(2010) 11 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11921 of 2010

T. Purushotham Rao APPELLANT

Vs

State of Andhra Pradesh and Others RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:
Stamp Act, 1899 — Section 13, 14, 33, 35, 37

Citation : (2010) 11 AP CK 0091

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Hari Sreedhar, for G. Satish Reddy, for the Appellant; A.G.P. for Respondent Nos. 1 to 3 and None for respondent Nos.4 to 10, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a mandamus to set-aside proceedings dated 22-4-2010 of Respondent No. 3.

2. On 5-10-2010 and also today, there has been no representation for Respondent Nos. 4 to 10 who have been impleaded in the Writ Petition. No counter affidavit has been filed on their behalf.

3. A counter affidavit is filed on behalf of Respondent Nos. 1 to 3.

4. The short issue that arises for consideration in this Writ Petition is whether Respondent No. 3 is justified in rejecting the Petitioner''s application for impounding and receiving of deficit stamp duty on a purported partition deed on the ground that the genuineness of the non-judicial stamp paper could not be verified in view of destruction of records and also on the ground that objections to the genuineness of execution of the document were filed by Respondent Nos. 4 to 10.

5. The facts giving rise to the filing of the Writ Petition can be summarized in a nutshell: There is a suit for partition pending between the Petitioner on the one

side and Respondent Nos. 4 to 10 on the other. The Petitioner approached Respondent No. 3 with an application to impound [validate] an earlier partition deed purported to have been executed on 18-5-1978 between the parties thereto and receive necessary fee therefor. Respondent Nos. 4 to 10 appear to have submitted their objections to the said application on the ground that the said partition deed is fabricated. Respondent No. 3 has therefore passed the impugned order.

6. At the hearing, Sri Hari Sreedhar, learned Counsel for the Petitioner has submitted that neither of the two reasons assigned by Respondent No. 3 are germane as they fall completely outside the scope of the provisions of the Indian Stamp Act, 1899. (for short, "the Act"). Section 33 r/w. Section 40 of the Act, contends the learned Counsel, leaves no discretion with the Collector [Respondent No. 3 is vested with the powers of the Collector] except to impound the document and collect deficit stamp duty if he is of the opinion that such instrument is not duly stamped.

7. Opposing this contention, learned Assistant Government Pleader for Revenue submitted that in view of the objections raised by Respondent Nos. 4 to 10, Respondent No. 3 has refused to impound the document and collect deficit stamp duty. She further stated that a civil suit is already pending and therefore the parties need to establish the genuineness of the document before the civil court before seeking impounding of the document and get it validated. Sections 33, 38 and 40 of the Act which are relevant for the present purpose read as under:

Section 33. Examination and impounding of instruments:

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a pubic office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898) [Now Chapters IX and X(1) of Code of Criminal Procedure 1973]

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

Section 38. Instruments impounded, how dealt with:

(1) When the person impounding an instrument u/s 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.

Section 40. Collector''s power to stamp instruments impounded:

(1) When the Collector impounds any instrument u/s 33, or receives any instrument, sent to him u/s 38, Sub-section (2), not being an instrument chargeable with a duty of twenty paisa only or a mortgage of a crop (Article 36(a) of Schedule I-A) chargeable under Clause (aa) or (bb) of Section 3 with a duty of forty paise or a bill of exchange or promissory note; he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of 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 five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under Clause (a) of Sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector u/s 38, Sub-section (2),

the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

8. On a careful analysis of the above reproduced provisions, I am of the opinion that the scheme underlying these provisions would only provide for ensuring payment of proper stamp duty on every instrument executed between the parties. These provisions do not, in any manner, lay down that collection of additional stamp duty in accordance with the rate prescribed thereunder would in a way establish the genuineness of the document impounded and in respect of which deficit stamp duty is collected. No mechanism is laid down under the scheme of the Act to hold an enquiry into the genuineness or otherwise of the documents nor any such requirement is laid down for the competent authority to get satisfied about such genuineness before collecting the deficit stamp duty. My view of this stands fortified by the Judgments of this Court in Sai Motors Vs. K. Raja Reddy 2004(IV) ALD 297 and Burra Yadagiri and Anr. v. Razia Begum and Ors. 2010(III) ALD 26. Though the counter affidavit has placed reliance on Circular dated 21-3-2009 of the Commissioner & Inspector General of Registration and Stamps, Andhra Pradesh, the law is well settled that the Circular cannot override the specific statutory provisions.

9. In the premises as above, the Writ Petition is allowed. Respondent No. 3 is directed to receive deficit stamp duty from the Petitioners and release the document to them. It is however made clear that collection of deficit stamp duty by Respondent No. 3 does not amount to his accepting the genuineness or otherwise of the document which issue requires to be adjudicated by the Court before which the civil suit between the parties is pending if such an issue is raised by the Respondent Nos. 4 to 10 or any other party to the suit.

