
(1979) 09 MAD CK 0010
In the Madras High Court
Case No : R.C. No. 4 of 1978

The Chief Controlling Revenue Authority, Madras
Vs
K.S. Dwarakanathan

APPELLANT
RESPONDENT

Date of Decision : 28-09-1979

Acts Referred:

Stamp Act, 1899 — Article 23

Citation : AIR 1980 Mad 171 : (1980) ILR (Mad) 301 : (1980) 93 LW 127

Hon'ble Judges : Ramaprasada Rao, C.J.; Padmanabhan, J; Natarajan, J

Bench : Full Bench

Advocate : P. Suryaprakasam, Pleader, for the Appellant; M.R. Krishnan, for the Respondent

Judgement

Ramaprasada Rao, C.J.—This reference by the Chief Controlling Revenue "Authority, Board of Revenue, Mad under Sec. 57 of the Indian

Stamp Act, IBM, arises under the following circumstances: The petitioner is the Chief Controlling Revenue. Authority, and the respondent is one

K. S. Dwarakanathan. The respondent obtained an assignment of a decree from one Thirumathi G. Rathnavalli an 17-11-1977. The decree itself

was passed in an original suit, O.S. 7230 of 1972, on the file of the City Civil Court, Madras. That decree was in favour of G. Rathnavalli, under

which the defendant in that suit was directed to pay a sum of Rs. 12,853 with further interest as specified therein and the said deposit was to be

made by 19-6-1976. It is this decree which Rathnavalli had obtained which was assigned in favour of the respondent in these Proceedings by

document No. P. .312/77 dated. 16-11-1971 registered in the books of the joint Sub Registration I Saidapet, Madras. The said deed was

engrossed on non-judicial stamp paper of the value of Re. 25. According to the

statement of the case made by the petitioner (Chief Revenue Controlling Authority) the decree was assigned for a consideration Of Rs. .10,000/- while the amount of the decree together with costs as indicated in the schedule to the document itself was Rs. 20,296. The registering authority was of the view that the document was in the nature of a conveyance for the consideration mentioned in the schedule to the document and would not a"" that the deed was properly stamped as a release deed. The Joint Sub Registrar therefore, impounded the document and referred it for adjudication to the District Registrar of Assurances, Madras (South). The District Registrar, holding the same view as the Joint Sub-Registrar, issued a show cause notice to the respondent, directing him to pay a stamp duty of Rs. 1,624, under Article 23 (3) of Schedule I to the Indian Stamp Act, The respondent would not seriously dispute that the document could be treated as a conveyance, but, according to him as the consideration paid under the document for the transfer was only Rupees 10,000/-, the stamp duty, even it were to be treated as a sale deed was chargeable only on the actual consideration of Rs. 10,000/-. The District Registrar would not, however, agree with the respondent, but treated the document as a conveyance for Rs. 20,296/-, and by his proceedings dated 26-12-1977, called upon the respondent to pay the additional stamp duty if the document were to be registered in the normal course.

2. Aggrieved by the order of the District Registrar, the respondent approached the petitioner. There again the respondent repeated the contention that the Joint Sub-Registrar could not substitute the consideration as recited in the document of conveyance, even if the document were to be treated as such and contended that, if at all, a duty on Rs. 10,000/-, alone could be charged and not the duty chargeable over the value of the decree as shown in the schedule to the document. The petitioner, however, rejected the revision petition of the respondent and upheld the District Registrar's order. As against this the respondent filed an application on 18-6-1978 , requesting the petitioner to refer :the case to this court u/s 57(1) of the Stamp Act. The question. referred to us is-

Whether the stamp duty payable on the assignment of decree is at 8 per cent as a deed of conveyance on the actual decree amount found payable as on that date or only on the actual consideration received viz. Rs. 10,000/- by

the assignor for the transfer of decree"".

The recitals in the document show that Rathnavalli, as assignor under the deed, was unable to find funds for the realisation of the fruits of the

deed by conducting further proceedings, accepted her offer of the respondent and agreed to assign the deed for a sum and consideration of Rs.

10,000/- the receipt of which she acknowledged. Under the deed, the respondent is enabled to collect the entire deed amount with costs which

he might incur, without recourse to the assignor.

3. In its order, the petitioner was of the view that each case had to be decided on its own merits and that it was open to the registering authority to

arrive at a reasonable assessment of the value of the subject matter conveyed or covered by a document. According to the petitioner, the

provisions of the Indian Stamp Act enable the authorities to determine the - stamp duty payable on instruments and to opine, after considering the

recitals in a given document, as to what would "be the probable stamp duty that has to be charged, having regard to the nature of the transaction

and the value of the subject matter of the involved transaction. Reference is made to Section 64 of the Act and it is contended that the Revenue

can and should have power to arrive at an opinion that the executant has acted with intent to deprive the Government of the proper stamp duty.

The petitioner (Board) also expressed the view that, though the Collector was not empowered to conduct an elaborate enquiry as it would be

burdensome to do so, yet if intrinsically the consideration recited in a document is inadequate, the impounding authority has the requisite power

duly to assess the stamp duty. In these circumstances, as it is admitted by the - respondent that the transaction would come within the description

of conveyance and what was conveyed was a deed for a specified sum, the transaction has to be viewed as a conveyance for the deed

amount, and even though the deed has been assigned for a lesser sum, that ought not to be, the, sole guide for, the determination of stamp duty.

4. The subject -matter of the reference before us is a deed which has been assigned by the deed-holder Suit. G. Rathnavalli in favour of the

respondent. No doubt the amount of the deed together with costs as indicated in the schedule to the document was Rupees 20,296/-. But the

consideration for the assignment which is admitted to have been conveyed is Rs.

10,000/-. The question for reference as already excerpted is whether the stamp duty on the instrument should be worked out on the actual decree amount or on the actual consideration received by the respondent as a result of the transfer of the decree.

5. A decree under the Civil Procedure Code, is a formal expression of an adjudication on the rights of parties and conclusively - determines such rights. Such determination might also result in what is originally known as a money decree. A decree as such is executable by the decree-holder, but in case it is assigned or conveyed as it happened in this case, such assignee decree-holder can cause the decree to be executed in the same manner and subject to the same conditions as if the application for execution of the decree was made by the decree-holder himself or herself. 0.

21, Rule 16, C. P. C. provides for such a statutory privilege in favour of the transferee decree-holder. The proviso to 0. 21, R. 16, however, provides that where the decree has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-

debtor and the decree shall not be executed until the court has heard their objections to its execution. Thus, therefore, though it appears prima facie

that the transferee" can execute the decree as a matter of right yet the foundation of jurisdiction with the Civil Courts to execute the decree

depends" upon the compliance of the mandatory prescription in the proviso to Order 21. Rule 16, C. P. Code. In fact, if the assignee decree-

holder has not applied for recognition of his assignment, he cannot even object to the attachment of the decree in question by a stranger in

execution of his decree against the original decree-holder. Thus the first essential requisite for the assignee to proceed with the execution is to apply

under Order 21, Rule 16, C. P. C. If he succeeds in obtaining a favourable order in his application under, Order 21, Rule 16, then he is entitled to

enter into the stream of the process of the execution of the decree and no one can speculate as to what impediments there would be and he would

be confronted with when he puts the decree into execution.

6. Thus it is seen that when an assignee decree-holder obtains by purchase a decree, though for all practical purposes, he stands in the shoes of the

decree-holder, yet due to the prescriptions under the procedural law he has to take necessary steps in a court of law which only would enable him

to execute the decree. As stated already he may be faced with several difficulties in the execution process. Thus, when an assignee decree-holder

purchases under the assignment of a decree of court, he has not only secured a right but also the necessary prejudicial obligations arising in a

litigation, along with it.

7. In the above background can it be said that the decree as such which is yet to be executed in accordance with law has a market value. Prior to

the amendment of Article 23, Sch. I of the Indian Stamp Act, there is no reference to the market value of the property which was the subject

matter of the conveyance under the article. Old Article 23, Sch. I of the Indian Stamp Act explains conveyance and fixes the stamp duty on the

amount or value of the consideration for such conveyance and prescribes a varied rate according to the value, This was substituted by Tamil Nadu

Act 14 of 1958 and further amended by Tamil Nadu Act 24 of 1967. Under the amended provision in the State of Tamil Nadu, the fee on a

conveyance is payable on the market value of the property which is the subject matter of the conveyance and here again a varied rate has been

prescribed. Therefore, in 1967, the Tamil Nadu Act 24 of 1967, has substituted the market value for the words "consideration for conveyance" as

the criterion for computation of duty with effect -from 22-4-1968. in our view, a decree has no market. it is not saleable freely. There may not be a

willing buyer in all cases to purchase a decree and put it in execution with all hazards involved in it.

8. Even prior to the amendment of the Article, our court in The Joint Secretary, Board of Revenue Vs. K.R. Venkatarama Ayyar, , Stated (Head

Note).

Value unless the term in any enactment suggests the contrary, must of course mean the real value, the real property of the nature of land and house

being ordinarily and most suitably estimated by determining what that property would fetch if sold in the open market. In other word "value"

ordinarily means "market value. The expression "market value, is not found anywhere in the Stamp Act. Only the expression "value" is found, and

so it must be taken that the term "value" means ""market value"".

After the amendment the position has become simple, Article 23 as it stands now says that the stamp duty has to be computed on the market value

of the subject matter of the conveyance.

9. If regard is had to the provisions of the Civil Procedure Code, and the hazards appertaining to execution of decree and particularly the steps to

be taken by an assignee decree holder to enter into the stream of the process of the execution, it cannot be said that the decree has a market value

in the popular mercantile sense.

10. If, therefore, the decree has no market value, then it follows that the consideration recited in a deed of assign merit or conveyance, as the

instrument may be called, when the decree-holder conveyed his right and interest in the decree to the assignee decree-holder, such a value is the

foundation for assessing the value of such an instrument of assignment. The consideration which is shown in such deeds of conveyance being the

bargain between the parties, it represents the price which a willing party is prepared to pay to a willing seller in case the latter as decree-holder is

inclined to assign the decree. In favour of the assignee decree-holder. The consideration represents the essence of the bargain between the parties.

11. In a catena of decisions starting from the decision in *Re. from Board of Revenue* (1884) ILR 7 Mad 350 (FB). Reference under the Stamp

Act (1885) ILR 8 Mad 453 (FB); reference under stamp Act (1897) ILR 20 Mad 27 and in *The Joint Secretary, Board of Revenue Vs.*

K.R. Venkatarama Ayyar, , our Court has affirmed the view hat stamp duty should be calculated on he value shown in the document itself in fact

the Full Bench in the last quoted decision has expressed.

Since the Registrar is not empowered to conduct an enquiry himself as to the market value, the value must be met out in the document itself"".

we are of the view that the sum of Rupees value of pees 10,000/- paid as consideration in this deed should be taken as the value of the instrument

of conveyance for purposes of assessment of stamp duty under Article 23 of Schedule I of the Stamp Act.

12. There is also an in-built lever in the Stamp Act itself in and by which the Revenue can prevent misuse in cases of such assignment of decrees

for a ridiculously inadequate consideration. It the Revenue is satisfied that the consideration quoted and purported to have been received by the

decree-holder is so inadequately and abhorrently low as to create the impression that both the decree-holder and the assignee decree holder were

deliberately intending to cause wrongful loss to the Revenue and the public exchequer, then Section 27 read with Section 64 of the Act do provide

for the requisite machinery to take action against the delinquents.

27. Facts affecting duty - to be set forth in instrument- The consideration (if any) and all other facts and circumstances affecting the chargeability

of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth there in"".

64. Penalty for omission to comply with provisions of Section 27 - Any person who, with intent to defraud the Government

(a) executes any instrument in which all the facts and circumstances required by Section 27 to be, set forth in such instrument are not fully and truly

set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts

and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to live hundred rupees"".

As pointed out by Ramaswami, J. In Re: Venkataswami Aiya,

..... as the law stands two courses are open when a document is sought to be registered or an undervaluation. First of all if the Registrar either

from his own information or otherwise suspects that the valuation given is an under valuation with intent to cheat the Government of the legitimate

duty, he can ask for particulars from the party and if satisfied with Its undervaluation Can refuse to register the document unless proper duty was

paid. Secondly, in case where the document gets registered and "the information is subsequently received that the valuation shown is an

undervaluation and that the legitimate stamp duty has been intentionally evaded to defraud the State, it will be open to the Registrar to initiate a

prosecution u/s 27 read with Section 64 of the Stamp Act"".

Even in such cases the burden is on the Government to show that there has been such gross undervaluation of the consideration and that such a

valuation was made in order to defeat the interests of the Revenue. This proposition is an accepted one. Apart from the legal obligation of the

signatories to an instrument which is liable to stamp duty to disclose true particulars in the instrument a mere apprehension on the part of the

Government would not enable them to act u/s 64. There must be an intention to defraud the Government of its stamp revenue. It is for the

Government as the prosecutor to affirmatively and satisfactorily establish such an intention as was stated in a decision of our court in *Narasimha*

Iyer v. Tahsildar of Walajah 1937 Mad WN 1071. The mere fact that a man sells his property for less than its worth cannot be an offence under

the section unless it is proved that the consideration quoted in the deed of sale is not the real consideration but something less and that the intention

or effect was to defraud the Government of revenue.

13. In the light of the above principles which have been well settled, we are of the view that the instrument in question is chargeable as a

conveyance for a sum and consideration of Rupees 10,000/-, only as it cannot be said that the consideration is so inadequately low and that it was

so made in order to defraud the revenue.

14. The reference is answered accordingly in favour of the respondent. There will be no order as to costs.

15. Answered accordingly.