(1999) 05 AHC CK 0192

In the Allahabad High Court

Case No : C.M.W.P. No. 3435 of 1990

Smt. Har Pyari and others — APPELLANT

Vs

District Registrar (Under Registration Act), Aligarh and others — RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34
Stamp Act, 1899 — Section 17, 3, 47A, 47A(1), 47A(2)

Citation : (1999) 4 AWC 2804 : (1999) AWC 2804

Hon'ble Judges : Yatindra Singh, J;Binod Kumar Roy, J

Bench : Division Bench

Advocate : S.U. Khan, for the Appellant;

Final Decision : Partly Allowed

Judgement

Yatindra Singh, J.—This petition raises many interesting questions. But what is the relevant date for calculating the stamp duty? is the most important of all. These questions arise in this writ petition which is in fact, for quashing of the order dated 20.6.1989 passed by respondent No. 1, directing the recovery of deficiency in the stamp fee. though the relief is not so claimed. It is differently worded.

FACTS

2. Sri Pannalal. predecessor-in-interest of the petitioner was the owner of the 1/6 share in plot No. 1533 area 1 Bigha, 1 Biswa pukhta and 1553. area 14 biswa pukhta situate in Nagla Tikoni Chandaria, Allgarh (hereinafter referred to as the property). He approached one Sri Shyam Lal for advancing a loan of Rs. 2,000. There was mutual understanding between the two. Sri Shyam Lal advanced the loan of Rs. 2,000 and Sri Pannalal executed a sale-deed on 10.5.1972 of the property in his favour for Rs. 2.000, The same day Sri Shyamlal executed an agreement to sell in favour of Sri Pannalal for the same amount, i.e.. for Rs. 2,000 ; the entire transaction was a kind of security. Sri Shyamlal did not

execute the sale-deed even when Sri Parma Lal offered to pay back the amount. Ultimately a suit'' was filed against Sri Shyamlal for specific performance of the agreement. The trial court decreed the suit. The District Judge. Aligarh. dismissed the appeal on 15.11.1979. It was sometime In between Sri Pannalal and Sri Shamlal (the dates are not clear from the records) died and legal heirs were substituted In their place. Petitioners took proceeding for execution. The Court executed the sale-deed on 30.5.1989. It was presented before the Sub-Registrar, Tehsll Roll, Aligarh for registration. He sent a report on 2.6.1989 to the District Registrar (Respondent No. 1). The report says that the value of the property sold has been shown to Rs. 8.000 only whereas its value is Rs. 1,77,500 ; there is deficiency in the payment of the stamp duty ; the matter may be Investigated u/s 47A(1) of the Indian Stamp Act, 1989 (The Act for short).

3. The respondent No. 1 by his order dated 20.6.1989 has held that the value of the property on 30.5.1989 was Rs. 2,13,000 : the required stamp duty has not been paid. The deficiency of the stamp duty according to him was to the tune of Rs. 29,725. A penalty of Rs. 500 was also Imposed ; recovery proceedings were started. This order says that a notice was sent to the petitioners, but they chose not to appear before respondent No. 1. Petitioners dispute this fact. According to them no notice was served. They have filed application to recall the recovery proceeding on 21.8.1989. It is still pending. There is nothing on the record to show if any order has been passed on this application, but the recovery proceedings continued. The petitioners then filed the present writ petition praying that deficiency or penalty on the sale-deed executed by the Court, may not be recovered from him.

POINTS FOR DETERMINATION

4. We heard the counsel for the parties. Following points arise for determination in the case.

(i) What is the nature of execution when the Court executes a document?

(ii) What is the relevant date for calculating the stamp duty? is it the date of execution of the agreement to sell or the date of execution of the sale-deed?

(iii) What is the scope of Section 47A of the Act? Can the present proceeding be initiated?

(iv) Can penalty be imposed u/s 47A?

(v) Was petitioner given reasonable opportunity before deciding the deficiency in the stamp duty?

Ist Point--THE NATURE OF EXECUTION OF A DOCUMENT BY THE COURT

5. Sri Syamlal or his heirs did not execute the sale deed. The Court executed it in pursuance of a decree. The Order XXI of the CPC (C.P.C. for short) deals with the execution of a decree. The decree for execution of a document is dealt under Order XXI, Rule 34 of C.P.C. A decree holder is to deposit the copy of the draft

with such alternation as the Court may have directed along with the proper stamp payable. Thereafter the Judge or the officer appointed executes the document. The legal consequence is, as if it has been executed by that party. The Court executes it on his behalf. In case party had executed the sale-deed on 30.5.1979, then whatever stamp duty was to be paid when the Court executes it. There is no difference between these two situations. The legal consequence is one and the same.

2nd Point--THE RELEVANT DATE

6. Chapter II of the Stamp Act talks about the stamp duty. This chapter is divided in different parts. Part A of the Chapter II deals with ''Of the Liability of Instruments to Duty''. Section 3 of Part A of Chapter II is the charging section. It charges stamp duty mentioned in Schedule 1A or IB on different instruments. Part C of Chapter II deals with ''Of the Time of Stamping Instruments''. Section 17 states that all instruments chargeable with duty shall be stamped before or at the time of execution. Order XXI of the C.P.C. deals with the execution. Rule 34 of this order deals with decree for execution of document or endorsement of negotiable instrument. It''s sub-rule (4) envisages the decree holder to deliver the copy of the document, which Is to be executed by the Court in execution of the decree, along with the proper stamp as required by the law for the time being in force. The effect of these provisions is that stamp duty is to be seen at the time, when the document is executed. It cannot be the time prior to the date of the execution. The date of agreement to sell is relevant for stamp duty on agreement to sell and not for the stamp on the sale-deed. The relevant date for sale-deed or for any instrument is the time of its execution.''

3rd Point--APPLICABILITY OF SECTION 47A

7. The Sub-Registrar by his letter dated 2.6.1989 referred the matter to the respondent No. 1 as according to him the value set forth as less than even the minimum value determined in accordance with the rules made under the Act. Petitioner says this could not be done. According to him, this case is not covered by Section 47A of the Act. He cites a Division Bench decision of the Madras High Court to support him. We don''t think that the division bench of the Madras High Court is of any help. The reason is simple. Though the Stamp Act is Central Act but the States can amend it. Different States, according to their policies, have inserted Section 47A of the Act. It is different for different States. Section 47A as applicable in Madras is different than as applicable here. The Madras Act does not contain a provision similar to Section 47A (1) as is here. Section 47A (1) of the Madras Act is similar to Section 47A (2) of the Uttar Pradesh Act. The reference by the Sub-Registrar was u/s 47A (1) of the Act and not u/s 47A (2) of the Act. Ruling cited by the petitioner may be good, as far as Madras amendment is concerned, but is not relevant for Section 47A (1) as is applicable here.

8. The market value shown in the sale deed was Rs. 8,000 only. Petitioner says it is the market value of the property on the date of execution of the agreement to

sell. namely. 10.5.1972. Admittedly, this was not the market value of the property on date of execution of the sale deed, i.e., 30.5.1989 when the Court executed the sale deed. Undoubtedly eight thousand rupees, shown as market value of the property, was much less than the minimum value determined in accordance with the rules made under the Stamp Act. The case is covered by Section 47A (1) of the Act. Sub-Registrar has rightly referred the matter for determination of the market value of the property. There is no illegality in the same.

4th Point--COULD PENALTY BE IMPOSED?

9. The impugned order is passed in pursuance of powers conferred u/s 47A of the Act. It has imposed penalty of five hundred rupees. No penalty can be imposed in proceedings u/s 47A of the Act. This is so held by a full bench decision of this Court''. This penalty runs foul of this decision. It is set aside.

5th Point--WAS REASONABLE OPPORTUNITY GIVEN?

10. Section 47A (3) of the Act states that the Collector, on receipt of a reference under sub-section 47A (1) or (2), has to give reasonable opportunity to the parties. The order dated 20.6.1989 says that petitioners were served with the notice and no objection were filed. But petitioners in paragraphs 8 and 9 of the writ petition have stated that no opportunity was given. In paragraphs 4 to 7 of the supplementary affidavit, they have stated that ; the notice meant for them was kept on file with the note ''refused'' ; they never refused any notice ; and have no knowledge of the proceedings. This petition is pending for long time. No counter-affidavit has been filed denying these allegations. Petitioners have also filed an application on 21.8.1989 to recall the recovery proceedings. No orders have been passed on this application. At least nothing is on the record of the case. We have no reasons to doubt these allegations. We think petitioners were not given reasonable opportunity to show cause as to what is the correct market value of the property on the relevant date, i.e., on 13.5.1989.

CONCLUSION

11. In view of our findings given above we allow the writ petition and quash the order dated 20.6.1989 and direct that:

* no penalty be imposed on the petitioners In proceeding u/s 47A of the Act ;

* the market value of the property be re-determined after giving reasonable opportunity to the petitioners ;

* the stamp duty will be payable on the market value of the property as on 30.5.1989, the date when the Court had executed the sale-deed.

* the respondent No. 1 will decide the matter at an early date if possible within six months from the date a certified copy of the order is presented before him.

In view of the partial success of the writ petition, we make no order as to the costs. The office will hand over a copy of the order to the Chief standing counsel for communication to officer concerned for taking suitable action.

