(2010) 05 DEL CK 0247

In the Delhi High Court

Case No : C.S. (OS) 541 of 2008

Smt. Parbha Mongha and Others — APPELLANT

Vs

Sh. Bharat Sahdev — RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Stamp Act, 1899 — Section 32, 33, 33(2), 35, 36

Citation : (2010) 05 DEL CK 0247

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sanjay Jain, Rachna Golchha and Siddhartha Tanwar, for the Appellant; Sunil Magon, for the Respondent

Judgement

S. Ravindra Bhat, J.

I.A. No. 11555/2009 (Under Sections 33, 35, 40 and 47 of the Indian Stamp Act, 1899)

1. This order will dispose of an application by the defendant, questioning the admissibility of a Gift Deed relied upon by the plaintiffs dated 24.05.2006. The applicant defendant contends that the Gift Deed (hereafter referred to as "the impugned document") is insufficiently stamped and undervalued; consequently, it cannot be admitted in evidence. It is stated that the plaintiffs have valued the document, the subject matter of the suit, at Rs. 65,00,000/- in 2006, which a gross undervaluation. They rely upon the determination of the Assistant Collector (Grade-II), Civil Lines, Delhi, in Testamentary Case 82/2008 (a matter which has been consolidated with the present suit), where the property has been assessed at Rs. 6,54,85,680/- and contend that in the circumstances, the subject matter of the Gift Deed could not have been valued below half the said amount, or Rs. 3,27,42,840/-. The defendant relies upon provisions of the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007, and submits that in terms of its provisions, the minimum rate fixed was Rs. 27,300/- per sq. metres; the defendant also relies upon the circumstance that the third plaintiff had sold a

portion of the vacant land in respect of the said property at Rs. 8000/- per sq. metres in the year 2000. The applicant further relies upon answers to queries received from the authorities under the Right to Information Act, 2005, indicating that the Sale/Conveyance Deeds have been registered in the vicinity of the suit property in the valuation range between Rs. 40,000/- to Rs. 50,000/- per sq. metre for the period 2006-07.

2. On the basis of the allegations, the applicant defendant contends that the Court should first rule upon the evaluation and sufficiency of Stamp Duty paid in respect of the instrument and take consequential action towards impounding it and thereafter proceed to trial.

3. The defendant applicant relies upon Sections 33 and 35 of the Indian Stamp Act, 1899 as well as the judgment of the Supreme Court reported as Bipin Shantilal Panchal v. State of Gujarat and Anr. AIR 2001 SC 1158, and subsequent judgment reported as State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, to submit that at any stage the Court ought to first rule upon such objections before proceeding with the trial of the suit.

4. The plaintiffs resist the application, personally contending that the proceedings are at a stage when such objections cannot be taken, as the document in question stands exhibited. They place reliance upon Section 36 of the Indian Stamp Act, 1899 to say that once a document is exhibited without demur, objections as to insufficient Stamp Duty etc. cannot be entertained even though it is open for one of the contesting parties to voice their objections regarding genuineness of the document or argue its contents.

5. The plaintiffs contend that admission/denial in the case was carried out by the parties on 06.10.2009, when it was open to the defendants to have objected to the admissibility of the document. Having chosen not to do so, they are now barred of raising such objections at this stage. It is argued that even otherwise, since the issue as to insufficiency of Stamp Duty has been framed as a question to be tried during the trial, the Court ought not to prejudge the issue at this stage. Reliance was placed upon a Full Bench ruling of the Bombay High Court in Mr. Hemendra Rasiklal Ghia v. Subodh Mody W.P. 623/2005 and connected cases, decided on 16.10.2008.

6. The relevant provisions of the Indian Stamp Act, 1899 are extracted below:

XXXXXX XXXXXXX XXXXX 33. Examination and impounding of instruments - (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument, so chargeable and so produced or coming before him, in order to ascertain whether

it is stamped with a stamp of the value and description required by the law in force in [India] when such instrument was executed or first executed:

Provided that-

(a) Nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI, of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,-

(a) the [State Government] may determine what offices shall be deemed to be public offices; and,

(b) the [State Government]may determine who shall be deemed to be persons in charge of public offices.

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35. Instruments not duly stamped inadmissible in evidence etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped:

Provided that-

(a) any such instrument [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the property duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898:

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the [Government], or where it bears the certificate of the Collector as provided by Section 32 or any other provisions of this Act.

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36. Admission of instrument where not to be questioned - Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

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7. In this case, the record would reveal that the defendants had moved the application well before the admission/denial of documents (which took place on 06.10.2009; the application was moved on 05.09.2009 and was in fact listed before the Joint Registrar on the same day, i.e. 06.10.2009). The parties had filed their affidavits indicating admission/denial of the documents; the defendant did so on 18.09.2009 in which the Gift Deed was clearly denied. Furthermore, the defendant has articulated an objection as to the admissibility of the documents in preliminary objection (g).

8. Having regard to the above circumstances, this Court is of the opinion that the plaintiffs'' arguments about the defendants being precluded from contending about the inadmissibility of the document have to be rejected as insubstantial. The defendants did object and have continued to press their objections as to the admissibility of the said Gift Deed at all material times, including in the written statement. In these circumstances, the Court does not accept the plaintiffs'' argument that the issue with regard to insufficient stamping of the document cannot be examined at this stage.

9. A three-Judge decision in Bipin Shantilal Panchal v. State of Gujarat (supra) held as follows:

XXXXXX XXXXXXX XXXXX 12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing Order on such objection. But the fall out of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realized through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

13. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.

14. The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

15. We, therefore, make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

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10. In the present case, the valuation of the subject matter of the Gift Deed, i.e. immovable property disclosed in cognate proceedings, i.e. Testamentary case clearly reveals that it is greatly in excess of what the plaintiffs have valued (i.e. Rs. 65 lakhs). The valuation, though revealed for the year 2007, would work-out to approximately Rs. 3.27 crores. Although the valuation appears to be for a later year, the Court is not unmindful of the spiraling property prices and, in any event, is unpersuaded by the plaintiffs'' arguments that the Circle Rates for the year 2006 were lower. Having regard to the above discussion, this Court is of the opinion that the document requires to be impounded and appropriately valued and adequate Stamps fixed upon it after which the trial in the matter can proceed.

11. In view of specific provisions u/s 33(2)(b), the consequential action towards impounding the instrument and transmitting it to the concerned relevant authorities for appropriate action in accordance with law shall be taken by the concerned Joint Registrar. The parties are directed to be present before him on 5th July, 2010. The plaintiffs are directed to produce the originals of the said Gift Deed dated 24.05.2006, to give effect to these directions.

12. I.A. No. 11555/2009 is allowed in the above terms.

