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(2014) 05 MP CK 0005

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Petition No. 2771/2014

Rajendra Syal		APPELLANT
	Vs	
Hari Prasad Agrawal and Others		RESPONDENT

Date of Decision: May 16, 2014

Acts Referred:

- Constitution of India, 1950 - Article 227
- Stamp Act, 1899 - Section 2(14), 33, 33(1), 35, 38

Citation: (2014) 2 JLJ 439 : (2014) 3 MPHT 464 : (2014) 3 MPLJ 561

Hon'ble Judges: Sujoy Paul, J

Bench: Single Bench

Advocate: P.C. Chandil, Advocate for the Appellant; Prashant Sharma, Advocate for Respondents No. 1 and 2, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

Sujoy Paul, J.
This petition filed under Article 227 of the Constitution challenges the order passed in Case No. 7-A/13 on 30.4.2014, whereby the application of petitioners/defendant No. 2 preferred under Sections 33, 35 and 38 of Indian Stamp Act, 1899 is rejected by the Court below.

2. Shri P.C. Chandil, learned counsel for the petitioner, submits that the plaintiffs/respondents No. 1 & 2 filed a suit for specific performance of contract. In the said suit, the document Annexure P-3, i.e., "agreement for sale" was filed. The petitioner preferred an application under Sections 33, 35 and 38 of the Indian Stamp Act, 1899 (Annexure P-4) and prayed that in the agreement of sale, the sale consideration is Rs. 8 crores. The stamp duty on the said amount would be Rs. 8 lakhs, whereas the plaintiffs have paid only Rs. 100/- and, therefore, by invoking

Section 33(1) and 35 of the Stamp Act, the said document be impounded and send to Collector of Stamp for proper adjudication.

3. The plaintiffs filed their reply Annexure P-5 and contended that the application is not tenable. Regarding the nature of agreement, the averments of written statement needs to be seen. They have relied on Laxminarayan Porwal and Others Vs. Omprakash Vairagi and Others, in their reply. Shri P.C. Chandil, learned counsel for the petitioner submits that the plaintiffs have relied on an overruled judgment in their reply (Annexure P-5). This judgment is expressly overruled by Division Bench in the case reported in Man Singh (Deceased) through L.Rs. Smt. Sumranbai and Others Vs. Rameshwar, .

4. Criticizing the impugned order, learned counsel submits that the Court below has given contradictory findings. In the first breath it is mentioned that the document Annexure P-3 infact is not an agreement for sale, whereas in the concluding paragraph the finding is given that it is an agreement for sale. By drawing attention of this Court on Schedule 1-A of Stamp Act [entry (e) (ii)], it is contended that this entry shall be applicable and, therefore, 1% of total consideration of the property set-forth in agreement or memorandum of agreement shall be the stamp duty. By taking assistance from Clause 5(d), it is contended that a minute reading of agreement for sale shows that it also falls within the ambit of Clause (d) aforesaid. Reverting back to Section (6) of the Stamp Act, it is urged that if one document is covered in two entries, then the stamp duty which is higher should be payable. Thus, he submits that 2% of the stamp duty is payable on the document in question. In support of his contention, he relied on Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, .

5. Per contra, Shri Prashant Sharma, learned counsel for the plaintiffs-respondents submits that for ascertaining nature of document only contents of the documents are to be seen and no assistance can be drawn from the pleadings of written statement. He submits that a careful reading of the document would show that it is not an "agreement for sale" between the plaintiffs and the respondents. He submits that the findings of Court below is that it is not "agreement for sale" between the parties, on the contrary it is an agreement of distribution of the sale proceeds which are over and above eight crores. He submits that since the plaintiffs and respondents are not purchasers and sellers, by no stretch of imagination, this document Annexure P-3 can be said to be an "agreement for sale". He submits that the document Annexure P-3 is covered under entry (g) of Clause 5 of Schedule 1-A. He submits that the Court below has not committed any jurisdictional error and, therefore, no interference is warranted in these proceedings under Article 227 of the Constitution. He relied on Hindustan Steel Ltd. Vs. Messrs Dilip Construction Company, .

6. No other points are pressed by the parties.

7. I have heard the learned counsel for the parties and perused the record.

8. The core issue is regarding the nature of the document Annexure P-3 and whether the Court below has rightly rejected the application of the petitioners. Before dealing with the rival contentions advanced, I deem it proper to quote Section 2(14) which defines "instrument". It reads as under:-

(14) "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited extended, extinguished or recorded;

The relevant entries of Schedule 1-A relied by the parties read as under:-

5. Agreement or memorandum of an agreement:-

9. It is settled in law that the recital in the document are decisive and conclusive on its admissibility. At the time of considering the document, it is recital/terms and conditions contained in the document which shall govern the issue of admissibility and shall also determine the nature of the document. (see Omprakash Vs. Laxminarayan and Others, . The caption of document Annexure P-3 is "agreement for sale". Certain relevant paragraphs reads as under:-

10. The case of the plaintiffs is that there is no purchaser and seller as per the document Annexure P-3. It is only a document regarding distribution of sale proceeds which are over and above Rs. 8 crores. The Court below in impugned order agreed with the contention of the plaintiffs and opined that the status of the plaintiffs and defendants in the sale deed is not of a Purchaser and Seller and, therefore, the said document cannot be treated as ''agreement for sale''. However, in the concluding paragraph the Court below opined that the stamp duty as per Article 5(e) of Schedule 1-A is not payable. In this finding it is mentioned that it is an ''agreement for sale'' of an immovable property.

11. In the opinion of this Court, the words "relating to sale of immovable property"" are very wide. These are wider than "agreement for sale". A conjoint reading of Section 2(14) which defines "instrument" with entry (e) aforesaid makes it clear that it is wide enough to cover a document by which any right or liability is either created or purported to be created, transferred, limited, extended, extinguished or recorded. As per the text and context, in which the words "instrument" in relation to sale of immovable property are used, in my judgment, same are very wide and covers any "instrument", which is relating to sale of immovable property. A microscopic reading of Annexure P-3 shows that it is relating to sale of immovable property. Entry (e) does not confine it only to the "instrument" in which the persons are in the capacity of Purchaser and Seller. Its horizon is much beyond it and covers any "instrument" which is relating to sale of immovable property. Thus, the view taken by the Court below is not in consonance with the relevant entries of Indian Stamp Act, 1899.

12. Putting it differently, by Annexure P-3 the right and liability have been created or purported to have been created. Thus, document in question comes within the meaning of "instrument" as defined in Stamp Act. Hence, the Court below has erred in rejecting the application of the petitioners by treating the document as not covered under entry (e) aforesaid of Schedule 1-A.

13. Since the document in question is covered under entry (e), entry (g) cannot be made applicable. A document may fall under entry (g) only when it is not covered in any other entry. Thus, this contention of Shri Prashant Sharma fails. The judgment cited in the case of Hindustan Steel Ltd. (supra) has no application in the facts and circumstances of this case. So far the contention of Shri Chandil regarding applicability of entry 5(d) is concerned, in my opinion, the petitioner did not press that point before the Court below and, therefore, the Court below had no occasion to address on the aforesaid aspect. In view of this, I am not inclined to deal with this aspect while judging the correctness of order passed by the Court below. It will be open for the Collector of Stamp to adjudicate the matter in accordance with law.

14. In view of aforesaid analysis, the impugned order is erroneous and runs contrary to the mandate of Stamp Act. In the result, this order dated 30.4.2014 is set aside. The application of the petitioners (Annexure P-4) is allowed. The Court below is directed to impound the document and send it to the Collector of Stamp for adjudication.

15. Petition is allowed to the extent indicated above. No cost.