(1956) 03 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 921 of 1955 and Writ Appeal No''s. 48 and 76 of 1955

The Collector of Madras APPELLANT

Vs

S. Rangaraju Naidu RESPONDENT

Date of Decision : 08-03-1956

Acts Referred:
Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 17, 18, 2(12), 29, 35

Citation : (1956) ILR (Mad) 1074

Hon'ble Judges : P.V. Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : V.K. Thiruvenkatachari, General and V.V. Raghavan, Special Government Pleader, for the Appellant; K. Bashyam, K. Krishnaswami Ayyangar, A. Sundaram Ayyar, T.R. Sreenivasan and N.C. Raghavachari, for the Respondent

Final Decision : Allowed

Judgement

Panchapakesa Ayyar, J.—The first question that arises for determination in all these three matters is whether these petitions for issue of writs

of certiorari were maintainable in this Court, especially when there were two alternative remedies available, viz., moving the Board of Revenue,

either to revise the order or to make a reference to this Court, and the Petitioners, after paying the stamp duty and penalty demanded by the

Collector, could ask the Court to include them in the order as to costs in the suits, u/s 44(3) of the Stamp Act. We are of opinion that these

petitions for issuing writs of certiorari would, in the circumstances, lie. It has never been doubted that this Court, as the inheritor of the jurisdiction

possessed by the original Supreme Court, has power to quash the order of an inferior tribunal, quasi-judicial or administrative, if that order was

passed either without jurisdiction or in excess of jurisdiction or if there is an apparent error in the order This power of entertaining a writ petition for

certiorari existed long before the Constitution, and has been enormously increased under Article 226 of the Constitution of India relating to

fundamental rights. It is clear that this Court can exercise, at the instance of an aggrieved party, irrespective of any fundamental right being involved

in the matter, such a power of issuing a writ of certiorari in suitable cases. Normally it will not issue a writ where there is an alternative remedy. But

it is well settled now, by decisions of the Supreme Court and the High Courts, that there is no absolute bar to entertaining writ petitions, and issuing

a writ, even when there are alternative remedies, when these alternative remedies are, in the opinion of the Court, not effective, speedy, adequate

or sufficient and the facts of each case have to be considered before deciding whether the alternative remedies are speedy, effective, sufficient or

adequate. In the present case, the writ petitions were, in our opinion, rightly entertained, as the alternative remedies were not speedy, effective and

adequate. The properties of the Petitioners could be attached and sold for the stamp duty and penalty for recovering the amount as arrears of land

revenue u/s 48 of the Stamp Act, and warrants were issued or were about to issue. There was no point in taking to the alternative remedies

indicated above, as they would not be speedy, effective or adequate to afford relief before the sale of the properties was effected. The learned

Advocate-General and the other Counsel had no valid contention to urge regarding this. We hold that the writ petitions were properly admitted in

all these three cases.

2. The next question for determination is as to who is the person against whom the Collector has to proceed u/s 48 by way of recovering the stamp

duty and penalty as arrears of land revenue by distress and sale, or by attachment and sale, where defectively stamped documents have been

produced in Court or have come before the Court in the performance of its functions, and have been impounded and sent by the judge to the

Collector for action u/s 40. Sections 40 and 48 of the Stamp Act are silent as to the person against whom the Collector has to proceed, i.e.,

whether against the executant, who is the person bringing the document into existence and is primarily liable to the State, u/s 17, which says that all

instruments chargeable with duty and executed by any person in India, except

Part B States, shall be stamped before or at the time of execution,

and u/s 62 which says that he shall be liable to be prosecuted and punished for executing or signing otherwise than as a witness in an instrument

chargeable with duty, without the same being duly stamped, or whether he should proceed against the person liable for the stamp duty payable on

the instrument either under the agreement between the parties or u/s 29 providing for cases where there is no such agreement to the contrary, or

whether he should proceed against the person who wants to let in the defectively stamped instrument as evidence to prove his case in any suit or

proceedings before the Court which impounds it. There is absolutely no doubt that an unstamped or defectively stamped document is not void and

that it is effective from the date of its execution, though it is incapable of being made use of as evidence, until it is stamped properly. As Lindley

L.J., has remarked in Powell v. London and Provincial Bank (1893) 2 Ch. 555:

No case that I know of can be cited to show that an erroneous stamp would invalidate the deed.

3. There is no difficulty where the person who wishes the document to be admitted as evidence in Court is the person who is initially bound to bear

the expense of providing the stamp duty, like the executant. But, very often the person wishing to admit the instrument as evidence in Court will not

be the executant, as the suit may be, and very often is against the executant. In such a case, the question, when the party wishing to let it in as

evidence does not pay the stamp duty and penalty, and it is impounded and sent to the Collector, is, whether the party bringing a suit and wanting

to let in the document as evidence in his favour (or the Defendant, who wants to let in the document in Jus favour) can be compelled by the

Collector, under Sections 40 and 48, to pay the stamp duty and penalty when he is not the executant. There are two rulings of two High Courts,

holding contrary views, and hence the difficulty of settling the question. In Secretary of State for India in Council v. Bhasharatullah (1908) ILR 30

All. 271, a Bench of the Allahabad High Court, consisting of Knox and Aikman, JJ., has held that if a Plaintiff produced in Court in support of his

claim an unstamped or improperly stamped document, he primarily is the person from whom the stamp duty and penalty have to be recovered by

the Collector u/s 40 of the Stamp Act, and the person to be proceeded against u/

s 48, and that such duty and penalty cannot be recovered from

the other parties to the instrument. A special bench of the Lahore High Court, consisting of three judges, Dalip Singh, Bhide and Blacker, JJ., has

decided in Mohammad Hussain v. The Crown (1940) ILR 21 Lah. 637 (F.B.), that Sections 35, 40 and 48 of the Stamp Act and the other

sections of that Act contain no provision to enable either the Court or the Collector to compel the person, who wishes to have an insufficiently

stamped document admitted in evidence in Court, to pay the duty or the penalty when he is not the person who was originally bound to bear the

expense of providing the duty, and so the stamp duty and penalty cannot be recovered from him u/s 48. They considered the ruling in Secretary of

State for India in Council v. Bhasharatullah (1908) ILR 30 All. 271, and expressly dissented from the view taken therein. They went on to say:

As already pointed out, there is no provision in the Act, making a person, who merely presents an insufficiently stamped document for being

admitted in evidence, liable for payment of the requisite stamp duty or penalty on the document. He cannot, therefore, be considered to be a

person from whom the stamp duty or penalty is due , and consequently the same cannot be recovered from him u/s 48. If the stamp duty or

penalty has to be recovered compulsorily, it can be legally recovered, u/s 48, only from the person from whom the same is due. In order to

ascertain the person or persons from whom the duty or penalty is due, we must go back to Section 29.... But it may be observed that if it is found

that the Indian Stamp Act does not in fact fix the liability for payment of stamp duty on any particular person in the case of any instrument, the

consequence will presumably be that the Collector will keep the impounded document in his custody and no person interested in the document will

be able to make any use of it until and unless the necessary stamp duty and penalty is paid.

We are unable to agree with the views of either Bench in full. We are of the opinion that a distinction must be made between the person liable in

the first instance to pay the stamp duty and penalty under the agreement between the parties or u/s 29, which provides for that liability in the

absence of an agreement to the contrary, and the person from whom the Collector can levy the stamp duty and penalty under Sections 40 and 48.

The State, obviously, is not a party to any such agreement between the parties, and cannot be, therefore, bound by any such agreement or by the

provisions of Section 29 fixing the liability for the stamp duty on one of the parties in the absence of an agreement to the contrary. So, Section 29

relied on so much by the learned Judges in Mohammad Hussain v. The Crown (1940) ILR 21 Lah. 637 (F.B.), can have no application to the

Collector''s powers under Sections 40 and 48. Section 44, relied on so much by the learned judges in Secretary of State for India in Council v.

Bhasharatullah (1908) ILR 30 All. 271, provides only for the case of parties who have agreed to pay stamp duty inter se or who would be bound

under the provisions of Section 29, or any other enactment in force at the time when the instrument was executed, to pay the stamp duty in the

absence of an agreement to the contrary. Section 44 does not deal with the right of the State to levy the stamp duty and penalty under Sections 40

and 48. Nor does it provide for the State applying to the Court for a provision as regards the stamp duty and penalty payable to it, in its order of

costs in the suit or proceeding.

4. We are, therefore, of opinion that the solution to the question propounded above, as to who is the person against whom the Collector could

proceed under Sections 40 and 48, has to be searched for elsewhere than in Sections 29 and 44, and we are unable, with great respect, to accept

the decisions in either of the two rulings quoted above.

5. The learned Advocate-General has suggested, and we agree with him entirely, that the true solution lies by following the clues afforded by

Sections 17 and 62 regarding instruments chargeable with duty and executed by any person in India, except Part B States, and that the person

against whom the Collector should proceed in all such cases, under Sections 40 and 48, is the executant of the document. Section 17 says:

An instrument chargeable with the duty and executed by any person in India, except Part B States, shall be stamped before or at the time of

execution .

and Section 62 says that the executant of such instruments shall for every such offence be punished with fine which may extend to Rs. 500,

provided that when any penalty has been paid in respect of any instrument under Sections 35, 40 or 61, the amount of such penalty shall be allowed in reduction of the fine, if any, subsequently imposed under this section in respect of the same instrument upon the person who has paid

such penalty. Thus, these sections read together indicate, in the opinion of the learned Advocate-General, with which we entirely agree, that the

executant of such document is the person against whom the Collector should proceed under Sections 40 and 48 for collecting the stamp duty and

penalty. It is significant that the proviso to Section 62 makes mention also about the penalty levied u/s 40, and makes a provision for its deduction

from the fine. Sections 17 and 62 show that the agreement between the parties and the provisions of Sections 29 and 44 are applicable only

between the parties, leaving the Collector''s right under Sections 40 and 48 unaffected. It is well settled that if the Collector passed an erroneous

order by proceeding against the wrong person under Sections 40 ant 48, his order will be subject to appeal or revision to the Board of Revenue,

or quashing by this Court, either on a reference by the Board of Revenue or on a writ. The ruling of a Full Bench of the Lahore High Court,

consisting of Tek Chand, Abdul Qadir and Bhide, JJ., in Thakar Das v. The Crown (1932) ILR 13 Lah. 745 (F.B.), shows the maintainability of

such a reference and revision, and we have already stated above that a writ will also lie to this Court in suitable cases. We may add that where

several persons jointly execute a document, the Collector can proceed, under Sections 40 and 48, against any of them, as they are all jointly and

severally liable. He is not bound to collect the pro rata shares from each. That pro rata division is a matter for them to effect amicably or get settled

in suits for contribution, or by moving the Court to include in its order of costs where suits and proceedings are pending. That Section 29 will not

bind the Collector under Sections 40 and 48 is not only clear from the fact that that section and Section 44 relate only to rights between the parties

(the Collector is, of course, not one of them) but can also be deduced from the ruling of Venkataramana Rao, J., in Panakala Rao v.

Kumaraswami (1937) 46 L.W. 470. There the learned Judge has held that Section 29 of the Stamp Act will only apply to a case where a

document is not produced before the Court, and that once the document has been produced before the Court and tendered in evidence, the

Plaintiff is not entitled to recover the penalty levied from him in respect of that document except u/s 44 of the Stamp Act when that amount has been included in the costs at the time of passing of the decree.

6. Mr. K. Krishnaswami Ayyangar and Mr. A. Sundaram Iyer for the executants of the three instruments in these writs, urged that, under the 1949

Stamp Manual, the Collector has been directed not to levy stamp duty and penalty u/s 48 from the producer of a document unless he is the

executant or is bound u/s 29 of the Stamp Act to pay the stamp duty, and that, therefore, Section 29 would be applicable. We do not agree. It is

obvious that the instructions in the Stamp Manual are only administrative instructions and cannot bind Courts which are bound to consider the

matter in the light of provisions of law and lay down the correct principle applicable to the case. The administrative direction in the Stamp Manual

was, in our opinion, based on the reliance on Section 29 by the special bench of the Lahore High Court in Mohammad Hussain v. The Crown

(1940) ILR 21 Lah. 637 (F.B.), the latest ruling which had differed from the ruling in Secretary of State for India in Council v. Bhasharatullah

(1908) ILR 30 All. 271, and had laid emphasis on Section 29. It is obvious that such administrative directions, issued at high level, are based on

the rulings current at the time. It may also be noticed that the directions in the Stamp Manual do not preclude proceedings against the executant,

the person who brings the document into existence and the person we have held primarily liable to be proceeded against by the Collector, under

Sections 40 and 48, in the case of an instrument executed in India except Part B States.

7. Nor can the contention of Mr. Krishnaswami Ayyangar and Mr. Sundaram Ayyar for the executants of the three instruments in these writs that

in some cases the executants, after paying the stamp duty and penalty levied under Sections 40 and 48 of the Stamp Act, cannot get recoupment

of the whole or part thereof from the parties liable under the agreement or u/s 29 to pay the stamp duty, by proceeding u/s 44, as they are not

innocent parties not liable for the default be any valid argument against our finding that the executants of such defectively stamped or unstamped

instruments in India, except the Part B States, are the persons against whom the Collector should proceed under Sections 40 and 48. No doubt,

the rulings in Raman Chetti v. Nagappa Chetty (1915) 2 L.W. 1024, Sundararamireddi v. Pattabhiramireddi (1945) 2 M.L.J. 253, and

Kashinathsa Yamosa and Others Vs. Narsingsa Bhaskarsa and Others, , show, as pointed out by Messrs. Krishnaswami Ayyanger and Sundaram

Ayyar, that Section 44 of the Indian Stamp Act is only intended to give a right to an innocent party not guilty of any default in the matter of the

proper stamping of a document, to recover the duty and penalty he is obliged to pay from the person or persons guilty of default, and that the

section is not intended to enable one of several persons who are under a common duty to pay proper stamp duty on a document in proportionate

shares to file a suit and claim from the others contribution in respect of the amount of the stamp duty and penalty which he has been compelled to

pay in full owing to their common default, and the executants cannot, therefore, after paying the stamp duty and penalty in full to the Collector

under Sections 40 and 48 as a consequence of their default file suits for contribution against the others, like co-executants, equally in default. But

then, there is no real hardship or injustice involved in this, even though mere hardship will be no reason for deviating from the law. The executants,

after paying the stamp duty and penalty in full on documents which have been produced or have come before the Court and been impounded and

sent to the Collector, can apply to the Court u/s 44(3), to provide for the stamp duty and penalty levied from them under Sections 40 and 48 in the

costs, and can get appropriate relief if entitled thereto. The ruling of Venkataramana Rao, J., in Panakala Rao v. Kumaraswami (1937) 46 L.W.

470, also shows that the Court can include in its order regarding costs in suits or proceedings such stamp duty and penalty paid under Sections 40

and 48, if it thinks fit.

8. Now the question arises as to who are the executants of such instruments who can be proceeded against under Sections 40 and 48 by the

Collector for recovering the stamp duty and penalty. Section 2(12) of the Stamp Act says that ''executed'' and ''execution'' used with reference to

instruments, mean signed and signature. But Section 62 makes only persons signing otherwise than as a witness liable to prosecution and penalty,

showing thereby that witnesses who sign any document are not ''executants'' bound to pay the stamp duty and penalty. The Privy Council has held,

as early as 1927, in Puran Chand Nahatta v. Monmotho Nath Mukherjee (1927) L.R. 55 I.A. 81 (P.C.), that persons executing i.e., ''executants'' do not ''include'' all persons signing in the document but only persons who by a valid execution have entered into an obligation under the document.

So, not only witnesses but even other persons, like persons in whose favour the document is executed, but who undertake no obligation under the

document will not be executants for purposes of being proceeded against under Sections 40 and 48. In Shams Din v. The Collector, Amritsar

(1936) ILR 17 Lah. 223 (S.B.), a special bench of the Lahore High Court consisting of three Judges, Addison, Coldstream and Abdul Rashid, JJ.,

has held that fourteen creditor firms, which had signed in the conveyance deed as vendees, the petition writer who had signed in it as writer, and

the witnesses, who had signed as witnesses, could not be said to have executed the instrument within the meaning of Section 2(12) of the Stamp

Act, and would not be liable therefore under Sections 40 and 48. But of course this does not preclude any number of persons being liable as

executants if they have signed the instruments and undertaken some obligation thereunder; as held in the Privy Council ruling in Puran Chand

Nahatta v. Monmotho Nath Mukherjee (1927) L.R. 55 I.A. 81 (P.C.). Mr. Krishnaswami Iyengar for the Appellants in Writ Appeal No. 76 of

1955, urged that, under this interpretation, Rangaraju Naidu, the Petitioner in the writ, will also be an executant of the instrument of assignment of

half the patent right, along with Dr. Kamesam, as he had undertaken substantial obligations under the deed, namely, the payment of the balance of

two lakhs in instalments by the dates fixed. The learned Advocate-General agreed with that view, and we also agree, as Mr. Bhashyam, for

Rangaraju Naidu, had no valid argument to urge against it, and as the Privy Council ruling referred to above directly covers it.

9. In the view we have taken regarding the executants being the persons who would be liable to be proceeded against by the Collector for

recovering the stamp duty and penalty under Sections 40 and 48, it follows that the order of the Collector regarding the stamp duty and penalty

leviable on the two bonds concerned in Writ Petition No. 921 of 1955, was correct, as Subramaniam Chettiar, the Petitioner would be the

executant of those documents and the person to be proceeded against under Sections 40 and 48. So, Writ Petition No. 921 of 1955 is dismissed.

But, as the law was not clear at the time the writ petition was filed, we direct all the parties to that petition to bear their own costs.

10. Regarding Writ Petition No. 697 of 1954, covered by the two writ appeals, there are, according to Mr. Krishnaswami Iyengar, three

differences. The first is that the instrument of assignment of half the patent rights was executed in Mysore, a part B State, to which Sections 17 and

62 and indeed the Indian Stamp Act itself, will not apply, and that therefore the rule that the executants are the persons who are liable to see that

such instruments are stamped before or at the time of the execution, cannot apply in terms and can only be applied if at all by adopting that rule

analogously as a rule of equity. Secondly, it is urged that this instrument was stamped properly under the Mysore Stamp Law and was executed in

Bangalore, and so would not be liable to be charged with any stamp duty or penalty, even though it relates also to property in India unless it was

brought outside Mysore to India outside the Part B States, and the liability to pay such Indian Stamp duty and penalty arises only when the

instrument which relates also to property in India was brought to a part of India outside the Part B States, namely, Salem, and the liability lies on

the person who brings such an instrument to India, or receives it in India outside the Part B States, as the Indian Stamp Act is not yet brought into

operation in Mysore and the Part B states and the executant of such an instrument in a Part B State cannot be prosecuted as executant u/s 62, and

there is some time given in the Stamp Act, u/s 18, for a private person bringing such an instrument into India, or receiving it in India outside the Part

B States to get it properly stamped. The third difference urged is that Rangaraju Naidu is also an executant of the instrument in question along with

Dr. Kamesam.

11. Though the question is not free from difficulty, after considering it thoroughly we agree with the learned Advocate-General that the proper view

to take is that the Collector should proceed even in such cases where the instruments relate to property in India outside the B States (otherwise

there is no liability) to levy the stamp duty and penalty, under Sections 40 and 48 of the Stamp Act, from the executants both for the sake of

uniformity and acting on the equities. The provisions of Section 17, though not strictly applicable to a document executed in a Part B State like this,

can be applied analogously and by way of equity. It is obvious that any person who executes a document and brings it into existence is bound to make that document valid in all ways as evidence, as by stamping it properly for use in India outside the Part B States, like Salem, seeing that the

assignment was to a person living in Salem for use and for exploiting the patent rights assigned in a part of India outside the Part B States. It would

be within the knowledge of the executant in such a case that a document relating to properties or rights enforceable in India outside the Part B

States should be stamped properly under the Indian Stamp Act, and he could have done this even when it was executed in Mysore. So, equity is in

favour of making the executant liable under Sections 40 and 48, even though Sections 17 and 62 will not apply in terms to such an instrument. That

will make it unnecessary for us to consider the vexed question as to who brought this document outside Mysore State, to Salem and who received

it in India. Mr. Bhashyam for Rangaraju Naidu, urges that it was Dr. Kamesam who would be liable, as he caused it to be brought to Salem by

summoning for it, and that Rangaraju''s merely producing that document in the Salem Court in obedience to the summons would not amount to his

receiving the document in India u/s 18 or bringing it to India outside the Part B States. He relied on the judgment of Govinda Menon, J., in

Rangaraju Naidu v. Kamesan (1953) 1 M.L.J. 498. Mr. Krishnaswami Ayyangar for the legal representatives of Dr. Kamesam, urged that

Rangaraju Naidu was the person who actually brought it into India outside the Mysore State to Salem and that he had received it in Salem within

the meaning of Section 18 even before the summons was issued, though there was no clear proof of it. Nor is there any need to decide the other

vexed question, viz., as to who required this document as evidence in the suit, whether Rangaraju Naidu to prove his contentions of undue

influence and fraud and inaccuracy of the copy, or Dr. Kamesam who summoned for it and wanted to rely on it for disproving the allegations of the

inaccuracy of the copy and undue influence and fraud. The learned Counsel for both sides now say that they do not want that document to be let in

as evidence on their side, obviously because of the heavy stamp duty and penalty levied and payable. But it is obvious that a man cannot escape

from the consequences of his action by recalling that action later, in a case like this. If we were to decide this question, we should hold that it is Dr.

Kamesam who summoned for the document and wanted to rely on it and wanted to let it in as evidence on his side, though we have no doubt that

Rangaraju Naidu would have taken full advantage of the document being let in as evidence to support his own contentions.

12. As we have applied the same rule, viz., that the executant of the document is the person t6 be proceeded against by the Collector under

Sections 40 and 48 for levying stamp duty and penalty even regarding a document like this, executed in Mysore, a Part B State, when it relates to

properties in India outside Part B States, and as we have held further that Rangaraju Naidu was a co-executant of this instrument along with Dr.

Kamesam (besides being liable to pay the stamp duty under the agreement and u/s 29 analogously), and as we have further held that the Collector

can levy the stamp duty and penalty under Sections 40 and 48 from any of the executants, when more than one executant is liable jointly and

severally, it follows that the Collector''s order levying the stamp duty and penalty from Rangaraju Naidu, one of the executants, is correct, and that

Ramaswami, J.''s order in the writ petition, quashing the order of the Collector, cannot be sustained.

13. In that view we allow both the writ appeals and set aside the order of Ramaswami, J., in the writ petition and dismiss the writ petition In the

peculiar circumstances of the case, and considering that the law was not settled before, we direct all the parties to the writ petition and the writ

appeals to bear their own costs.

