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(2014) 02 KAR CK 0177

In the Karnataka High Court

Case No : Writ Petition No. 16165 of 2012 (GM-CPC)

Smt. Munivenkatamma — APPELLANT

Vs

Smt. Ganga Anjanamma and Another — RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Karnataka Stamp Act, 1957 — Section 2(1)(mm), 37, 38(1), 45A

Citation : (2014) 3 KarLJ 1 : (2014) 4 KCCR 3782

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : T. Seshagiri Rao, Advocate for the Appellant; R. Bhadrinath, Advocate for the Respondent

Judgement

S. Abdul Nazeer, J.—I have heard the learned Counsel for the parties. The petitioner is the plaintiff in O.S. No. 412 of 2009 on the file of Senior Civil Judge and JMFC, Nelamangala. The respondents are the defendants. The suit filed by the plaintiff is for specific performance of agreement of sale dated 29-12-2002.

2. The plaintiff filed an application u/s 151 of Civil Procedure Code, 1908 requesting the Trial Court to permit him to take back the agreement with liberty to produce the same before the Deputy Commissioner for adjudication of the duty and penalty. The Court below has dismissed the application by order at Annexure-F, dated 14-3-2012 and directed the office to calculate the duty and penalty payable on the said document. The office has determined the duty and penalty at Rs. 1,83,425/-. Instead of depositing the said amount before the Trial Court, the petitioner has challenged the validity of the said order in this writ petition.

3. It is not the case of the petitioner that duty and penalty determined by the Court below is erroneous or excessive. The only contention of the learned Counsel for the petitioner is that Trial Court ought to have permitted the plaintiff to take back the agreement to enable him to produce before the Deputy

Commissioner, under the Karnataka Stamp Act, 1957 (for short ''Stamp Act'') and get the duty and penalty determined and thereafter to produce the same before the Trial Court.

4. This Court in Sri J. Prakash Vs. Smt. M.T. Kamalamma and Another, has not accepted a similar contention. This Court after considering the various provisions of the Stamp Act, has held as under:

22. Now, let me consider the last contention of the learned Counsel for the petitioner with regard to the adjudication of the proper market value of the property in question. As noticed above, the market value in relation to any property which is the subject-matter of the instrument means, the price which such property could have fetched in the opinion of the Deputy Commissioner or the Appellate Authority or the Chief Controlling Revenue Authority, if sold in open market on the date of execution of such instrument or the consideration mentioned in the instrument whichever is higher. The consideration mentioned in the agreement is Rs. 10,27,982/-. Section 45A of the Act prescribes the procedure to deal with the under valued instrument of conveyance. Sub-section (3) of Section 45A of the Act grants suo motu power to the Deputy Commissioner to call for and examine an instrument specified in sub-section (1) of Section 45A for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject-matter of any instrument specified in sub-section (1) and the duty payable thereon. If after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine by order the market value of such property and the duty payable thereon in accordance with the procedure provided in sub-section (2) of Section 45A of the Act.

23. The Court after levying duty and penalty has to send an authenticated copy of the instrument to the Deputy Commissioner together with a certificate in writing stating the amount of duty and penalty levied in respect thereof. If the Deputy Commissioner is of the view that the instrument has been under valued, he may determine the market value of such property. However, the Court has to levy duty and penalty on the basis of the total consideration mentioned in the instrument subject to determination of market value by the Competent Authorities under the Act. The market value of the property cannot be less than the total consideration mentioned in the instrument having regard to Section 2(1)(mm) of the Act. If in the opinion of the Competent Authority, the instrument of conveyance has been undervalued, then only the authority concerned has to take steps to determine the market value of the property as provided u/s 45A of the Act.

5. Further, this Court has passed the order as under:

(i) The writ petition fails and it is accordingly dismissed;

(ii) The petitioner/plaintiff is directed to deposit a sum of Rs. 9,01,769/- with the Court below towards duty and penalty. On deposit of the said amount, the Court below is directed to permit the petitioner/plaintiff to mark the document in question in evidence, subject to other objections which may be raised by the respondent/defendant;

(iii) After deposit of the aforesaid amount, the Court below is directed to send an authenticated copy of the document in question to the concerned Deputy Commissioner together with a certificate in writing stating the amount of duty and penalty in respect of the said instrument and send the said amount to the concerned Deputy Commissioner as provided u/s 37 of the Act;

(iv) The petitioner/plaintiff can seek refund of the penalty by making an appropriate application before the Deputy Commissioner u/s 38(1) of the Act. If such an application is filed, the concerned Deputy Commissioner is directed to consider the same in accordance with law. No costs.

6. SLP''s filed challenging the above order has been dismissed by the Hon''ble Supreme Court in SLP (Civil) No. 24149 of 2007, dated 8-1-2008.

7. The petitioner has no option other than to deposit the duty and penalty determined by the Trial Court. The petitioner is granted eight weeks time from the date of receipt of copy of this order to deposit the amount of Rs. 1,83,425/- before the Trial Court. On such deposit, the Court below is directed to send the authenticated copy of the aforesaid agreement of sale to the concerned Deputy Commissioner together with a certificate in writing stating the amount of duty and penalty in respect of the said instrument and send the said amount to the concerned Deputy Commissioner as provided u/s 37 of the Karnataka Stamp Act. The petitioner/plaintiff is permitted to make an appropriate application seeking refund of the said amount u/s 38(1) of the Act. If such an application is filed, the concerned Deputy Commissioner is directed to consider the same and pass appropriate orders thereon in accordance with law. Writ petition is accordingly disposed of. No costs.