(2007) 04 AHC CK 0206

In the Allahabad High Court

Sri Subhash Chandra APPELLANT

Vs

Chief Controlling Revenue Authority and The District Stamps Officer (Additional District Magistrate) RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Contract Act, 1872 — Section 202
Stamp Act, 1899 — Section 33

Citation : (2007) 5 ADJ 544 : (2007) 7 AWC 7238 : (2007) 103 RD 55

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned counsel for the parties.

2. The question involved in this writ petition is regarding payment of stamp duty on power of attorney dated 30.01.1985, copy of which is Annexure-1 to the writ petition. The matter was registered before District Stamp Officer, Bijnor as Case; No. 208 u/s 33 of Indian Stamp Act, State v. Subhash Chandra. The said case was decided on 19.07.1985 and it was held that petitioner was liable to pay Rs. 17745/- as stamp deficiency, Rs. 25l/- as deficiency in registration fees and Rs. 20,000/- as penalty. However, by subsequent order of the same authority dated 10.10.1985, penalty was reduced from Rs. 20,000/- to Rs. 8,000/-. Against the said order, Stamp Revision No. 52(0) of 1985-86 was filed. Chief Controlling Revenue Authority/Board of Revenue, Allahabad dismissed the revision on 03.03.1987, hence this writ petition.

3. The relevant provision under which stamp duty on power of attorney is to be paid is provided under Article 48 of Schedule 1-B of Indian Stamp Act as applicable in U.P. The relevant clauses of the said article are (e) and (ee), which are quoted below:

(e) When given for The same duly as a conveyance consideration and authorising the for the amount of the ttorney to sell any immovable consideration. property. (ee) ''hen irrevocable The same duty as a conveyance authority is feiven to the attorney on the market value of the to sell immovable property. property forming subject matter of such authority.

4. The power of attorney in question squirely falls within aforesaid Clause (ee) lowever, the said clause was added w.e.f. 01.11.1991, while power of attorney in question was executed in 1985 and both the impugned orders were passed in 1985-1987. Application of Clause (ee) is, therefore, out of question. It has to be seen as to whether the power of attorney in question is covered by Clause (e) or not.

5. SIC the power of attorney, it was mentioned that the executants, i.e. sic Singh and others, had earlier executed a registered agreement for sale in respect of their property in favour of Lakhpat Rai-father of the petitioner on 01.08.984 and 30.01.1085 (30.01.1985 is also the date of execution of power of attorney). It is further mentioned in the power of attorney that under the two agreements for sale in favour of father of the petitioner, it was mentioned that total same consideration would be Rs. 1,69,000/- out of which Rs. 1,39,00c/- had already been paid by him. It was further mentioned that the attorney could execute sale deed in favour of the agreement holder, i.e. his father or other persons on the direction of his father and attorney should make payment of Rs.30,000/- to the executants after execution of the sale deed either in favour of his father or in favour of different persons in small portions on the direction of his father. It is also mentioned in the power of attorney that the executants, would never cancel the same.

6. The question is as to whether the said deed (power of attorney) has been given for consideration or not.

7. Even though in the deed, no consideration is mentioned, however, execution of the agreement for sale in favour of the father of power of attorney holder on the same date on which power of attorney was executed makes it abundantly clear that the said agreement and power of attorney were part of the same transaction. Accordingly, I hold that the earnest money given under the agreement of the same dale was the consideration for power of attorney. One agreement had already been executed six months before, hence it may reasonably be inferred that no further earnest money or part of sale consideration would have been paid by Lakhpat Rai, in case power of attorney had not been executed by the vendors in favour of his son i.e. Petitioner Subhash Chandra.

8. By virtue of Section 202 of the Contract Act, a power of attorney given for consideration is irrevocable. The fact that in the power of attorney in question, it is mentioned that it is irrevocable'' is a strong indicator of the fact that it was for consideration.

9. Neither in the deed of power of attorney nor in the impugned orders, it has

been mentioned that what amount was paid under the agreement executed on the date of execution of power of attorney, i.e. 30.01.1985.

10. Accordingly writ petition is allowed Both the impugned orders are set aside. The matter is remanded to District Stamp Officer, Bijnor to charge the Stamp duty and registration fees on the power of attorney in question taking the consideration to be the amount paid under agreement for sale executed on the same date, i.e. 30.01.1985 by the executants of power of attorney in favour of Lakhpat Rai father of the petitioner.

11. Under the facts and circumstances of the case, I am of the opinion that there was absolutely no occasion to impose any penalty. Accordingly, it is further directed that no penalty shall be imposed.

