(2009) 07 KAR CK 0103

In the Karnataka High Court

Case No : Writ Petition No. 1795 of 2009

Smt. Manjula APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Karnataka Stamp Act, 1957 — Section 31, 31 (2), 32

Citation : AIR 2010 Kar 41 : (2009) ILR (Kar) 4232 : (2010) 1 KCCR 691

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Sunil S. Rao. Advocate for T. Seshagiri Rao, for R3 to R11 and Narendra Prasad, HCGP for R1 and R2, for the Respondent

Judgement

Ajit J. Gunjal, J.—Respondents 3 to 11 claim to be the agreement holders in respect of an agricultural land belonging to the petitioner. The said agreement to sell is stoutly denied by the petitioner on the ground that the signature found on the agreement is not that of hers. Since the petitioner did not come forward to execute the necessary sale deed pursuant to the agreement to sell, they have filed a suit in O.S. No. 1490/08 on the file of Civil Judge(Sr.Dn.), Bangalore Rural District. In the meantime, one of the agreement holders i.e., respondent No. 3 makes an application to the second respondent for adjudication of stamps u/s 31 of the Karnataka Stamp Act The said application was considered and the second respondent found that in the given set of circumstances and having regard to Article 5(e)(i) of the schedule to the Karnataka Stamp Act, 1957, the respondents are liable to make good the deficit stamp duty to the tune of Rs. 16,20,100/-, inasmuch as, according to the respondents there was a recital in the agreement that pursuant to the agreement they were put in possession. The second respondent has adjudicated and has collected the required stamp duty, copy of the endorsement or the certificate is to be found at Annexure-A and the application made by the third respondent is at Annexure-B. Petitioner questions the endorsement on the agreement to sell, virtually ratifying the agreement to sell by accepting the deficit stamp duty.

2. Mr. Seetharama Rao, learned Counsel appearing for the petitioner vehemently submits that a reading of Section 31 would clearly indicate that there must be an adjudication which would necessarily take into its fold an enquiry since respondent No. 2 is a quasi judicial authority. He further submits that the affidavit filed by the second respondent and also the records made available discloses that there is no adjudication of the proceedings at all, inasmuch as, Sub-section (2) of Section 31 of the Act contemplates that there must be an evidence and a proceeding while adjudicating the stamp duty leviable. He further submits that having regard to Section 32 of the Act, agreement ought to have been presented for adjudication within 30 days from the date of execution.

3. Mr. Sunil Rao, learned Counsel appearing for the respondents 3 to 11 submits that adjudication, as contemplated u/s 31 of the Act is not in the nature of a judicial proceedings but is adjudication of the stamp duty payable. He further submits that an application was made by respondent No. 3 and on such application, the second respondent has determined the stamp duty payable. He further submits that the time limit prescribed u/s 32 of the Act may not be available to the petitioner, inasmuch as, they would relate to a suo motu proceedings and he would press into service the decision of the Apex Court in the case of Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, .

4. Mr. Narendra Prasad, learned Government Pleader supports the endorsement/ certificate on the agreement to sell. He reiterates the fact that Section 31 of the Act does not contemplate any judicial proceedings.

5. To determine this question we have to see what is the meaning of adjudication as contemplated under the Act. What is required is adjudication or determination of the stamp duty payable. The word ''adjudicate'' will have different meaning in different connotations. The general meaning as found in the English Dictionary, Words and Phrases and Law Lexicon would necessarily contemplate deciding an issue between two parties. Resolving disputes between the two parties is essentially the concept of adjudication. Adjudication would be in the nature of judicial proceedings deciding a dispute between two parties. It would also further disclose that it would be in the nature of a judicial or quasi-judicial proceeding. The question would be whether adjudication as commonly known or understood is required to be imported in the present proceedings. Chapter 3 would relate to adjudication as to stamps. Section 31 is in relation to adjudication as to proper stamps. Sub-section (1) would speak about when any instrument whether executed or not and if it is brought to the Deputy Commissioner and the person bringing it applies to have the opinion of that officer as to the stamp duty chargeable and payable and on such application being given, the concerned authority namely, the Deputy Commissioner shall determine the duty with which in his judgment the instrument is chargeable. Indeed Mr. Seetharama Rao presses into service Sub-section (2) of Section 31 which would relate to the

Deputy Commissioner calling upon the person to furnish an abstract of the consideration and also with such affidavit other documents as he would deem fit to prove that all the facts relating to the chargeability of instrument with the stamp duty. Indeed, the proviso would show that no evidence which is furnished having regard to Section 31, the stamp shall not be used in the present civil proceedings certainly with which we are not concerned. Sub-section (1) or Sub-section (2) of Section 31 do not give any indication that all proceedings are required to be in the nature of judicial proceedings. It is to be noticed that Section 31 simply contemplates that where a person is unsure of the stamp duty payable on any document, would make an application to the Deputy Commissioner for determination of the stamp duty payable. The phrase ''adjudication'' used in Section 31 may be equated or related to the phrase ''determination'' of the stamp duty. The determination'' of the stamp duty does not entail an enquiry either quasi judicial or otherwise. Sub-section (2) of Section 31 would come into play only when the Deputy Commissioner is of the view that an affidavit and some other evidence is required for determination of the stamp duty payable. He can call upon the presenter to produce such evidence. In the case on hand, it is to be noticed that the sale consideration under the agreement is about 2,16,00,000/-. The statement of objections is filed by the second respondent indicating that the value reflected in the agreement to sell is much more than the standard value determined by the competent authority. Hence, the second respondent did not feel it necessary calling upon the applicant to produce such other evidence or by way of an affidavit as to the actual market value of the land. Having said that the adjudication in the circumstances, as contemplated u/s 31 of the stamp Act does not entail an enquiry, I am of the view that the contention of Mr. Seetharama Rao cannot be accepted. Insofar as the second contention as to the document to be presented within stipulated period, indeed, that would be a where the authority are required to exercise their powers suo motu. The time limit specified therein is required to be read in such a fashion. Indeed a ruling of the Apex Court in the case of Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, is complete answer to the contention raised by Mr. Seetharama Rao. Indeed, the Apex Court has considered the scope of Sections 31, 32 and 33 of the Act and has observed thus:

... But what happens when the instrument has been executed more than a month before its being brought before the Collector? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable.

Having given my anxious consideration, I am of the view that the question of interfering with the endorsement or the certificate, in the circumstances, does not arise.

No merit. Petition rejected.

