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**(2004) 09 AP CK 0080**

**In the Andhra Pradesh High Court**

**Case No : Civil Revision Petition No. 2431 of 2004**

Sub-Registrar and Another

APPELLANT

Vs

K. Veereswara Rao

RESPONDENT

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**Date of Decision : 09-09-2004**

**Acts Referred:**

Stamp Act, 1899 — Section 2(16), 2(17), 2(22), 47A  
State Financial Corporations Act, 1951 — Section 31(1)  
Transfer of Property Act, 1882 — Section 58

**Citation :** AIR 2005 AP 243 : (2004) 6 ALT 739 : (2004) 3 APLJ 132 : (2005) 3 CivCC 740 : (2005) 1 RD 9

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** Govt. Pleader, for the Appellant; P. Shiv Kumar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

L. Narasimha Reddy, J.—This revision presents an instance as to how the financial necessities of an individual would expose him or her to several compulsions and thereby make them to face the adverse consequences. Though the revision arises out of an order passed in a civil miscellaneous appeal filed u/s 47A of the Indian Stamp Act, 1899, it has a background spread over about three decades.

2. The mother of the respondent viz. K. Anasuya was the absolute owner of the property admeasuring 1350 sq. yards in premises No.16-2-705/1/5, Malakpet, Hyderabad. In September 1970, she was in dire need of a sum of Rs.12,000/- and approached one person viz. Ch. Bikshapathy for the same. He paid that amount. On 29.09.1970, a sale deed was executed conveying the said property in his favour and on the same day, an agreement of re-conveyance was executed to the effect that in case, she refunds the same amount within six years, he shall re-convey the property to her.

3. Smt. Anasuya offered to pay the amount in July 1976. Her creditor appears to

have developed affinity to the property and refused to accede to her request. That necessitated her to file O.S. No. 625 of 1976 in the Court of the II Additional Judge, City Civil Court, Hyderabad for specific performance of the agreement of re-conveyance dated 29.09.1970. She deposited the entire sum into the Court on 24.09.1976. After serious contest, the suit was decreed on 15.12.1979. The creditor filed A.S. No. 175 of 1980 in the Court of Additional Chief Judge, City Civil Court, Hyderabad. It was dismissed on 04.09.1981. S.A. No. 969 of 1981 was filed in this Court and it was dismissed on 28.01.1987. The mother of the respondent died on 13.07.1987. S.L.P.No.5534 of 1987 filed by the creditor was dismissed in 1987.

4. The respondent filed E.P.No.6 of 1988. This was also opposed by his creditor by filing E.A. No. 221 of 1988. The creditor filed O.S. No. 2041 of 1989 in the Court of the First Additional Judge, City Civil Court, Hyderabad for declaration that he is the absolute owner of the property. The E.P. was allowed on 20.07.1990 and O.S. No. 2041 of 1989 was dismissed in 1995. Even thereafter, the creditor created several obstacles by filing several applications in the execution petition and civil revision petition before this Court. Ultimately, the sale deed was executed on 06.01.1998 in the E.P. by the Court itself. However, the respondent had to face the trouble from another front.

5. On 27.01.1998, the Sub-Registrar referred the sale deed to the District Registrar u/s 47-A of the Act, for proper valuation. After hearing the objections, the District Registrar passed the order on 15.07.1999 directing the respondent herein to deposit a sum of Rs. 15,64,640/- towards the deficit stamp duty. Aggrieved thereby, the respondent filed C.M.A. No. 152 of 1999 in the Court of Chief Judge, City Civil Court, Hyderabad. The appeal was allowed through Judgment dated 30.03.2001. Hence, this revision by the State.

6. The revision is preferred by the Sub-Registrar and the Collector, the authority u/s 47-A of the Act. It is doubtful whether the second petitioner, being the adjudicatory authority, can figure as one of the contesting parties.

7. Learned Government Pleader for Arbitration submits that the stamp duty on the sale deed has to be collected on the basis of the market value prevailing on the date on which it was presented for registration, and in that view of the matter, no exception can be taken to the order passed by the authority u/s 47-A of the Act. He submits that the lower appellate Court relied upon a Judgment of this Court in Sub-Registrar, Nalgonda Dist. Vs. Amaranaini China Venkat Rao and others, and since the same was subsequently overruled by a Division Bench of this Court in Siddula Madhukar and another Vs. Govt. of A.P. and another, the order under revision deserves to be set aside. He submits that no distinction, as such, exists between a sale deed simplicitor and a deed of re-conveyance in the context of levy of the stamp duty.

8. Learned counsel for the respondent, on the other hand, submits that a deed of re-conveyance stands on a footing, different from an ordinary sale deed.

According to him, a sale followed by an agreement to re-convey the property for the same consideration is almost akin to the transaction of mortgage and it cannot be compared to an ordinary sale. Learned counsel submits that the object of executing a sale deed, followed by an agreement of re-conveyance is to provide adequate security for repayment and the provision for payment of a stamp duty calculated on the prevalent market value in relation to sale deeds, does not apply to such transactions.

9. Though the case has a chequered career, the limited controversy in this revision is as to whether the deed of re-conveyance executed in favour of the respondent is liable to be levied the stamp duty at the prevalent market value of the property by treating it as an ordinary sale deed. The deed of re-conveyance came to be executed in favour of the respondent on 06.01.1998, after several rounds of litigation, and it was presented before the first petitioner on 27.01.1998. The consideration of the transaction was Rs. 12,000/- and stamp duty was paid, calculated on that amount. The first petitioner took the view that the stamp duty has to be calculated on the market value of the property, prevailing as on the date of presentation of the deed and referred the matter to the District Registrar u/s 47-A of the Act. The respondent pleaded that the consideration for the transaction was fixed way back in the year 1976 at Rs. 12,000/-, the same amount was paid into the Court and it constitutes the basis for calculation of the stamp duty. This did not appeal to the District Registrar and it was held that the respondent is liable to pay the deficit Court fee of Rs. 15,64,640/-.

10. In C.M.A. No. 152 of 1999 filed by the respondent, the learned Chief Judge took the view that irrespective of the dates of execution and presentation of the deed, the consideration prevailing as on the date of agreement, needs to be taken into account for the purpose of calculating the stamp duty. He derived support from a Judgment of this Court in Sub-Registrar's case (1 supra). In view of the fact that the said decision is overruled by a Division Bench of this Court in Siddula Madhukar's case (2 supra), the matter needs to be given a different consideration.

11. The instruments involved in both the cases referred to above were ordinary sale deeds. Had the document in question in the present proceedings been an ordinary sale deed, there would not have been any occasion to discuss the matter further. As observed earlier, it is a deed of re-conveyance. Therefore, it needs to be examined as to whether a deed of re-conveyance is, in any way different from an ordinary sale deed in the context of the levy of stamp duty and other related issues. This involves examination of certain provisions of some important enactments, such as, the Transfer of Property Act, the Registration Act and the Indian Stamp Act.

12. The concept of registration of sale deeds was unknown to Indian law before the Moghal and English Rule. The necessity of registration, as a measure of concrete proof of the transaction, was not felt in view of the "lofty ethics" (to

adopt the expression used by a noted author Sri Sen Gupta) prevalent in the then society. It is not uncommon in certain parts of the country even at present that such transactions take place otherwise than through registration. In a way, they reflect the left over moral fibre in the society. This, however, is not to suggest that every transaction by way of registration presupposes absence of ethics or morality, in the parties. The object of enacting the laws on Registration was to provide a concrete proof and authenticity to the transaction.

13. Stamp duty, on the other hand, stands on a different footing. It is treated as a recognized source of revenue for the State and is almost in the realm or field of Taxation. Though the theory of Reasonableness is somewhat unknown to the Law of Taxation, one recognized principle is that the Taxation or levy of duty should not be to an extent of a breaking point. In such an event, the corresponding law is prone to be treated as confiscatory in nature. At what point, the levy becomes confiscatory depends on the nature of transaction and extent of Taxation. Seldom there exists any hard and fast rule in this regard. In the process of bringing about a transaction of transfer of immovable properties of various kinds, the provisions of the Transfer of Property Act, the Registration Act and the Indian Stamp Act become relevant. Several concepts find place in all the three enactments. However, same terms are defined differently under these enactments. It is impermissible to import the definition or meaning of a term in one enactment into the other.

14. It is well known that the Transfer of Property Act provides for five categories of transfers viz. sale, mortgage, lease, exchange and gift. Absolute transfer of right, title and interest takes place in cases of sale, exchange and gift. However, the nature of transfer of property in cases of lease, mortgage is limited. In such cases, the title continues to be with the transferor and the transferee is vested with certain rights. Section 58 of the Transfer of Property Act defines the term "mortgage" as well as the six categories of mortgages. Of these, the mortgage by conditional sale, referred to in Section 58(c), is contrasted with, or compared to, a sale with a condition of re-transfer. Though these two are different kinds of transfers, there exists substantial similarity between them. By omitting the minute differences or similarities, it can broadly be stated that they resemble in their character, of being devices to secure repayment, but differ from the point of view of vestiture of title. On a close analysis, it would be found that both the transactions are intended to provide security for repayment of the amount constituting the consideration thereof. Depending on the emphasis or the extent of security intended, the transactions are chosen.

15. Howsoever assured the mortgagee under a mortgage by conditional sale may be, as to the repayment of the secured amount, he has to reconcile to the fact that the transaction continues to be a mortgage and his rights can ripen to ownership only after a pronouncement by a Court. Mortgage gives leverage to the mortgagor to seek redemption even after the lapse of several years because of the adage that a transaction, which is once a mortgage, is always a mortgage.

It is for this reason, that a creditor, in a given case may chose to insist upon the execution of a sale deed with a condition to re-purchase. Section 58(c) of the Transfer of Property Act was amended in the year 1929 to insist that the terms as to conditional sale shall be incorporated in the same document, in the light of conflicting decisions of the various High Courts. Therefore, much would depend on the degree of security, which the lender of the amount would insist, in resorting to one of the modes of transfers. In this context, the following observation of the Supreme Court in Indira Kaur and Ors Vs. Sheo Lal Kapoor, is relevant.

"In fact very often the mortgagee in place of getting a mortgage deed executed in lieu of a loan, obtains an agreement to sell in his favour from the mortgagor so as to bring pressure on the mortgagor by seeking to enforce specific performance to enable the mortgagee to obtain possession of the property for an amount smaller than the real value of the property."

16. In the ultimate analysis, the initial sale, followed by an agreement to re-convey and execution of deed of re-conveyance leads to nothing more than change of roles by the same set of parties. In this equation, the property and the consideration remain constant.

17. It is true that in case of a sale with a condition to re-purchase, the transfer of title takes place. However, such title is immediately clouded with the obligation of the purchaser to re-convey it, as and when the consideration is returned by the transferor in terms of the contract. Notwithstanding the transfer of title, the transaction partakes the character of a measure of security for repayment. It is in this context, that the definition of mortgage under the Stamp Act becomes relevant u/s 2(17), the mortgage deed is defined as under:

"Mortgage deed includes every instrument whereby, for the purpose of securing money advanced or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of another, a right over or in respect of specified property."

18. To differentiate this with the definition of mortgage u/s 58(c) of the Transfer of Property Act, it is beneficial to extract the same. It reads as under:

"A mortgage is the transfer of an interest in specific immovable property for the purpose of security the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to pecuniary liability."

19. A comparison of these provisions discloses that the definition of mortgage deed under the Stamp Act is wider in scope than the one under the Transfer of Property Act. The former is an inclusive definition, whereas the latter is a definition simplicitor. An inclusive definition is wider than other kinds of definitions (See The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd., . Section 2(17) of the Stamp Act takes in its fold,

every instrument executed for the purpose of securing the repayment of money advanced or to be advanced. While under the Transfer of Property Act, a transaction of mortgage is limited to the one involving "transfer of interest in a specific immovable property", the mortgage deed under the Stamp Act includes an instrument, which "transfers or creates the right over or in respect of a specified property". In this context, a sale deed, followed by an agreement to re-convey the property, comes closer to the mortgage deed defined u/s 2(17) of the Stamp Act and assumes the characteristics of an instrument executed for the purpose of securing the re-payment of the money advanced, at least in the limited context of the provisions of that Act. So is the case with several definitions, such as, of "lease" u/s 2(17) and of "promissory note" u/s 2(22) of the Stamp Act.

20. It is settled principle of law that the nomenclature given to a document is not conclusive and its contents are the decisive factors in deciding the nature of the document. Nothing would be more convincing and educative, than a reference to a Judgment rendered by Justice Vivin Bose in *Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another*, . It is rather fortifying that the case before the Supreme Court related to the distinction between a mortgage u/s 58(c) and a sale u/s 54. In his inimitable style, Justice Bose observed as under:

" Para 6: The first is that the intention of the parties is the determining factor: see- "*Balkishen Das v. Legge*" 22 I. A 58 (P.C.) (A). But there is nothing special about that in this class of cases and here, as in every other case, where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended.

As Lord Cranworth said in - "*Alderson v. White*" (1858) 44 E.R. 924 (B)-

"The rule of law on this subject is one dictated by commonsense; that "prima facie" an absolute conveyance, containing nothing to show that the relation of debtor and creditor is to exist between the parties, does not cease to be an absolute conveyance and become a mortgage mere by because the vendor stipulates that he shall have a right to repurchase..... In every such case the question is, what, upon a fair construction, is the meaning of the instruments?" Their Lordships of the Privy Council applied this rule to India in "*Bhagwan Sahai v. Bhagwan Din*" 17 I. App. 98 (P.C.) ( C) and in -" *Jhanda Singh v. Wahid-uddin*" AIR 1916 P.C. 49 (D).

Para 7: The converse also holds good and if, on the face of it, an instrument clearly purports to be a mortgage it cannot be turned into a sale by reference to a host of extraneous and irrelevant considerations. Difficulty only arises in the

border line cases where there is ambiguity. Unfortunately, they form the bulk of this kind of transaction."

21. In *Sundaram Finance Ltd. Vs. State of Kerala and Another*, the Supreme Court indicated the mechanism to decide the actual nature of the documents. It observed:

"The true effect of a transaction may be determined from the terms of the agreement, considered, in the light of the surrounding circumstances. In each case, the Court has, unless prohibited by statute, power to go behind the documents and to determine the nature of transaction, whatever may be the form of the documents."

22. The question as to how far the amendment to Section 58(c) of the Transfer of Property Act, insisting on that the clause as under re-conveyance shall be contained in the mortgage deed itself, remedied the situation; was pointed out in *Chunchun Jha's* case (4 supra) in the following terms:

"Because of the welter of confusion caused by a multitude of conflicting decisions, the legislature stepped in and amended Section 58(c) of the Transfer of Property Act. Unfortunately, that brought in its train, a further conflict of authority."

23. Having made this observation, the Supreme Court held that if the sale deed and agreement to repurchase are made in separate documents, though contemporaneously, the transaction cannot be a mortgage. However, a different note was struck by the Supreme Court in *Indira Kaur's* case (3 supra). In that case, a sale deed was executed in respect of an immovable property for a consideration of Rs.7,000/-. On the same day, as in the present case, an agreement to re-convey was entered into, obligating the purchaser under the sale deed to re-convey it, if the same consideration is repaid in 10 years. It was held that the factors, such as the same amount being stipulated as a consideration for sale and re-conveyance, that too, after a fairly longtime, the initial purchaser not taking care of any margin for investment, and transaction of sale being resorted to as a device of better security, become relevant in deciding the nature of the document. The following are some of the circumstances that were referred to in that Judgment:

"Para 5: There is no manner of doubt that the transaction in question was one of mortgage in essence and substance though it was clothed in the garb of a transaction of ostensible sale. The factors adumbrated herein under leave no room for doubt on this score:

(1) The sale deed was for a sum of Rs.7000. So also the agreement which could be enforced at any time within 10 years was also for an identical sum of Rs.7000. If the defendant wanted to purchase an immovable property for the sake of investment would he have agreed to convey the very same property, for the same amount even after ten years? In the first place he would have lost the

advantage of appreciation in value of the property resulting in 10 years let alone erosion of his investment on account of inflation. In the second place he would not have been able to sell, mortgage, gift or will away the property for 10 years as the obligation to convey it to the plaintiff within 10 years for the very same amount was annexed to the property and he could have dealt with his property in any of the aforesaid modes only subject to this obligation. Why should he have locked up his funds in such a manner?

(2) The stipulated period for conveying the property was a very long period of 10 years. The very length of the period is suggestive of a transaction of mortgage and not a transaction of absolute sale with a stipulation to re-convey the property in such peculiar circumstances, bearing on the relationship between the parties or some other relevant consideration.

(5) The obvious reason for entering into such a transaction of ostensible sale coupled with a contemporaneous agreement to sell within 10 years was that if it was not garbed with this paraphernalia and was given the nomenclature of a mortgage the period of redemption would have been 30 years,. This period could not have been curtailed without attracting the doctrine of clog on equity of redemption. This was obvious reason for resorting to this device" (Sub paragraphs 3 and 4 omitted)

24. Same factors are present in the case on hand. The question assumes significance from the point of view of stamp duty, though not in the context of adjudication of rights of the transferor and transferee. The observations made by the Supreme Court apply with a greater vigor to the present case, inasmuch as the initial purchaser had the advantage of enjoying the possession of the property even as on today.

25. It is true that a deed of re-conveyance is already executed by the Court. However, the controversy looms large in the context of amount of stamp duty to be paid thereon. The stamp duty is levied on the basis of the market value of the property prevailing as on the date of the transaction. In the context of sale deeds, this value answers the description of the price, which, a willing purchaser is prepared to pay for the property, taking that the owner thereof is willing to part with the same for that consideration. The principle evolved by the various Courts, in determining the market value for the lands acquired under the Land Acquisition Act, turns around this concept. This pre-supposes that the willing purchaser did not have any interest or a vested right in the property, anterior to the sale, and that the vendor has the absolute freedom to accept or reject the offer. These constitute important and concomitant features of an ordinary sale transaction. Where, however, the purchaser is conferred with a right to purchase the property, at a price specially fixed for him and the vendor suffers from a corresponding disadvantage to part with the property despite his disinclination, the concept of market value undergoes a kind of metamorphosis, qua, such transactions. In a way, such transactions stand on a footing, superior to an involuntary sale under the Law of Compulsory Acquisition.

26. In the cases of compulsory acquisition, the owner of the property is made to part with it, despite his unwillingness. However, he is paid the market value as ascertained in accordance with the procedure prescribed under the relevant law. The acquiring authority or the agency for which it is acquired, have no right to dictate the terms about the consideration. In case of sale in pursuance of an agreement to re-convey, the freedom of the vendor, on both these aspects viz. discretion to sell, and to insist on the consideration of his choice (or the one arrived at in accordance with the procedure) is denied to him, when the re-conveyance takes place. The transferee in the re-conveyance possesses the right to insist upon the vendor to part with the property, that too at the price stipulated in the agreement. Therefore, the concept of market value, for the purpose of calculating the stamp duty substantially differs in respect of re-conveyance from ordinary sale deeds.

27. The Stamp Act maintains a clear distinction between the transactions, which result in acquisition of absolute title, on the one hand, and those that are intended to provide a measure of security for repayment of the amount, on the other. Apart from the definition of "mortgage" u/s 2(17) of the Stamp Act, this difference is discernible from the amount of stamp duty levied on transactions of sale, on the one hand, and mortgage on the other. Though there is a transfer of interest in both the instances, stamp duty is levied on the value of the property in transfers through sale; whereas it is levied on the amount assured, in a transfer by way of mortgage. The former is levied in Article 47A of Schedule I-A, and the latter is charged under Article 35. Article 35, in turn, maintains a distinction between the deeds of mortgage where possession is delivered or agreed to be delivered to the mortgagee and those where the possession is kept with the mortgager. In either of the case, the basis is the amount secured by the deed and the difference is only as to the percentage of duty. Under Article 47-A, the basis for levy of the stamp duty is the market value. In fact, the stamp duty, for redemption is nominal. Once it is found that the predominant object of a sale with an agreement to re-convey resulting in a deed of re-conveyance is to provide security for repayment, the stamp duty payable on such a document should be guided by the same principle and analogous provisions.

28. There is another angle from which the matter can be examined. In a transaction of sale with a condition to re-convey the property, by and large and with few exceptions, the consideration does not represent the actual value of the property. The transaction of re-conveyance is almost concluded in all respects, except for actual payment of the amount. The corresponding rights and obligations of the parties are crystallized in terms of the conditions of the agreement to re-convey. In its actual purport, by operation of agreement of re-conveyance, the person, in whose favour it is executed, regains the property, as distinguished from acquiring an item of property. In a way, but only in a way, it can be said that the right and title of such person vis-?-vis the property were only eclipsed from the date of sale deed till the date of re-conveyance, and not obliterated altogether. Therefore, a transaction of re-conveyance cannot be

compared to that of an ordinary sale deed.

29. It is not uncommon that in the operation of fee or tax regimes, provided for under various enactments, instances which do not fall in any of the defined categories occur and the Courts are called upon to resolve the controversy. In *Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others*, the question arose as to whether the fixed Court fee under Article 1 (c) of Schedule II, or ad valorem Court fee under Articles 1 or 7 of Schedule I of the *Bombay Court Fees Act, 1959* is payable on applications filed u/s 31(1) of the *State Financial Corporation Act*. Section 31(1) provided for filing of three categories of applications namely, a) for sale of the pledged or mortgaged property, b) transferring the management of industrial concern, or, c) an interim injunction restraining the borrower from transferring or removing the machinery.

30. After discussing the scope of the various kinds of applications, and the relevant provisions, the Supreme Court took the view that though the application for sale of pledged property does not answer the description of the proceedings referred to in Article 1(c) of Schedule II, fixed Court fee is leviable under that provision. In the process of reaching this conclusion, the Supreme Court observed as under.

" para 15: When dealing with a question of court-fee, the perspective should be informed by the spirit of the magna carta and of equal access to justice which suggests that a heavy price tag on relief in Court should be regarded as impalatable."

31. If this is the approach adopted in respect of proceedings, which otherwise answer the description of a suit, that too, filed by the lending agency run by the State, the citizens need a greater protection from the rigor and hardship of levy, be it of stamp duty or Court fee.

32. One of the recognized principles of interpretation is that the operation of a provision of law should not be permitted to lead to absurd situations. Such situations may arise either because the legislature may not have contemplated them when they enacted the provision or because of the manner in which a provision is enforced by the executive. Some times delegated or subordinate legislation may bring about such situation. Where the Court finds that the consequences of the application of the provision flouts the norms of common sense and justice, it is not only entitled to, but is also under obligation to interpret the provision in such a way as to avoid absurdity. As in case of any other principle, this also has to be applied cautiously, after exhausting all other means to sustain the provision as well as its usual operation. Maxwell in his treatise on "The Interpretation of Statutes", observes

"whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention to bring it about has been manifested in plain words."

33. The principle was aptly coined in *Re Maryon-Wilson's Will Trusts* (1968) Ch. 268 as under:

"If the Court is to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for common sense and justice."

34. It has already been noticed in this case that there did not exist any dispute that the amount borrowed by the mother of the respondent was Rs. 12,000/-, a sale deed was executed by her, followed by an agreement of re-conveyance, as a measure of security. Suit for specific performance was decreed for the same consideration of Rs. 12,000/-. If the respondent is required to shell down a sum of Rs. 15,64,640/-, in the process of clearing the debt of Rs. 12,000/-, there hardly exists any doubt that it results in absurdity. It would never have been in the contemplation of the Parliament or the State Legislature, that such a levy of stamp duty, be made. Once the facts are clear that the deed of re-conveyance was executed by the Court in favour of the respondent, almost as a measure of redemption, the respondent cannot be mulcted with the liability to pay the unimaginable, disproportionate and un-conscionable sum as stamp duty. In effect, such a step amounts to penalizing a citizen for his financial penury. Levy of Rs. 15,64,640/- on a transaction for a sum of Rs. 12,000/- shocks conscience of any one and such a course of action cannot be countenanced in any legal system.

35. For the foregoing reasons, it is held that stamp duty leviable on deeds of re-conveyance is to be calculated on the actual consideration and not on the market value. The levy of deficit stamp duty in relation to the document of re-conveyance, as determined by the second respondent, is untenable and the order dated 15.07.1999 passed by him is set aside. Consequently, the civil revision petition is dismissed. Since the document was withheld unduly for last several years and the respondent is denied the benefit of litigation spread over a quarter of century, the first petitioner is directed to release the document forthwith, so as to enable the respondent to take steps to recover possession of the land. No costs.