(2010) 08 AHC CK 0510

In the Allahabad High Court

Case No : C.M.W.P. No. 6353 of 1996

Sunil Kumar APPELLANT

Vs

XIth Addl. District Judge and Others RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Stamp Act, 1899 — Section 47A
Stamp Rules, 1942 — Rule 340, 340A, 341

Citation : (2011) 2 ADJ 140 : (2010) 6 AWC 5998

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Misra, J.—Heard Sri A.K. Goyal learned Counsel for the Petitioner and learned standing counsel for the State Respondents.

2. The Petitioner is aggrieved by the order dated 8.7.1992 (Annexure 5 to the writ petition) passed by the 1st Additional Civil Judge, Meerut in Execution Case No. 6 of 1990, Sunil Kumar v. Mukul Kumar, as also the Revisional order dated 1.11.1995 (Annexure 6 to the Writ petition) passed by the court of XIth Additional District Judge, Meerut in Civil Revision No. 266 of 1992.

3. Sri A.K. Goyal has submitted that the Petitioner was a decree holder in a Suit for specific performance being Suit No. 877 of 1984 and when the Defendant judgment debtor failed to execute the sale deed of the land in question the executing court executed the sale deed on 8.5.1992 and sent the sale deed for registration before the Sub-Registrar, Meerut (Respondent No. 6). The Sub-Registrar found that the sale deed was executed on stamp paper of Rs. 22,600 but in accordance with the circle rate determined by the District Magistrate on 2.2.1992 the value of the land in question would be Rs. 1,80,000 and hence the stamp duty chargeable would be Rs. 26,110. As such the executing court on the report of the Sub-Registrar found deficiency in the stamp duty and required the decree holder Petitioner to deposit the same -before the executing court.

4. Sri Goyal states that feeling aggrieved the decree holder Petitioner filed Civil Revision No. 266 of 1992 which has also been dismissed by the Revisional Court on 1.11.1995.

5. According to Sri Goyal the rules framed u/s 47A of the Stamp Act in their application to the State of U. P. have provided a clear procedure for determination of the value of the land in case of dispute with respect to payment of stamp duty. He submits that the Collector has jurisdiction either suo moto or otherwise to satisfy himself with respect to market value of the property in accordance with the procedure prescribed under Rule 340, Rule 340A and Rule 341 of the Stamp Rules, 1942 as were applicable in the year 1992. He states that having not initiated the process for valuation of the land in question for the purpose of payment of stamp duty on the instrument the executing court has committed an error since it ought to have directed the District Magistrate to do so when there was a dispute.

6. Sri Goyal has submitted that in case of an order passed by the Collector demanding deficient stamp duty the same would have been appeallable under the provisions of Stamp Act but when the civil court in execution of a decree of specific performance has passed the order to deposit deficit stamp duty no appeal can be preferred by the Petitioner in case he is aggrieved by the demand of excess stamp duty. His submission therefore is that the Petitioner has been deprived of a forum of appeal against the demand of excess stamp duty on the one hand and on the second the- demand being based on circle rate cannot be taken to be an absolute determination of the market value of the land in question.

7. The aforesaid submission of Sri Goyal appears to have substance. The revenue authority has not noticed the Petitioner for deposit of deficient stamp duty. In fact it has written to the executing court for payment of deficient stamp duty and the executing court has directed the Petitioner to deposit the same so as to stamp the sale deed and satisfy the decree for specific performance. Therefore the right of appeal under the Stamp Act, if any, to the Petitioner has been taken away.

8. The second submission also appears to have force inasmuch as by the impugned order passed by the executing court the valuation has been found on the basis of the circle rate determined by the District Magistrate on 2.2.1992. When there is a dispute regarding such determination the Stamp Act and the Rules as they were at that time have provided a procedure for determination of valuation by the competent authority. As such while executing his decree of specific performance the Petitioner has also been deprived of an opportunity of getting the valuation of the property made as on that date for the purpose of assailing the demand of deficient stamp duty.

9. For the aforesaid reasons the impugned orders cannot be upheld and are liable to be set aside.

10. In these circumstances the impugned order dated 8.7.1992 passed by the

1st Additional Civil Judge, Meerut as also the Revisional order dated 1.11.1995 passed by the court of XIth Additional District Judge, Meerut shall stand set aside with a further direction to the trial court to refer the matter for valuation of the land which is subject matter of the sale deed executed by the court in execution of a decree of specific performance in Execution Case No. 6 of 1990 arising out of Original Suit No. 877 of 1984. Upon a reference made to the District Magistrate concerned he will get the valuation of the land in question on the date the sale deed was submitted for registration in accordance with the procedure prescribed in the U. P. Stamp Rules and thereafter determine as to whether the Petitioner decree holder was required to pay further stamp duty on the valuation done in the sale deed executed by the court. It goes without saying that the Petitioner shall not be deprived from availing the remedy available to him in law against such determination of market value.

11. The Petitioner may produce a certified copy of this order before the trial court within a period of one month from today and the trial court is required to proceed in accordance with law.

12. The writ petition stands allowed.

No order is passed as to costs.