(1950) 08 PAT CK 0020

In the Patna High Court

Case No : Civil Revision No. 726 of 1949

The Sasa Musa Sugar Mills Ltd. APPELLANT

Vs

Sugeni Pandey and another RESPONDENT

Date of Decision : 09-08-1950

Acts Referred:
Stamp Act, 1899 — Section 33, 6

Citation : (1950) 08 PAT CK 0020

Hon'ble Judges : Sinha, J;Rai, J

Bench : Division Bench

Advocate : Raj Kishore Prasad and Shivanugrah Narain, for the Appellant; Government Pleader, for the Respondent

Judgement

Rai, J.—This is an application by the plaintiff against the order of Mr. A. Rashid, Small Cause Court Judge of Gopalganj, impounding a document filed on behalf of the plaintiff in the suit and asking the office to assess stamp duty and penalty chargeable under the law.

2. The plaintiff, the Sasa Musa Sugar Mills Ltd., brought a suit in the Small Cause Court, Gopalganj, for recovery of the price of sugarcane seed which the defendant-opposite party 1 had taken from the plaintiff under an agreement executed by him. This agreement was exhibited in the action as Ex. 1. It is unstamped. It has been incorporated in a printed form and is not attested by any witness. The trial Court came to the conclusion that the document is chargeable with stamp duty under Art. 5, cl. (c) of Sch. 1, Stamp Act. The Court below, therefore, ordered that the document be impounded under s. 33 of the Act.

3. Mr. Raj Kishore Prasad, learned Advocate for the petitioner, contends that the agreement in question would be covered by the Exemption (a) to Art. 5, Sch. 1, Stamp Act, Article 5 with the relevant Exemption runs as follows :

Description of Instrument

Proper stamp duty.

5. AGREEMENT OR MEMORANDUM OP AN AGREEMENT.

(a) If relating to the sale of a bill of exchange.

Two annas.

(b) if relating to the sale of Government security of share in an incorporated company or other body corporate.

Subject to a maxi-mum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.

(c) if not otherwise provided for.

Eight annas.

Exemptions.

Agreement or memorandum of agreement-

(a) for or relating to the sale of goods or merchandise exclusively, not being a Note on Memorandum chargeable under No. 43 :

He contends that the agreement in question is in substance an agreement for sale of sugarcane crop and the other matters mentioned in the agreement are merely incidental to the agreement for sale and, as such the document, according to him, is admissible without any stamp. In support of his argument, he cited a Special Bench decision of the Allahabad High Court in the case of L.H. Sugar Factory Vs. Moti, . He relied upon the view taken by the learned Judges who were in majority in the Special Bench. The Special Bench had to deal with a local enactment apart from the provisions of the Stamp Act. In that case also the document under consideration was one executed by an agriculturist for supply of sugar-cane to a sugar factory. Though the terms of the document under consideration in that Special Bench case are not exactly the same as those incorporated in the document in question, yet Mr. Rajkishore Prasad emphasised the view taken by the majority of the Judges on the interpretation of Exemption (a) to Art. 5, Sch. 1, Stamp Act. The Special Bench case of L.H. Sugar Factory Vs. Moti, , aforesaid refers to some other previous decision of the Allahabad High Court as well as to decisions of the Calcutta, Madras and Bombay High Courts. I have carefully gone through the judgment of the Special Bench of the Allahabad High Court quoted above. But I regret to say that I do not agree with the opinion of the Judges who were in majority so far as the interpretation of Exemption (a) to Art. 5, Sch. 1, Stamp Act, is concerned. I respectfully agree with the opinion of the Judges who were in minority specially that of Verma, J. regarding the meaning of the word "exclusively" occurring in the said Exemption (a).

4. On this point the judgment of Verma J. runs as follows:

Mr. Pathak contends that the word "exchusively" qualifies "goods" or "merchandise". He, therefore, argues that the agreement in the present case being to sell certain goods alone (namely, the sugar-cane crop), and to sell nothing else, the exemption is applicable. The argument in my opinion is not well founded. The word "exclusively" is an adverb and cannot qualify a noun. In my judgment what it qualifies here is the preposition "for" and the participle "relating", or the phrase "for, or relating to, the sale of, introduced by the preposition and the participle, all of which it can qualify under the rules of grammar.

In my judgment, this Exemption is confined to an agreement which deals solely with the sale of goods or merchandise. It cannot be extended to an agreement incorporating several items in addition to an agreement for sale of goods or merchandise. The heading of the document in question shows that it is satta (agreement) in respect of seed, manure, sanai and plough. The relevant portion of the document in question runs as follows:

The Sasa Musa Sugar Mills Limited, Sasa, Musa, Saran.

Satta in respect of seed, manure, sanai and plough, circle No. 5, Season 1945-46, Satta No. 121.

Whereas, I, executant No. 1, have to cultivate Sugarcane No. 313 in my kasht land and have to sow good Sugar-cane seeds in order to have good out-turn of produce. When the sugar-cane crop will be ready, I shall have to sell it to the said Mills. Therefore, we, the executants, of our own free will and accord, in a sound state of our body and mind, have taken 14 maunds of manure at the rate of -/15/- per maund amounting to Rs. 13-2 as advance for 1 Katha of land bearing survey No. 252 and as per boundaries specified below in village Rampore Babu which we shall cultivate. Through, and on the security of, executant No. 2, I received manure in one lump sum as peshgi seed and manure. I do hereby declare that when the said Company within the period from 23-2-1946 to 31-5-1947 will demand it from me, the executant No. 1, without any objection I shall carry it on my cart, and take it to the garh or station of Sasa Musa Sugar Mills Limited, Sasa, Musa, Saran, in accordance with the order of the proprietor of the Mill and get it weighed. According to the rate fixed by Government he shall take the price of the sugar-cane from me, executant No. 1, after setting off the price of the seeds and manure he shall take the balance of the price.

If the sugar-cane be dried up, rotten and very ripe or unripe, i. e., if it be damaged in any way, the said mill shall have full right either to take it or not to take it.

If on any account the mill be closed, the said mill neither is nor shall be liable to pay damage to any extent for the loss of the sugarcane. So long as the entire (produce) is not weighed, the field and the entire produce of the field shall remain mortgaged and hypothecated to the said Company.

I shall have no right to dispose of the said produce to any other person in any way. If any action of me or my family or my heirs be contrary to this, the Company shall be competent to take such civil and criminal proceedings as the said Company may deem proper against me or my family.

I declare that I have executed this satta as a karta of the joint family on behalf of all the members and that neither I nor any member of my family has executed any satta in favour of any other Company, agent and thikadar.

The Company shall realize without objection from the person and movable and immovable properties of us, the executants, by instituting a suit in the Court without damage.

We have, therefore, executed this agreement satta in respect of sugar cane, seeds, manure, sanai and plough so that it may be of use when required.

5. So, from the document itself it is clear that it cannot be said to be an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively. In my judgment, therefore, the document is clearly liable to stamp duty under Art. 5, Cl. (c) of sch. 1, Stamp Act. Though Art. 41, Sch. 1, Stamp Act, provides for the stamp duty in respect of mortgage of a crop, it cannot cover all the agreements as contemplated by the document in question. Article 41, Sch. 1, Stamp Act, rune as follows;

Description of Instrument.

Proper Stamp duty.

41. Mortgage op a crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage-

(a) When the loan is repayable not more than three months from the date of the instrument-

for every sum secured not exceeding Rs. 200.

oneanna.

and for every Rs. 200 or part thereof secured in excess of Rs. 200;

oneanna.

(b) When the loan is repayable more than three months, but not more than eighteen months, from the date of the instrument-

for every sum secured not exceeding Rs. 100.

Two annas.

and for every Rs. 100 or part thereof secured in excess of Rs. 100.

Two annas

Article 41, therefore, cannot be a bar to the applicability of Art. 5, cl. (c) of the Act. The Government Pleader representing the State of Bihar supported the order of the Court below on the ground that the document should be assessed to duty in accordance with the provisions of Art. 5, cl. (c), Sch. 1, Stamp Act. He further submitted that, in accordance with the provisions of S. 6, Stamp Act, even though a portion of the document is covered by the provisions of Art. 41, Sch. I, Stamp Act, a higher duty as provided for by Art. 5, cl. (c) would be leviable in the present case. Section 6, Stamp Act, runs as follows :

Instruments coming within several descriptions in Schedule I : Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart of duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

In my view, there is much force in the contention of the learned Government Pleader.

6. The result is that the order passed by the Court below is upheld and the present rule is discharged. Under the circumstances of the present case there would be no order as to costs.

Sinha, J.

7. I agree.

8. The universally accepted rule of construction of a document, with reference to its character as to under what part of the charging section or rule or article of the taxing statute it comes under, is that the document should be read as a whole. Under S. 6, Stamp Act, an instrument coming within two or more of the descriptions in Sch. I of the Act is chargeable only with the highest duty for one of such descriptions. Read as a whole, there is doubt that the document in question has the dual character of being an agreement for sale of sugar-cane and a mortgage of the sugar-cane produce until the entire dues advanced under the document are satisfied. That being so, it is chargeable with the higher duty under Art. 5 (c), Stamp Act. But it was argued on behalf of the petitioner that this document is one relating to a "document... for or relating to the sale of goods or merchandise exclusively". The question whether the word "exclusively" governs only the words "goods or merchandise", as contended for on behalf of the petitioner, or the entire clause beginning with the word "for" has been very exhaustively dealt with by a Special Bench of the Allahabad High Court in the case of L.H. Sugar Factory Vs. Moti, . For the reasons given by Verma and Mulla, JJ., who were in a minority, I would hold that the word "exclusively" governs the entire clause, and not only the words "goods or merchandise", though the majority of their Lordships constituting the Special Bench in that case were of the opposite view. The view that we have taken of the construction of the exemption

in cl. (a) to cl. (c) Art. 5, Stamp Act, is in accord with the opinion of the Full Bench of the Allahabad High Court in a reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue, , though the document before their Lordships in that case was not entirely of the same character. An earlier decision of a Pull Bench of five Judges of the Allahabad High Court in the matter of Gajraj Singh, 9 all. 585 : (1887 A.W.N. 190) also supports the principle underlying our decision. It must, therefore, be held that the decision of the Court below on the question of stamp duty leviable on the document in question is correct.

9. The rule is accordingly discharged, but in the circumstances, there will be no order as to costs.

