impugned orders or in pursuance of the interim order passed by this Court shall be refunded to the petitioners within a period of one month from the date of production of certified copy of this order by the authority concerned. In case of default, the authority concerned shall also be liable to pay interest @ 6% per annum from the date of deposit to the date of actual refund.

25. The writ petition is allowed with costs.

Petition allowed.

 