(2010) 01 MP CK 0057

Madhya Pradesh High Court (Indore Bench)

Case No: None

Umesh Kumar Sharma		APPELLANT
	Vs	
Rajaram Jat and Another		RESPONDENT

Date of Decision: Jan. 19, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227, 23
- Copyright Act, 1957 - Section 18
- Stamp Act, 1899 - Section 13, 14, 2, 31, 32

Citation: AIR 2010 MP 158 : (2010) ILR (MP) 1290 : (2010) 2 MPLJ 104

Hon'ble Judges: Ramesh Surajmal Garg, J; Prakash Shrivastava, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Yesterday, when the matter was taken up for hearing, Shri Ashok Kutumbale, who is otherwise holding the Office of Additional Advocate General, appeared in the matter and there was no representation from the side of the State Government, therefore, we recorded the proceedings and referred the copies of the same to the Advocate General for making appropriate arrangements for representation of the State in the matter where the duty and penalty is recoverable on a document and the amount is to go to the coffers of the State Government.

Today, Shri A.S. Kutumbale is not appearing in the matter, but Shri Amit Purohit appears for the petitioner, Shri B.I. Mehta appears for respondent No. 1 while Smt. Rashmi Pandit appears under the authorization by the Advocate General for the State Government.

The petitioner/plaintiff Umesh Kumar being aggrieved by the order dated 28.03.2008 passed by the learned District Judge, Mandleshwar on 28.03.2008 impounding the document in question and requiring the plaintiff to pay the duty and penalty on the document in dispute in light of the explanation appended to Article 23 of the Indian Stamp Act in its application to the State of Madhya Pradesh, requiring the plaintiff to pay 7ï¿½% stamp duty on the face value of the document and pay ten times penalty.

The short facts necessary for disposal of the present writ petition are that plaintiff Umesh Kumar filed a civil suit for specific performance of the contract/agreement dated 2nd January, 2001 with a further submission that possession of the property was handed over to him and a document evincing the agreement between the parties and delivery of possession was executed on 02.06.2001. The defendant, after putting in his appearance in the matter, raised various pleadings. The trial Court framed certain issues and thereafter, required the parties to lead their evidence.

The plaintiff produced the document dated 02.06.2001 before the Court with a submission that the same be admitted in evidence, but defendant raised an objection submitting inter-alia that the document contained a recital that possession was delivered to the plaintiff, therefore, the document would be a conveyance and under Clause 23 of the Schedule appended to the Indian Stamp Duty, 1899, the document was required to be executed upon appropriate stamps and as the document was not on appropriate stamps, it was liable to be impounded with a further direction to the plaintiff to pay duty and penalty, in accordance with Sections 33, 35 and 38 of the Indian Stamp Act. The plaintiff, however, submitted before the Court that the document in question was a simple agreement and in accordance with Article 5 of the Indian Stamp Act, appropriate stamp duty has been paid, therefore, the document was admissible in evidence. After hearing the parties and after going through the contents of the documents, the trial Court observed that as the document recited that possession of the property was handed over to the plaintiff the document would become a conveyance and the plaintiff was required to pay 7ï¿½% the stamp duty on market value of such document. The Court accordingly, impounded the document and observed that the plaintiff was to pay 7ï¿½% stamp duty on the face value of the document (on Rs. 3,01,000/-) and pay 10 times penalty and if the said amount was deposited in the Court within one month from the date of the order, the document would become admissible in evidence. Being aggrieved by the said order, the plaintiff has approached to us under Article 227 of the Constitution of India.

Yesterday, the matter was argued before us and today arguments have been reiterated to submit that the document was appropriately stamped and penalty was not required to be imposed. Placing reliance upon a single Bench judgment of this Court in the matter of Satyanarayan Gaud Vs. Ramsingh, Deceased through L.R. Prithwisingh, Deceased through L.Rs. Mahaveer Singh and Others, , learned Counsel for the petitioner submitted that in every case when a document is produced before the Court, the matter has to be referred to the Stamp Collector and the Stamp Collector has to look into the duty chargeable on the document and decide the question relating to the duty and penalty.

After taking us through Sections 33, 35, 38 and 40, it was submitted that the order passed by the learned Court below was patently illegal and was suffering with latent defects. It was submitted that the Court below had no jurisdiction to decide the question relating to the stamp duty payable and the question of penalty to be imposed. According to him, the matter was to be referred to the Stamp Collector, who in his turn, in accordance with Section 40 of the Indian Stamp Act, was to decide the matter. Shri Mehta, learned Counsel for respondent No. 1, however, submitted that a perusal of Sections 33, 35 and 38 would make it clear that whenever a document is impounded and is proposed to be produced in the evidence, then the Court which has impounded the document has to decide the question of duty and penalty recover the same from the person producing the document, admit the document in evidence and thereafter, in accordance with provisions of law, send to the Collector an authenticated copy of such instrument together with a certificate in writing, stating the amount of duty and penalty levied and also forward the amount so recovered to the Collector. His submission is that in the present matter, the document was produced in evidence and if at that time, objection regarding admissibility on the ground of insufficient stamps was raised, the Court was obliged to decide the question relating to the duty and penalty.

Smt. Rashmi Pandit, learned Counsel for the State while supporting the arguments raised by Shri Mehta also referred to Section 40 and submitted that the Collector can impound the documents, which are sent to him u/s 38(2) of the Act, and as in the present matter, the document was not required to be forwarded to the Collector for impounding and deciding the question of duty and penalty, the Court was justified in dealing with the documents under Sections 33, 35 and 38 of the Act.

We have heard the learned Counsel for the parties at length.

For proper appreciation of the dispute, we are obliged to refer to the provisions contained in Sections 33, 35, 38 and 40 of the Act and are also required to refer to Article 5 of Schedule I-A dealing with agreement or memorandum of an agreement and Article 23 dealing with the stamp duty to be levied on conveyances:

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 public 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:

Provided that nothing contained in this sub-section shall be deemed to authorise the Collector to impound any instrument which has not been executed but is brought to him u/s 31 for determining the duty with which the instrument is chargeable or any instrument which he is authorised to endorse u/s 32(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 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;

(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.

Instruments not duly stamped inadmissible in evidence, etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Provided that

(a) any such instrument not being a receipt, a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act;

(f) any such instrument not being a bill of exchange or promissory note shall, subject to all just exceptions, be registered or authenticated on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty.

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.

Collector''s power to stamp instruments impounded. - (1) When the Collector impounds any instrument u/s 33, or receives an instrument sent to him u/s 38, Sub-section (2), not being a receipt 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.

Schedule I-A

Agreement or memorandum of an agreement

(a)if relating to the sale of bill of exchange or to the sale of a Government Security or share in an incorporated Company or other body corporate	Re.1 for every Rs. 10,000 or part thereof, of the value of bill of exchange or security or share.
(b)if not otherwise provided for	Fifty rupees.
23. Conveyance, not being a transfer charged or exempted under No. 62 irrespective of the market value of the property which is the subject matter of conveyance.	Seven and half per cent of such market value: Provided that if the total amount of the duty payable is not a multiple of fifty paise, it shall be rounded off to the nearest rupee half of a rupee or over being counted as one rupee and less than half of a rupee being disregarded.

Exemptions
Assignment of Copy-right under the Copy right Act, 1957 (No. 14 of 1957), Section 18, Co-partnership deed, See Partnership (No. 46).

Explanation - For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance

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in respect thereof then such
agreement to sell shall be deemed
to be a conveyance and stamp duty
thereon shall be leviable accordingly:
Provided that, the provisions of
Section 47-A shall apply mutatis
mutandis to such agreement which
is deemed to be a conveyance as
aforesaid, as they apply to a
conveyance under that section:
Provided further that where subsequently
a conveyance is effected in pursuance
of such agreement of sale the stamp
duty, if any, already paid and
recovered on the agreement of sale
which is deemed to be a conveyance
shall be adjusted towards the total
duty leviable on the conveyance,
subject to a minimum of Rs. 10.
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From a perusal of Section 33, it would clearly appear that when a person authorized under law or by consent of the parties have powers to receive evidence, then such person would be obliged to impound the document, when any document, which is insufficiently stamped is produced before him. The word "impound" has not been defined in the Indian Stamp Act, however, in Wharton"s Law Lexicon, 14th Edition, at page 496, defined the word to mean "to place a suspected document in the custody of the Law.". Stroud"s Judicial Dictionary, 4th Edition, at page 1295, defines "a document is impounded when it is ordered by a court to be kept in the custody of its officer." The word "impound" does not mean that the Court, which is in possession of the document, has immediately to recover duty and penalty. A true understanding of the word "impound" would only mean to authorize the Court to keep document in the custody because the Court is of the opinion that the document is either suspected or is insufficiently stamped.

Once a Court comes to the conclusion that the document is insufficiently stamped then it has to keep the document in its custody and then proceed in accordance with law.

Section 35 provides that a document chargeable with duty shall not be admitted in evidence for any purpose by any person having by law or consent of the parties authority to receive evidence, if such document is not properly stamped. Such document shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, and the amount required to make up such duty, together with a penalty of five rupees, or 10 times of the amount of proper duty or deficient portion thereof exceeds five rupees, penalty would be a sum equal to ten times such duty or portion. To be more simple, Clause (a) of Section 35 simply provides that if document is insufficiently stamped then duty and penalty would be recoverable. The duty would be amount which is less on the document and the penalty would be five rupees only, but in case, the ten times penalty exceeds five rupees, then such penalty shall be ten times the amount by which the document was required to be stamped.

Section 38(1) if is read and understood in accordance with the scheme of the Act, it would appear that when a person impounding an instrument u/s 33 has to receive evidence and admits such instrument in evidence upon payment and penalty as provided by Section 35 or of duty as provided by Section 37, then the Court shall be entitled to admit the document in evidence if the party producing the document is ready and willing to pay the duty and penalty ten times. Once amount of duty and penalty is deposited by the person producing the document, then the document shall be admitted in evidence and then the person who is receiving the document (in the present case, the Court) shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty and shall also send such amount to the Collector or to such person as the Collector may appoint in this behalf. Sub section (1) of Section 38 deals with the situation where the Court before receiving evidence decides the question of duty and penalty, the person desirous of producing the document in evidence is ready and willing to pay the duty and penalty and then thereafter duty and penalty is received and the document is admitted in evidence. In a case where the Court decides the question of duty and penalty, but the person, who is obliged to pay the said duty, does not pay the same, then the document would continue to be inadmissible in evidence, but as it has already been impounded by the Court, the Court has to refer the matter to the Collector under Sub-section (2) of Section 38 of the Act.

Section 40 of the Indian Stamp Act provides that whenever the Collector impounds any instrument u/s 33 or receives an instrument sent to him u/s 38 Sub section (2), then he has to adopt a particular procedure. It is to be noted that powers of the Collector are different in different situation. When he himself is impounding the document u/s 33, then he has to consider the matter and when a document is referred to the Collector under Sub-section (2) of Section 38 by a Court, or by a person authorized to receive evidence under the law with consent of the parties, then the Collector has to decide the question whether the document is duly stamped or not. If the same is not duly stamped, then what duty and penalty is to be paid on the said document. When the document is produced in the Court and the Court impounds the same, the Collector would have no jurisdiction to impound the document u/s 33 of the Act but the Collector will have to receive the document from a Court and then proceed in accordance with law. Once the matter is referred to the Collector under Sub-section (2) of Section 38 of the Indian Stamp Act, then he has to decide that the said instrument is duly stamped or not. Once he decides that the document is duly stamped, then he shall certify by endorsement thereon that the document is duly stamped or that it is not so chargeable with the duty. However, if the Collector comes to the conclusion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or 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.

A sharp distinction is to be marked in the language of Section 38 and Section 40 of the Act. While Section 38 requires the Court to recover the duty and ten times penalty and nothing less than that, Section 40 authorizes the Collector (Stamps) to recover the duty so also recover penalty, which shall not exceed ten times the amount of proper duty. Discretion given to the Collector (Stamps) is to impose any amount of penalty, which should not necessarily be ten times, it can be less than that.

However, in the present matter, it is to be seen that the document is valued for Rs. 3,01,000/- and it contains a recital that possession of the property at the time of execution of the document was handed over to the plaintiff. At this stage, it would be necessary to refer to Article 5 of the Indian Stamp Act, which deals with an agreement or memorandum of an agreement. If the agreement refers to the sale of bill of exchange or to the sale of a Government Security or share in an incorporated company or other body corporate, then the property stamp duty would be Re.1/- for every Rs. 10,000/- or part thereof. However, clause (b) of Article 5 provides that if not otherwise provided for, then the stamp duty shall be Rs. 50/-. If the agreement is in relation to the property or sale of the same, then ordinarily the stamp duty payable would be Rs. 50/-, but in case, the document contains a recital that the possession of the property has already been transferred or handed over to the proposed purchaser, without executing a conveyance or it shall be handed over to the purchaser without execution of the conveyance in future, then the document shall come out of the definition of an "agreement", but would become a "conveyance", as provided under Article 23 of Schedule I-A.

The word "conveyance" has already been defined in Clause 10 of Section 2. The definition is inconclusive definition, which says that "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I-A, as the case may be. In light of the explanation appended to Article 23 of the Indian Stamp Act, in the case of an agreement to sell immovable property there is a recital that possession of immovable property is transferred to the purchaser at the time of execution of, such agreement or that possession would be delivered in future without executing a conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly. In the present matter, findings of the Court below that the document would fall under the mischief of Article 23 of Schedule I-A cannot be found fault with, because the Court below was absolutely justified in holding that because of the recital in the document, the agreement stood converted into a conveyance and was chargeable with the duty of 7ï¿½% on the market value of the property.

The Court below was also justified in requiring the plaintiff to pay 7ï¿½% duty on the face value of the document and pay ten times penalty in accordance with Sections 33, 35 and 38 of the Indian Stamp Act. The order passed by the Court below is not bad. However, we make it clear that if the plaintiff is not ready and willing to pay the duty and penalty, as proposed by the Court below, then the Court which has impounded the document shall refer the matter to the Collector (Stamps) u/s 38(2) of the Indian Stamp Act.

Any observations made by the learned single Judge in the matter of Satyanarayan Guad, which run contrary to the above observations are overruled.

For the reasons aforesaid, we find no reasons to interfere in the matter. The petition deserves to be and is dismissed.

There shall be no orders as to costs.