(2008) 10 AHC CK 0041

In the Allahabad High Court

State of U.P. APPELLANT

Vs

Sri Dharam Pal and Shri Prithi Pal Singh RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:
Stamp Act, 1899 — Section 2, 21

Citation : (2009) 1 AWC 473 : (2008) 105 RD 776

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bharati Sapru, J.—Heard learned standing Counsel for the petitioner State Sri S.K. Mehrotra and Sri Vipin Sinha appearing on behalf of the respondents.

2. These two writ petitions arising out of the similar controversy are being decided by a common order treating the writ petition No. 15189 of 2006 as the leading writ petition.

3. The writ petition No. 15189 of 2006 has been filed by the State against the judgment and order passed by the Chief Controlling Revenue Authority dated 28.7.2004 by which he has set aside the order of Collector passed u/s 47-A of the Indian Stamp Act, by which he had imposed stamp duty on the respondents by coming to the conclusion that the release deed dated 7.6.2002 was not a release deed but was a conveyance and stamp duty was attracted on it, as provided in the explanation to Sub-section (10) of Section 21, of the Indian Stamp Act taking into consideration the said explanation Clause inserted by U.P. Act No. 19 of 1981 which reads as under:

2 (10) Conveyance - ''Conveyance'' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos, and which is not otherwise specifically provided for by Schedule I, Schedule I-A or Schedule I-B, as the case may be.

Explanation: An instrument whereby a co-owner of a property having defined share therein, transfers such share or part thereof to another co-owner of the property, is, for the purposes of this Clause an instrument by which property is transferred.

4. The contention of the learned standing Counsel is that the release deed dated 7.6.2002 was not a release deed but was a conveyance within the meaning of Section 2(10) explanation because the co-owner had parted with the share in the property for consideration.

5. Learned Counsel for the respondents has argued that the instrument dated 7.6.2002 was nothing but a release deed made by two co-sharers to other co-sharers who had existing right in the property and it was simply an extension of their existing share and no stranger had been admitted to the property. Therefore it did not amount to a transfer of the property at all and the release deed would be covered by the Full Bench decision of this Court in the case of Smt. Balwant Kaur and Others Vs. State of U.P.,

6. 6. Learned standing Counsel has strenuously argued that the instrument which was subject matter in the case referred to Full Bench of this court was of the year 1970 whereas the Explanation to Clause (10) of Section 2 of Indian Stamp Act was added by way of Amending Act No. 19 of 1981 applicable with effect from 1.8.1981.

7. However a complete reading of the Full Bench decision of this Court in the case of Balwant Kaur (supra), it is clear that that this aspect of the matter is already covered by the Full Bench. Reference may be had in para 9 of the decision of the Full Bench.

8. Having heard learned standing Counsel and the learned Counsel for the respondents and having examined the material on record, I am of the opinion that this case is squarely covered by the Full Bench decision of this Court in the case of Balwant Kaur (supra). The co-owners in this case had transferred their shares to other co-sharers who had pre-existing right in the property. It did not amount to any transfer rather it only amounted to an extension of their existing share. Since there was no transfer to any outsider, it would not amount to a sale or conveyance within the meaning of Section 2(10), even if the explanation is taken into account.

9. In my opinion, the Chief Controlling Revenue Authority has not committed any error in coming to the conclusion that the deed dated 7.6.2002 was a release deed.

10. The writ petition is devoid of merit and is hereby dismissed.