(1956) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1985 of 1952

Suryanarayananmrty APPELLANT

Vs

Satyanarayanaraju RESPONDENT

Date of Decision : 07-03-1956

Acts Referred:
Stamp Act, 1899 — Section 2(5), 36, 5

Citation : AIR 1956 AP 252

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : V.V. Krishnamurthy, for the Appellant; M. Seshachalapathi, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, C.J.—The revision raises a or is in stamp duty and penalty. The document in ft,'''' -fid namely tion v/as described as a non-possessory mortgage deed for Rs. 2500/- dated and-7-1950 in fiefs Suryanarayanamurthi. of being can is not adequate, f under a transact:

or specific amount After reciting that the executants had be liable to pay that amount to Suryanaranamf former Test of it was stated that the creditor demanded fore as more executant an agreement that he should pay said amount or, m the alternative, that he is give some immovable property as security for Under the docent said amount and that the executants, in to pay money with the said demand, executed the said dough-time and if be The document then proceeds to state: the a non-possessor "Having agreed to the same, I. hereby dreading object the this agreement non-possessor mortgage. I to impose an olive received the said amount of Rs. 26,60/- as to execute a mc above. I hereby undertake to pay you teary and subsidiary sum together with interest thereon at the rails contingent on 6i% by 30/10-1950 and obtain a proper receiiioney within the t the sajjsfT from you. If I fail to pay theft the amount agree in full settlement of your debt by prescribed time, execute and get registered a nonposse age deed would be mortgage deed on 30-10-1950 on a duly stably was not paid, a " paper as per the terms of the deed to be benefited. The agree you, a non-possessory mortgage of the pitted for its conic mentioned in para 3 of the schedule." liability upon them.

2. The Subordinate Judge Amfclapuramt. It was not, the thatNjhis document recorded two transactions, the meaning of I repayment of certain money with interest instrument emb (ii) agreement to mortgage the properties does stamped, no fur ed in the schedule and, therefore, u/s 5, Inble on the agreem Stamp Act, the executant should pay quos'' on the first transaction, which was a bond, The docu Rs. 45/- on the second transaction viz. the The execu'' merit to mortgage the properties. As Rs. 1-8-OL of "RS. 2660/-was paid, he directed the deficit to be collect object of the in;

3. Learned Counsel for the Petitioner cognition of ''bond'' that the main object of the document was which reads

to create a liability to pay a sum of Rs. 2L instrument n within the prescribed time and the gremmie execute a mortgage deed in default was only to nnv r lary to the main object, and therefore, stamp of Rs. 1-8-0 paid on the basis that it was a Both the cor was correct. land stamp duty.

4. Section 5, which prescribes the manned was paid., As stamping a multifarious instrument reads:-5 only ancillary, to "Any instrument comprising or relatini.1 stamp duty net several distinct matters shall be chargeable if necessary to (the aggregate amount of the duties with whether Section 36, separate instruments, each comprising or revising the question to one of which such matters, would be charge duty paid on under this Act." '' lower Court is set.

5. Under this section, if the instrument the revision Aides to several distinct matters, the duty is f total of the duties for each matter. This self was the subject of judicial scrutiny and van tests were laid down for ascertaining whet

particular instrument comprised more than only -timed matter.

6. A Pull Bench of the Madras High in Secy, to the Commr. of Salt Abkari and 3fihriqnnri rate Revenue, Madras (Referring Officer) 4305: (AIR 1920 Mad 225) (P.B) (A) J Atchutarao to deal with the case of a sale deed in which vendor mortgaged lands not included in the Appeal N as security for the due performance of decree of Ag ants. It was contended that the document West Goad be stamped both as a sale and as a the Pull Bench rejected that contents. They (a) Agency Rule that the main object of the instrument wasflr party. '', and security for the due performance of cc ugh ant was only ancillary to the main object which. view, they held that the document was stamped as a sale deed. re) of the Agency.

7. The main test to find out whether a cfejjcw an amendment comprised two distinct matters is to implication the leading object of the instrument an the second matter is only ancillary to chain object or is independent of it. Another

namely, whether the two matters Isabel of being carried out by .several instruct-f is not adequate, for it breaks down in. cases, under a transaction, different properties are tore specific amounts. I would, therefore, and the former test, the test applied in the Pull 11 decision, us more satisfactory and apply the to the facts of this case.

8. Under the document, the executants obliged if. to pay money to another within a partition and, if he did not pay, he agreed to jade non-possessor mortgage. The main or lading object therefore of the instrument \\6 impose an obligation to pay. The agree-t to execute a mortgage deed was not only key and subsidiary to the main object but lasso contingent on the executants not paying money within the stipulated time, if the amount agreed to be paid was paid with-fee prescribed time, the agreement to execute a gage deed would become unenforceable. If the By was not paid, a fresh document had to be The agreement to execute a mortgage Owed for its consideration as well as its en-ability upon the main object of the insfru-;. It. was not, therefore, a "distinct matter", in the meaning of Section 5 of the Act. In this view, e instrument embodying the main object was stamped, no further stamp duty would be able on the agreement to execute a mortgage.

9. The next question is how to stamp this ninth. The document was attested by two issues. The executants obliged himself to pay of Rs. 2660/- within a prescribed time: The object of the instrument directly falls under definition of ''bond'' in Section 2(5) (b), Indian Stamp reads:

Any instrument attested by a witness and not to order or bearer, whereby a person ornately to pay money to another.

10. Both the conditions are satisfied in this lipid stamp duty of Rs. 1-8-0 prescribing for was paid. As the agreement to mortgage only ancillary to the main object, no ?tamp duty need be paid. In this view, it to necessary to consider the other question id, whether Section 36. Indian Stamp Act was a bar losing the question of the correctness of the duty paid on a document. The order of .our court is set aside.

11. The revision is allowed but without costs.