

(2011) 05 CAL CK 0067
Calcutta High Court
Case No: C.O. No. 3418 of 2004

Md. Ismail		APPELLANT
	Vs	
Inspector General of Registration and Another		RESPONDENT

Date of Decision: May 19, 2011

Acts Referred:

- Stamp Act, 1899 - Section 31, 33

Citation: (2011) 5 CHN 626

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Jiban Ratan Chatterjee and Sukumar Bhattacharyya, for the Appellant;None, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

These three applications are taken up together as they involve the common questions of law.

2. For convenience, I am discussing the case being C.O. No. 3418 of 2004.

C.O. No. 3418 of 2004:

3. Challenge is to the order dated July 16, 2009 passed by the Divisional Commissioner, Presidency Division in Appeal Case No. 49 of 1997-98.

4. The Petitioner purchased certain immovable property of undivided one-third share of a three storied wholly tenanted building together with a piece of land having an area more or less about 6 Cottah 6 Chittak and 30 Sq.ft. at premises No. 89/6, Repon Street, Calcutta now known as 89/6B, Repon Street, (Muzaffar Ahmed Street), Calcutta-16 at a consideration of Rs. 1,30,000/- from one Smt. Sova Devi,

Pradip Mukherjee and Mrs. Mala Chatterjee by a deed of sale dated April 8, 1994. That deed of sale was registered at the office of the Registrar of Assurance, Delhi due to the convenience of the parties at the material point of time and the same was permissible under the provisions of Registration Act.

5. Thereafter, the Petitioner wanted to mutate his name with the Municipality and such a prayer was rejected holding that, the said deed was not properly stamped. He got a notice from the Additional Collector of Stamp Revenue, Calcutta u/s 31 of the Indian Stamp Act intimating that a reference had been made under the Adjudication Case No. 111 of 1999-2000. Accordingly, after examination, the opposite party found that the said deed of sale was not duly stamped and the same was impounded u/s 33(i) of the Indian Stamp Act, 1989. The opposite party assessed the valuation to the tune of Rs. 2,26,064/- plus a fine of Rs. 5,000/- and such amount should be paid by March 12, 2002. Being aggrieved by the said order of the Collector, he preferred this application.

6. Upon hearing the learned Counsel for the Petitioner and on perusal of the materials on record, I find that the above contention of the Petitioner is supported by documents. The Collector has observed that the premises-in-case is wholly tenanted and that the building was constructed in 1917. However, upon consideration of the depreciation value of the building, the Collector had assessed the amount as stated above and directed to make payment within the aforesaid time. What I find that in order to assess the valuation, the valuation of the other buildings situated nearby had not been considered. There is no indication that any property under any deed executed in about the year when the deed under question was executed i.e. on April 8, 1994 was sold at the price or near about it at the relevant time. The Collector has observed that the building is fully tenanted. Of course, there is a vacant land to the extent of 2 Cottahs and this is valuable. Since, no comparison could be made with other deeds of transfer which took place in or around 1994, it is difficult to accept the valuation as determined by the Collector, although, it may be difficult for the parties to collect any deed of the year of 1994 or near about this year. Yet, an effort should be made to find out by either of the parties to come to a conclusion about the valuation of land or the property at the locality at the relevant time.

7. Accordingly, I am of the view that the impugned order cannot be supported. A fresh valuation of the property should be determined. Thereafter, the impounding shall be done according to Section 33 of the Indian Stamp Act as applicable in West Bengal.

8. The application, therefore, succeeds. It is allowed. The impugned order is hereby set aside. The Collector is directed to re-hear the matter again for determination of fresh valuation of the property in question within a period of six months from the date of communication and then to impound the said deed in accordance with law.

C.O. No. 3429 of 2004:

9. In view of the above findings, this application is also allowed.

10. The application, therefore, succeeds. It is allowed. The impugned order is hereby set aside. The Collector is directed to re-hear the matter again for determination of fresh valuation of the property in question within a period of six months from the date of communication and then to impound the said deed in accordance with law.

C.O. No. 3430 of 2004:

11. In view of the above findings, this application is also allowed.

12. The application, therefore, succeeds. It is allowed. The impugned order is hereby set aside. The Collector is directed to re-hear the matter again for determination of fresh valuation of the property in question within a period of six months from the date of communication and then to impound the said deed in accordance with law.

13. Urgent Xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.