**(2001) 04 AP CK 0086**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 1649 of 2001

Siddula Madhukar and another APPELLANT

Vs

Govt. of A.P. and another RESPONDENT

**Date of Decision :** 06-04-2001

**Acts Referred:**

Registration Act, 1908 — Section 47A
Stamp Act, 1899 — Article 14, 40, 2(14), 3, 4

**Citation :** (2001) 3 ALD 317 : (2002) 6 ALT 144

**Hon'ble Judges :** S.B. Sinha, C.J;V.V.S. Rao, J

**Bench :** Division Bench

**Advocate :** Mr. R. Narasimha Reddy, for the Appellant; Government Pleader for Revenue, for the Respondent

# Judgement

S.B. Sinha, CJ.

1. This reference has been made by a learned single Judge of this Court having regard to the difference of opinion in two decisions of this Court in Sub-Registrar, Nalgonda Dist. Vs. Amaranaini China Venkat Rao and others, and Writ Petition No.34859 of 1998, dated 16-12-1998 as also Paramount Cooperative Housing Society Ltd. v. Sirajunnisa Begum, 1997(3)ALD261.

2. The question which arises for consideration in this petition is as to whether in respect of payment of stamp duty under the Indian Stamp Act the date on which an agreement of sale was executed or the date of execution of sale deed which was the subject-matter of a suit for specific performance of contract wherein a decree and judgment has been passed, would be the relevant date.

3. The petitioners herein had prayed for issuance of a writ of certiorari directing the respondents to register the deed of sale presented by the petitioners pursuant to the judgment and decree for specific performance of contract dated 15-12-1993. The duty which was sought to be levied therefore was as was prevailing on the date of execution thereof and not the rate which was prevailing

on the date of execution of the agreement of sale.

4. It appears that a learned Judge of this Court in Sub-Registrar''s case (supra) held:

"16. From the above judgment it is evident that the Registration Officer while conducting enquiry should concentrate himself whether the consideration mentioned in the instrument of conveyance is true or the instrument was undervalued to avoid stamp duty. It is not his concern to see whether the market value of the property as given in the instrument is proper or correct. That being the legal position in this case, the Registration Authorities cannot contend that the value of the property shown in the sale deed is not true consideration that was paid by the respondent to their vendors. As the vendor went back on performing his part of contract, the respondents are forced to approach the Court of law by way of filing a suit for specific performance. Because of the cumbersome legal procedures that are vogue in this country, the suit could not be disposed of till 1977 and in the meantime as seen from the record, the vendors seemed to have set up her relative to prevent the execution of the sale deed by getting another suit filed for a permanent injunction by stating that she, the vendor entered into an agreement with him in the year 1976 to sell the land. After the plethora of appeals provided in CPC were exhausted the execution proceedings in the suit filed by the respondents could be initiated only in the year 1987. Even thereafter for some time the vendor or her legal representative after her death did not come forward to execute the sale deed. In those circumstances, the Court was compelled to register the sale deed in favour of the respondents. From the above factual narration it cannot be said that the sale consideration shown in the sale deed cannot be the true consideration passed on between the parties. When once the consideration paid by the respondents cannot be attacked on any ground, the question of demanding stamp duty on the basis of the market value prevailing on the date of execution of sale deed does not arise. Because of the circumstances that have taken place in this case there is an abnormal delay in execution of sale deed in terms, of the agreement of sale and the respondents are in no way responsible for the delay in execution of the sale deed. On the other hand they were fighting the litigation throughout in one Court or the other and ultimately realised the fruits of litigation by 1995. Hence there is no justification on the part of the registering authorities in demanding stamp duty on the basis of the market value prevailing on the date of execution of the sale deed by the Court."

5. In terms of the aforementioned judgment, a circular memo dated 24-12-1998 was issued directing thus:

"Therefore, all the Registrars/Sub- Registrars in the State are hereby directed to comply with the aforesaid judgment of the Hon''ble High Court in respect of cases where sale deeds are executed pursuant to such decrees. They may not seek any reference u/s 47-A of Indian Stamp Act in respect of such cases on the ground that the consideration shown in such documents is less than the market value".

6. However, it appears that the same learned Judge in Writ Petition No.34859 of 1998 distinguished his earlier judgment stating that the same was rendered in the facts obtaining therein in the following terms:--

"The petitioner deemed to have filed suit for specific performance and obtained ex parte decree. Thereafter he tried to get the sale deed registered through Court by showing the consideration as shown in the agreement by relying on a judgment of mine in Sub-Registrar, Nalgonda Dist. Vs. Amaranaini China Venkat Rao and others, and the Court below blindly followed my order without looking into the facts of the case.

Admittedly, the facts of that case are altogether different. It was a contested suit and the matter was in Court for more than 20 years. Whereas in the instant case, the petitioner filed the suit in the month of January, 1994 and obtained ex parte decree by the end of that month only. Hence, it is suffice to hold that it is a case for inquiry u/s 47-A of the Registration Act".

7. Pursuant to or in furtherance of the said judgment another circular dated 8-4-1999 was issued which reads:

"2. The District Registrars are directed to take steps to keep in mind the judgment of Hon''ble High Court of A.P. dated 16-12-1998 in WP No.34859 of 1998 while implementing the instructions of Commissioner and IG (R&B) issued in Circular Memo No.MVS/24389/98, dated 24-12-1998."

8. Prior to rendition of the judgment by a learned single Judge in Sub-Registrar''s case (supra) another learned single Judge in Paramount Co-operative Housing Society''s case (supra) relying upon a large number of decisions held:

"2. .....As per the provisions of the Stamp Act, stamp duty has to be paid as per Article 40 of Schedule J-A and the relevant factor for collection of non-judicial stamps is the date of execution of the document. As passing of the final decree in a partition suit has to be treated as on the date of execution of the partition deed the value as on that date has to be taken into consideration for the purpose of collection stamp duty and the market value shown in the plaint on the date of presentation of the suit is only for the purpose of Court fee and to decide the pecuniary jurisdiction of the Court but the same value cannot be adopted for collection of stamp duty to engross final decree and directed the petitioner to furnish non-judicial stamps as per the value of the property on the date of passing of the final decree."

9. Section 47-A of the Indian Stamp Act as amended by the State of Andhra Pradesh which are relevant for the purpose of this case reads thus:

"47-A. Instruments of conveyance, etc., under-value-how to be dealt with :--

(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition,

 

settlement or lease, reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument he may, keep pending such instrument and refer the matter to the Collector for determination of market value of such property and proper duty payable thereon.

(2) On receipt of a reference under subsection (1), the Collector shall, after giving the parties opportunity of making their representation and after holding an enquiry in such manner as may be prescribed rules made under this Act, determine the market value of the property which is the subject-matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu within two years from the date of registration of such instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject-matter of such instrument and the duty payable thereon and if, after such examination, he has reason to believe that market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1971.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the appellate authority specified in subsection (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act."

10. The Indian Stamp Act, 1989 was enacted to consolidate and amend the law relating to stamps.

11. The question that the provisions of Section 47-A are intra vires the Constitution is no longer in dispute having regard to the several decisions rendered by different High Courts including this Court. Without multiplying decisions, reference may be made to a recent full bench decision of the Calcutta High Court in B.N. Manna v. State of W.B. 2000 (I) CHN 173.

12. Entry 44 of the List III of VII Schedule of the Constitution covers the field of legislation. In B.N. Manna''s case (supra) it has been held:

"13. Measure of charge has either to be fixed or ad valorem. The charging provision of the Act is on the instrument for execution as would appear from Section 3 of the said Act. The amount of tax to be calculated on the basis of the document should not be mixed up or identified as a measure of duty which is clearly indicated in the two columns of the schedule appended thereto.

14. Section 28 of the Act provides for direction as to duty in case of certain conveyances. From a comparison of the said provision with Section 47-A of the Act it would appear that such conveyance shall be chargeable on ad valorem basis or the market value thereof whichever is greater.

15. Entry 44 of List II, Entry 63 of List II and Entry 91 of List I of the VII Schedule read thus:-

'' Entry 44 of List III--Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

Entry 63 of List II--Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

Entry 91 of List I--Rates of stamp duty in respect of bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance; transfer of shares, debentures, proxies and receipts''.

21. Entry 44 of List III covers a wide field. It is now a well settled principle of law that an entry made in any of the list should be construed liberally and only in a case where one entry comes in direct conflict with the other, the doctrine of pith and substance should be applied.

22. As by reason of the said entry both the Parliament as also the State Legislature have been conferred power to enact law relating to stamp duty, the same must be held to have wide import. The power to legislate on the stamp duty includes a power to make a provision to check evasion thereof and new process and procedural provisions may also be added for plugging the loopholes. By reason of the said provision only prohibition of evasion of stamp duty has been made.

23. It is profitable to note that in terms of Section 2(14) of the said Act ''instrument'' has been defined to mean every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

24. As indicated hereinbefore, Section 3 of the said Act provides for the taxable event being on the instrument. A deed of sale or any other transfer or any other conveyance whereby and whereunder right or liability is imposed would come within the definition of instrument.

26. It is now well known that the entries of a schedule have to be construed in the same manner as that of the provisions of the Constitution".

13. There cannot be any doubt that the tax imposed is to be calculated on the basis of the rate when the instrument itself is executed. Such an instrument, for the purpose of registration or otherwise in terms of the provisions of the Indian Stamp Act cannot relate back to the date of execution of an agreement for sale.

 

It is now well settled principle of law that there cannot be any intendment in relation to a tax.

14. Only because in relation to such an agreement for sale a suit for specific performance of contract had to be filed and a decree was passed is no ground to hold that in such a case the duty payable would be calculated at the rate which was prevailing at the time of execution of the agreement for sale and not at the rate which was prevailing at the date of execution. The statute does not say so. In our considered opinion by reason of an interpretation thereof, no meaning can be attributed which is beyond the scope and purport of the statutory provisions.

15. Furthermore, as has rightly been observed by the learned single Judge, the decision in Sub-Registrar''s case (supra) must be held to be rendered per incuriam as neither any argument, as noticed hereinbefore, had been advanced nor the binding precedent in Paramount Co-operative Housing Society''s case (supra) was brought to its notice. In A-One Granites v. State of A.P. 2001 AIR SCW 848, it has been held:

"10. The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in Prem Nath Sharma Vs. State of U.P. and another, . From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.

11. This question was considered by the Court of Appeal in Lancaster Motor Co (London) Ltd v. Bremith Ltd. (1994) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, observed thus (at p.43 of AIR):

"In Gerard v. Worth of Paris Ltd (K). (1936) 2 AII.ER 905 (CA), the only point argued was on the question of priority of the claimant''s debt, and on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancester Motor Co. (London) Ltd v. Bremith Ltd. (1941) 1 KB 675, the Court held itself not bound by its previous decision. Sir Filfrid Greens, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by Counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument arc of no moment....."

16. For the aforesaid reasons we arc of the opinion that the decision in Sub-Registrar''s case (supra) does not lay down the correct law and it is overruled accordingly. However, there cannot be any doubt whatsoever that the registration authority, in case of dispute as regard the correctness or otherwise of the market value of the land, will have to take recourse to the provisions contained in Section 47-A of the Act. We must also observe that in a given case, the Collector can also take suo motu notice thereof. The petitioners, therefore, may take recourse to the remedies provided for under the Act. The writ petition is dismissed with the aforesaid observations.

 