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Court : Andhra Pradesh

Decided On : Jun-21-1977

Reported in : AIR1977AP397

Judge : Jayachandra Reddy, J.

Acts : Stamp Act, 1899 - Sections 35 and 38

Appeal No. : Writ Petn. No. 773 of 1976

Appellant : Gulam Hussain

Respondent : The Additional Rent Controller, Hyderabad and ors.

Advocate for Def. : Govt. Pleader of Revenue (NS) and ;R. Kondaiah, Adv.

Advocate for Pet/Ap. : N. Bhaskara Rao, Adv.

Judgement :
ORDER

1. This is an application to issue a writ of certiorari to quash the order of the 1st respondent, Additional Rent Controller, Hyderabad in R.C. No. 390 of 1968.

2. The question, which is of day to day importance that arises for consideration in this writ petition is

'Whether the Court has power under S. 38 of the Stamp Act to levy the penalty after impounding the document when such a document is sought to be tendered in evidence.'

3. For a better appreciation of the question involved the necessary facts may be stated. The petitioner took a house on rent from respondents 4 to 5 who filed an eviction petition before the 1st respondent, which is pending. In compliance with the order of the 1st respondent the landlords produced the rental deed in original which was found to be sufficiently stamped. The landlords did not seek to tender the same in evidence. From the record it appears that the writ petitioner, i.e., the tenant, alone wanted to tender the rental deed in evidence. The learned Rent Controller first decided that the tenant was liable to pay the deficit stamp duty. The Rent Controller also directed the petitioner to pay a penalty of Rs.3,608 subject to the admissibility of the deed in evidence as the petitioner alone wanted to tender the rent deed in evidence. The matter was carried in appeal (R.A. No. 324 of 1973) before the Chief Judge, City Small Causes Court, Hyderabad, which was dismissed. The petitioner has filed this writ petition seeking a writ of certioarari to quash the order of the 1st respondent.

4. Sri N.Bhaskara Rao, the learned counsel for the petitioner contended that the 1st respondent has no jurisdiction to levy penalty after impounding and that his duty was to send the document to the Collector under S. 38(2) of the Stamp Act for the purpose of levying penalty and it is the Collector that his power to levy the penalty.

5. Section 38 of the Indian Stamp Act is in the following terms:-

'38. Instruments impounded how dealt with.

(1) When the person impounding an instrument under 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 S. 35 or of duty as provided by S. 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.'

It can be seen that S. 38(1) of the said Act applies to cases where the stamp duty and penalty provided by S. 35 have been collected by the authority or Court who receives the document and admits the same in evidence. It is also required that the authorities shall send an authenticated copy of such instrument together with a certificate stating the amount of duty and penalty levied and send the amount collected to the Collector. Sub-sec. (2) of S. 38 refers to every other case, viz., where the document is impounded but the stamp duty and penalty are not collected.

6. Relying on a judgment of the Hyderabad High Court in Jai Narayan v. Yasin Khan, AIR 1955 Hyd 17 (FB) the learned counsel for the petitioner sought to contend that it is the Collector alone who has the power to assess the penalty and the Court has to power only to impound. In that case the facts are different. It appears a Division Bench of the High Court impounded the document of award and forwarded the same to the Inspector General of Registration sent the document to the concerned Collector who after enquiry reported that the High Court had no power to assess the stamp duty and penalty. The Inspector General of Registration agreed with the opinion of the Collector. In view of the earlier order of the Division Bench, the matter was referred to the High Court under S. 55 of the Hyderabad Stamp Act. The Full Bench considered the scope of S. 38(2) and held that the High Court could only impound the document but could not assess the penalty and that under sub-sec. (2) of S. 38 the document shall be sent to the Collector who alone has power to assess the penalty. It can thus be seen that when the Division Bench impounded the document and levied the penalty, it did not amount to the course of action contemplated under S. 35 of the Stamp Act. Therefore the decision of the Full Bench of the erstwhile Hyderabad High Court cannot throw much light on the question to be resolved. A combined reading of Ss. 35 and 38 makes it abundantly clear that the Court which impounded the document can admit the same in evidence on payment of the duty together with

the penalty by the party who seeks the document to be admitted in evidence. In Balaji Chit Fund v. Balaji Satyanarayana, (1967) 2 Andh WR 268 Chandrasekhara Sastry, J. while considering the scope of Ss. 35 and 38 of the Stamp Act referred to the decision of the Hyderabad High Court cited supra, and held thus:-

'From the facts it appears to me that that was a case where the High Court impounded a document and sent it to the Collector under sub-sec. (2) of S. 38 without levying penalty and stamp duty under sub-sec. (1) of S. 38. It cannot be gainsaid that if a document is sent to the Collector under S. 38(2) it is the Collector that decides the nature of the document and the amount of the fee payable and levy the fees and the penalty from the party concerned. Clearly to my mind the decision of the Full Bench of the Hyderabad High Court was one under sub-sec. (2) of S. 38 and not at all under sub-sec. (1)of S. 38 under which the present case falls, because in the present case as already noted the lower Court has decided the nature of the document and the amount of the stamp duty payable and collected it along with ten times the stamp duty as penalty.'

Therefore the contention of the learned counsel that the Collector alone has power to assess the penalty and that the Court under no circumstances has such power, has to be rejected.

7. In T.K. Kantharaj v. Md. Nazeer Khan, AIR 1959 Mys 172 a similar question came up for consideration. The party therein filed two documents - One being a Sale deed and the other an agreement to pay hire. He did not wish to rely on the sale-deed. The trial Court however found the sale deed to be insufficiently stamped and impounded the same and also directed the party to pay the penalty to be fixed by the Court in due course. The concerned party preferred a revision to the High Court. It was contended before the High Court by the petitioner that the document impounded should be sent by the Court to the Commissioner under S. 38(2) unless the Court which impounded the instrument admitted the same in evidence in which case it could do so on payment of the duty together with penalty as provided under S. 35 of the Act. In other words the contention was that it is only if a document is asked to be admitted in evidence and it becomes exigible to such duty and penalty and not otherwise. The learned Judge accepted this contention

and held that, it is not disputed that in this case the document in respect of which the petitioner was required by the Court to pay such duty and penalty was not sought to be produced in evidence. That document was merely produced before Court and the petitioner did not seek to get that document admitted in evidence so far. This was therefore plainly a case to which sub-sec. (2) of S. 38 applied so that the Court should have sent the document in original to the Deputy Commissioner for necessary action under S. 40 of the Act..... In my opinion the stage when the lower Court could direct the petitioner to pay any duty and penalty was never reached in this case.

8. In Balkrishna v. Board of Revenue, : AIR 1970 MP74 a Full Bench of the Madhya Pradesh High Court held thus (at p. 78 of AIR):-

'On the above analysis it is abundantly clear that an instrument can be sent to the Collector under S. 38(2) of the Stamp Act only when it is impounded under S. 33, but is not admitted in evidence on payment of penalty and /or duty with the aid of S. 35. Section 38(2) has no application to a case where the document has been admitted in evidence.'

9. In the instant case the petitioner asked the Court to call for the document and sought to tender the same in evidence. The 1st respondent held that having regard to the above circumstances and since the respondent alone wants to tender the lease deed in evidence, he should pay the stamp duty and penalty of Rs. 3,608.00 subject to admissibility of the lease-deed in evidence for want of registration as the lease deed was executed for an indefinite period and appears to be compulsorily registrable. In view of the fact that the petitioner wanted to tender the document in evidence, the 1st respondent exercised his jurisdiction under S. 36 read with S. 38 of the Stamp Act and impounded the document and also levied the penalty. The principles laid down in the decisions of the Mysore and Madhya Pradesh High Courts apply to the facts of this case.

10. The learned counsel lastly contended that even assuming that the 1st respondent has power to impound and also levy the penalty he can do so only at the time of admission of the document. The learned counsel further contended that in this case the stage of admitting the document has not arisen yet and therefore

the 1st respondent had no power to levy the penalty. I am unable to uphold this contention. As observed by the Mysore High Court in T.K. Kantharaj v. Md. Nazeer Khan, AIR 1959 Mys 172, if a document is asked to be admitted in evidence, it becomes exigible to such duty and penalty and that stage has been reached in this case. In Balkrishna v. Board of Revenue, : AIR 1970 MP74 (FB) the Full Bench , after having considered the scheme of the Stamp Act, observed in Paragraph 11as follows (at p. 78 of AIR): -

'Once an instrument chargeable with duty is tendered in a Civil Court, it shall impound it, if, after examining it, the Court is of the opinion that it is not duly stamped ; Section 33 of the Act. The Court has, however, power under S. 35 of the Act to admit it (barring certain instruments) in evidence on payment of duty with which the instrument is chargeable or the amount required to make up the deficiency, together with a penalty limits of which are prescribed in the section. There is no third course open to the Court, once it finds that an instrument tendered in evidence is not duly stamped. The next step which the Court has then to take is provided in S. 38. If the Court has admitted in evidence an instrument upon payment of penalty and/or duty, it shall send to the Collector an authentic copy of such instrument together with a certificate stating the amount of duty and penalty levied in respect of that instrument, and shall send such amount to the Collector. This is provided in sub-sec. (1) of S. 38.' Therefore, the admission of a document as contemplated under Ss. 35 and 38 arises only after payment of the penalty and duty by that party who seeks to tender the document in evidence. The question of collecting the duty and penalty after the admission is not contemplated under the Act.

11. Therefore, I see no illegality in the impugned order. The Writ petition is accordingly dismissed. No costs. Advocate's fees Rs. 150.

12. Petition dismissed.

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