(2015) 04 RAJ CK 0140

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 9977 and 9978 of 2013

Sunita and Others — APPELLANT

Vs

Municipal Council and Others — RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:
Rajasthan Stamp Act, 1998 — Section 33, 35, 37, 38, 38(2)

Citation : (2015) 04 RAJ CK 0140

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : A.K. Babel, for the Appellant; Rajat Dave, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—These writ petitions have been filed by the petitioner aggrieved against the order dated 03.09.2012 (Annex.-3) and 09.07.2013 (Annex.-6) passed by Civil Judge (Junior Division) West, Bhilwara, whereby the trial court on a prayer made by the petitioner-plaintiff indicating his readiness to pay the stamp duty and penalty, directed production of certified copy of the document and return of the original document for getting it stamped properly and produce the same back and rejected application filed by the petitioner under Proviso-(a) to Section 39 of Rajasthan Stamp Act, 1998 ("the Act of 1998") respectively.

2. The petitioner filed a suit for permanent injunction based on a document, which was claimed by the petitioner as Patta dated 27.11.1961. It appears that during the course of evidence of the plaintiff, objection regarding the said Patta being inadmissible in evidence on account of the same being insufficient stamp was raised. The petitioner made an oral prayer on 03.09.2012 indicating his willingness to pay the deficient stamp duty and penalty, on which the trial court ordered that the petitioner may produce a certified copy of the Patta and the original Patta be returned to him for being duly stamped.

3. On passing of the order, the petitioner filed application purportedly under Proviso-(a) to Section 39 of the Act of 1998, inter alia, indicating that as the petitioner was ready to pay the deficient stamp duty alongwith ten times penalty and for that purpose, he was filing the challan and tender, the same may be accepted.

4. The application was opposed by the respondents, wherein it was indicated that the power for the said purpose lies with the Collector (Stamps) and the court has rightly passed the order giving opportunity to the petitioner to get document duly stamped and the petitioner having not done the same, the application deserves to be dismissed.

5. The trial court after hearing the parties by its order dated 09.07.2013 (Annex.-6), came to the conclusion that the petitioner did not taken any steps after the order dated 03.09.2012 (Annex.-3) was passed and reiterated its order dated 03.09.2012 and disposed of the application.

6. It is submitted by learned counsel for the petitioner that the trial court fell in error in the first instance directing the petitioner to take the original document and get the same duly stamped from the Collector (Stamps) and when an application was filed pointing out the procedure prescribed under law, the same was also rejected by the trial court merely reiterating the earlier order without taking into consideration the provisions of law. It is submitted that the procedure adopted by the trial court is not in terms of the procedure laid under the Act of 1998; once a prayer was made by the petitioner indicating his willingness to pay the requisite stamp duty and penalty, the trial court under provisions of Section 42 of the Act of 1998 was bound to determine the deficient stamp duty and penalty, whereafter the petitioner would have paid the same.

7. Reliance was placed by the petitioner on Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle and Another, AIR 2001 SC 1321 : (2001) 3 JT 430 : (2001) 2 SCALE 466 : (2001) 4 SCC 197 : (2001) 2 SCR 419 : (2001) 2 UJ 1237 : (2001) AIRSCW 1174 : (2001) 2 Supreme 365 and Indralal and Anr. v. Saligram and Anr.: 2011 (2) CDR 894.

8. Learned counsel for the respondents opposed the submissions made by learned counsel for the petitioner. It was submitted that the petitioner having not followed the direction dated 03.09.2012 (Annex.-3) passed by the trial court, was not entitled to any further relief from the trial court. It is also submitted that a plain reading of provisions of Section 37 of the Act of 1998 clearly indicates that the issue has to be determined by the Collector (Stamps) and not by the trial court and, therefore, the rejection of application by the trial court was justified.

9. I have considered the submissions made by learned counsel for the parties and have perused the material placed on record.

10. The directions issued by the trial court dated 03.09.2012 and reiterated by

its order dated 09.07.2013 (Annex.-6) appears to be wholly beyond the procedure prescribed under law, instead of determining as to whether the document was insufficiently stamped or not and whereafter following the procedure prescribed under the Act, the trial court adopted a novel procedure of directing the party to take original document and get the same duly stamped. Such a procedure adopted by the trial court cannot be sustained.

11. As to what procedure should be adopted by the trial court in a case where an objection is raised about the document being insufficiently stamped and the party concerned being ready and willing to pay the deficient stamp duty and penalty is no more res integra as Hon''ble Supreme Court in the case of Chilakuri Gangulappa (supra) while dealing with the said aspect while interpreting the provisions of the Indian Stamp Act, 1899, which provisions are pari materia to the provisions of the Act of 1998 observed as under:--

"10. Sub-section (2) of Section 47-A of the Act says that the Collector shall have the power to determine the market value of the property which is the subject-matter of such instrument and the duty payable thereon. Sub-section (3) empowers the Collector to take action, suo motu, within two years from the date of the registration. Sub-section (4) has to be read in this context:

"47-A. (4) Any person aggrieved by the order of a Collector under sub-section (2) or Sub-section (3) may appeal to the Appellate Authority specified in sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

There is a proviso to sub-section (2) which contains a bridle on the appellate provision envisaged in sub-section (4). Hence that proviso has to be read:

"Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him:"

11. We extracted the relevant sub-sections of Section 47-A for the purpose of showing that the whole route followed hitherto was wrong as Section 47-A would not come into picture at all since nobody has a case that the instrument concerned was ever presented for registration. In the context of this instrument being presented before the civil court the relevant provision to be noticed is Section 40 of the Stamp Act. Sub-section (1) of that section says that when the Collector impounds an instrument under Section 33, or receives any instrument sent to him under Section 38(2) he shall adopt the procedure laid down in the sub-section. In this context Section 38 is to be looked into. It is extracted below:

"38. Instruments impounded how dealt with.-

(1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as

provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

12. It is clear from the first sub-section extracted above that the court has a power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. When the court chooses to admit the document on compliance with such condition the court need forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid the Court has no other option except to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped "he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof."

12. The Hon''ble Supreme Court laid down that the court has the power to admit the document in evidence, if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty and if the party refuses to pay the amount, the court has no other option except to impound the document and forward the same to the Collector, who would then take steps in terms of provisions of the Stamp Act.

13. The said judgment has been followed by this Court in the case of Indralal (supra).

14. In the present case admittedly the petitioner offered to pay the deficient stamp duty and penalty, which fact is clearly reflected from the order-sheet dated 03.09.2012 (Annex-3) and, therefore, it was necessary for the trial court to itself determine the deficient stamp duty and penalty and give an opportunity to the petitioner to pay the same and on payment the document would have become admissible in evidence.

15. Learned counsel for the respondents with regard to the judgment of Hon''ble Supreme Court in the case of Chilakuri Gangulappa (supra) pointed out that the provisions of Section 33 of the Act of 1899/Section 37 of the Act of 1998 has not been considered, inasmuch as, Sub-section 1 of the said Section directs impounding of the document and once a document is impounded, under sub-Section 4, the same has to be referred to the Collector for determination of stamp duty.

16. A bare look at the provisions of Section 33 of the Act of 1899/Section 37 of the Act of 1998 would reveal that the same deals with two types of authorities before whom a document/instrument insufficiently stamped may come i.e. (i) every person having by law or consent of parties authority to receive evidence and (ii) every person incharge of a public office.

17. Sub-Section 4 of section 37 of the Act of 1998 deals with the second category of persons i.e. person incharge of a public office and the said Section applies to such authority only and not to a person having by law or consent of parties authority to receive evidence. The said person having authority to receive evidence under Section 38 of the Act of 1899/42 of the Act of 1998 can admit such instrument in evidence upon payment of penalty as provided by Section 42 of the Act of 1998 while such power is not available with a person incharge of a public office.

18. In that view of the matter, it cannot be said that the alleged non-consideration of provisions of Section 33 of the Act of 1899/Section 37 of the Act of 1998 would have any implication on the law laid down by the Hon''ble Supreme Court.

19. In view of the above discussion, the writ petition filed by the petitioner is allowed, the orders dated 03.09.2012 and 09.07.2013 passed by the trial court are set aside.

20. The trial court is directed to determine the deficient stamp duty on the instrument dated 27.11.1961 and follow the procedure laid down by Hon''ble Supreme Court in the case of Chilakuri Gangulappa (supra).

21. No order as to costs.

