(2014) 07 MP CK 0344

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5625 of 2013

Sneh Farms and Agro Products Ltd. APPELLANT

Vs

Pankaj Agrawal RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Stamp Act, 1899 — Section 17, 32, 33, 33(1), 33(3)

Citation : (2014) 3 JLJ 200 : (2015) 1 MPHT 141 : (2014) 4 MPLJ 333 : (2015) 1 RCR(Civil) 1021

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present writ petition being aggrieved by the order dated 16-3-2012, passed by 21st Additional District Judge, Indore in Civil Suit No. 19-A/2011 (Pankaj Agrawal v. Shri Shyam Kuril and two others). The learned Additional District Judge has dismissed the application preferred under section 33 of the Indian Stamp Act, 1899 filed by the present petitioner (defendant No. 2). Facts of the case reveal that plaintiff Pankaj Agrawal-respondent No. 2 in the present writ petition, has filed a suit for grant of declaration and injunction under Order 7, Rule 11 of the Code of Civil Procedure, 1908, as stated in the plaint, based upon an agreement dated 15-4-2011. The petitioner has preferred an application under section 33 of the Indian Stamp Act, 1899 stating therein that the document dated 15-4-2011 has not been properly stamped and, therefore, in the light of the statutory provisions as contained under section 33 of the Indian Stamp Act, 1899, the same be impounded and sent to the Collector of Stamps for adjudication. The learned trial Court after hearing the arguments on the application preferred by the defendants, has dismissed the application. The present writ petition is arising out of aforesaid order passed by the trial Court dated 16-3-2012.

2. Learned counsel for the petitioner has drawn attention of this Court towards sections 33 and 35 of the Indian Stamp Act, 1899 and he has also placed

reliance upon the judgment delivered in the case of Smt. Dilwati Devi Vs. Commissioner and another, , Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, , and in the case of Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, , and contention of the learned counsel is that a document the moment it is produced before an authority, as mentioned in section 33, if it is not duly stamped, the authority has to impound the same.

3. On the other hand, learned counsel for the respondent-plaintiff has argued before this Court that by virtue of statutory provisions as contained under section 33 of the Indian Stamp Act, 1899, the stamp duty is required to be paid only when a document is tendered in evidence. He has placed reliance upon a judgment delivered by the Kerala High Court in the case of Varghese Vs. State of Kerala and Others, . He has also placed reliance upon a judgment delivered in the case of Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, . He has also placed reliance upon a judgment delivered in the case of Avinash Kumar Chauhan v. Vijay Krishna Mishra (supra), and lastly he has placed reliance upon a judgment delivered by the Kerala High Court in the case of Uthuppan Abraham Vs. State of Kerala and Others, .

4. Heard learned counsel for the parties at length and perused the record.

5. In the present case, it is an admitted fact that the plaintiff Pankaj Agrawal has filed a civil suit claiming declaration and injunction based upon a document dated 15-4-2011. It is also an admitted fact, not disputed by the parties, that the document is not sufficiently stamped. An application was preferred under section 33 of the Indian Stamp Act, 1899 by the defendants (petitioners) for impounding the same. The trial Court has dismissed the application by an order dated 16-3-2012.

6. The statutory provisions as contained in sections 33 and 35 of the Indian Stamp Act, 1899 reads as under :

"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 (5 of 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.

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 proper 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, 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, 1989;

(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 provision of this Act.

7. Section 33 categorically states that any person having authority to receive an evidence is duty bound to impound a document when it is insufficiently stamped.

8. The Allahabad High Court in the case of Smt. Dilawati Devi v. Commissioner,

Varanasi (supra), in paragraph 2, has held as under :

"2. The submission of Mr. A.B. Singh does not appear to be sound so far as the sections 33 and 47-A are concerned. Inasmuch as section 33 does not require that the document is to be produced in evidence. A plain reading of section 33 of the Indian Stamp Act shows that every person having by law or consent of parties authority to receive evidence, or every person in charge of a public office, except a police officer, before whom any instrument, chargeable with duty is produced or comes in the performance of his functions, he may impound the same if it appears to him that such instrument is not duly stamped which in his opinion is required to be stamped. Thus, it is not clear that the document is not required to be produced in evidence but it is necessary who is capable of receiving the document in evidence or a person in charge of a public office before whom a document comes in discharge of his function of such office, he has the authority to impound such document."

9. The Allahabad High Court in the aforesaid case has held that by virtue of section 33, when an instrument is produced chargeable with duty, has to be impounded by the authority who receives such instrument.

10. In the case of Government of Andhra Pradesh v. Smt. P. Laxmi Devi (supra), the Apex Court in paragraphs 15, 16, 17 and 19 has held as under :

"15. Section 33(1) of the Stamp Act states :

"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 in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same".

16. A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorized to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word ''shall'' in section 33(1) shows that there is no discretion in the authority mentioned in section 33(1) to impound a document or not to do so. In our opinion, the word ''shall'' in section 33(1) does not mean ''may'' but means ''shall''. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions. Hence the view taken by the High Court that the document can be returned if the party does not want to get it stamped is not correct.

17. In our opinion, a registering officer under the Registration Act'' (in this case the Sub-Registrar) is certainly a person who is in charge of a public office. Section 33(3) applies only when there is some doubt whether a person holds a

public office or not. In our opinion, there can be no doubt that a Sub-Registrar holds a public office. Hence, he cannot return such a document to the party once he finds that it is not properly stamped, and he must impound it.

19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, . If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998."

11. The Apex Court in the aforesaid case has held that stamp duty is a tax and hardship is not relevant in construing taxing statutes which are to be construed strictly. It was also held that in the light of section 33(1), the moment a document is produced before an Authority and is insufficiently stamped, the same has to be mandatorily impounded.

12. The Apex Court in the case of Avinash Kumar Chauhan v. Vijay Krishna Mishra (supra), in paragraphs 22 and 24 has held as under :

"22. We have noticed hereto before that section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The Court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The Court, therefore, was empowered to pass an order in terms of section 35 of the Act.

24. In this case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. {See Pandey Orson Vs. Ram Chander Sahu and others, , and Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others, }. The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to section 49 thereof, which reads as under:

"49. Effect of non-registration of documents required to be registered.--No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered :

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

13. Keeping in view the aforesaid judgments, this Court is of the considered opinion that it is mandatory for an authority to impound a document produced before him or which comes before him in the performance of his functions.

14. This Court has already dealt with the judgment delivered in the case of Avinash Kumar (supra), and the same has also been relied upon by the learned counsel for the respondent. Learned counsel for the respondent has placed reliance upon a judgment delivered in the'' case of Varghese v. State of Kerala (supra), which is of Kerala High Court and again upon a judgment delivered by the Kerala High Court in the case of Uthuppan Abraham (supra). The judgment relied upon by the learned counsel for the respondent are of no help to the respondent, as the issue in question has already been clarified by the Apex Court in the case of Avinash Kumar (supra). Resultantly, the writ petition is allowed. The impugned order dated 8-10-2013 is hereby set aside. The application preferred by the present petitioner under section 33 of the Indian Stamp Act, 1899 stands allowed and the learned trial Judge is directed to proceed further in accordance with law by impounding the documents and thereafter by sending it to the Collector of Stamps for adjudication. No order as to costs.

