(2014) 01 BOM CK 0033

In the Bombay High Court

Case No : First Appeal No. 114 of 2010

State of Goa APPELLANT

Vs

Andrew Francis Davies RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Foreign Exchange Management Act, 1999 — Section 2(1)(v)(B), 2(v)
Registration Act, 1908 — Section 34, 35, 77

Citation : (2014) 01 BOM CK 0033

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : Vivek Rodrigues, Additional Government Advocate, Advocate for the Appellant; Nitin Sardesai, Advocate for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The appeal is filed against Judgment and Decree of the Civil Suit No. 25/2009, which was pending in Court of District Judge, Panaji. The suit filed by the respondents u/s 77 of the Registration Act, 1908 and for directions is decreed in their favour by the Trial Court. Both the sides are heard.

2. In short, the facts leading to the institution of the suit can be stated as follows.

The plaintiffs are British Nationals. They are retired persons and they want to reside in India for most of their time in their retired life. For the purpose of residence, they decided to purchase immovable property and the owner of house No. 172, ward Ranoi, in village Aldona, Taluka and Sub District of Bardez, District North Goa Goa has executed sale deed in their favour of the property admeasuring 925 square metres for valuable consideration.

3. It is the case of the plaintiffs that they had presented the sale deed for registration before the registering authority on 30/4/2008. It is contended that the registration was refused by the Sub Registrar, Bardez at Mapusa, buy giving

reasons that it was necessary for the plaintiff to obtain permission of Reserve Bank of India (R.B.I., for short) for such transfer. It is the case of the plaintiff that they contacted the R.B.I. and the R.B.I. informed that if they fall u/s 2(v) of The Foreign Exchange Management Act 1999 (FEMA, for short), from that angle it was not necessary for them to obtain any permission for any such transaction.

4. It is the case of the plaintiffs that after obtaining such letter from the R.B.I. they again presented the sale deed for registration. It is contended by order dated 7/11/2008, the Sub Registrar again refused to register the document by giving reasons that the plaintiffs did not fulfill the requirement of section 2(v) of the Foreign Exchange Management Act 1999. It is the case of the plaintiff that they preferred an appeal before the District Registrar but the District Registrar dismissed the appeal by observing that the plaintiffs do not fulfill the conditions laid down in section 2(1)(v)(B) of FEMA, 1999 and they are not eligible to purchase the property.

5. It is the case of the plaintiffs that they filed the suit as provided u/s 77 of the Registration Act. They prayed for declaration that they are the residents of India defined in FEMA and they also prayed for declaration and direction in respect of the registration of the aforesaid sale deed.

6. The defendants, the Sub Registrar and others filed written statement and they contested the suit. So many defences were taken including that absence of statutory notice u/s 80 of C.P.C. The defendants contended that the plaintiffs cannot be called as the persons residents of India, in view of the wording of the section and the regulations. They contended that for such transaction, the permission of R.B.I. is a must and so the Sub Registrar rightly refused to register the document. They also contended that the plaintiffs have not placed material to prove that they have intention to reside in India during their retired life. It is contended that the authority had issued "X" (entry) visa which was valid for one year and similar visa was issued to them after one year. It is contended that the plaintiffs are not entitled to declaration that they are eligible to purchase the property and that they are persons residents in India as defined under FEMA.

7. The Trial Court framed the issues regarding the entitlement of the plaintiffs to get the sale deed registered. Plaintiff No. 1 examined himself and some record regarding the said visa etc. is produced by the plaintiff. The correspondence made with R.B.I. was also produced. One Sub Registrar was examined by the defendant.

8. The Learned Ad hoc District Judge has decided the suit in favour of the plaintiffs by discussing provisions of FEMA. It is held that u/s 2(v) of this Act, the plaintiffs can be treated as the persons residents in India. The defence that the notice u/s 80 was required to be given is rejected by holding that the suit is filed u/s 77 of the Registration Act, which is of the nature of appeal and so section 80 of C.P.C. has no application. Direction is given by the trial court to the defendants to register the sale deed.

9. The Learned Counsel for the respondents/plaintiffs submitted that in view of the provisions of the Registration Act 1908 and the power given to the office of the Registrar, under this Act, it was not open to the office of the Registrar to refuse the registration. He took this Court through the provisions of Sections 34 and 35 Act. He relied on some reported cases:

(i) Chairman/Secretary, Deep Apartment CHS Ltd. Vs. The State of Maharashtra and Others, ."

(ii) Jeewan Ram Vs. State of Rajasthan and Another, ."

(iii) Pandurangan Vs. The Sub Registrar, The District Registrar and The District Collector, ."

10. This Court has gone through the discussion of the aforesaid provisions made by the High Court in the reported cases. After discussing the provisions of Sections 34 and 35, this Court in the case of "Chairman/Secretary, Deep Apartment CHS Ltd., cited supra, has made following observations:

4. Hence it is seen that the document would have to be presented before the registration office by the executors or their representatives. Once that is done the Registering Authority would see that the executors are personally present before him or their representative is present before him. The Registering Authority will also ask whether they admit the execution. The Registering Authority will satisfy himself that the persons before him are the persons they claim to be. If that is done, the Registering Authority must register the document.

This Court has considered the scheme framed under the Registration Act. More discussion of this provision and the other relevant provisions is made by the Rajasthan High Court.

11. In the case of "Jeewan Ram", cited supra, the Rajasthan High Court has observed that while deciding the said point, the aforesaid provision and the supplemental law to the Registration Act can be considered. It is observed that it is not the business of the Registration Officer to see that whether a particular document is against any other law in force for the time being if the conditions prescribed for registration under sections 34 and 35 of the Act or any supplemental law are satisfied. One notification was issued to prohibit transaction of persons between two communities and on the basis of that, registration was refused by the office of the Registrar. Rajasthan High Court held that said notification cannot be considered by office of the Registrar. In view of the scheme of the Act there cannot be a dispute over propositions made in the aforesaid case.

12. The submissions made by the learned counsel for the appellants that the provisions of FEMA needs to be considered cannot be accepted in view of the law discussed above.

13. The learned counsel for the respondents/plaintiffs cited 1956 SC 604 "Ravulu Subba Rao and others Vs. Commr. of Income Tax, Madras". In this case, the

Apex Court has discussed the provisions of Income Tax Act and it is observed that Income Tax Act is a self-contained code exhaustive of the matters dealt with therein, and its provisions show an intention to depart from the common rule, qui facit per alium tacit per se. There cannot be dispute over the said proposition. The provisions of FEMA show that there is particular purpose behind these provisions. In case of breach of the provisions, penalties are provided under the Act. Thus, if in the present case, there is breach of some provisions of FEMA by the plaintiffs, authority created under FEMA can take action for it. The scheme of the Registration Act, however, show that the Sub Registrar is not expected to considered the provisions of FEMA. This Court is avoiding to discuss the regulations framed under FEMA in view of such position of law.

14. The Trial Court has discussed the provisions of Section 2(v) of FEMA and has held that the plaintiffs can be treated as the persons are "Residents in India". This point was not involved in the matter and so that finding cannot sustain and it is hereby set aside. The Trial Court has, however, given relief to the plaintiffs and direction is given to the concerned authority to register the sale deed. No interference is warranted in that direction. In the result, the appeal stands dismissed.