Ramchand Vs. Moti Thad and anr.

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Court : Allahabad

Decided On : Jan-22-1962

Reported in : AIR1962All353

Judge : N.U. Beg and ;S.D. Singh, JJ.

Acts : Stamp Act, 1899 - Sections 61; Uttar Pradesh Stamp (Amendment) Act - Schedule - Article 35

Appeal No. : First Civil Appeal No. 61 of 1957

Appellant : Ramchand

Respondent : Moti Thad and anr.

Advocate for Def. : M.K. Seth, Adv.

Advocate for Pet/Ap. : B.N. Roy, ;M.M. Raur and ;H.R. Gurnani, Advs.;Standing Counsel and ;J.S. Trivedi, Adv.

Judgement :

N.U. Beg, J.

1. This is a report by the Chief Inspector of Stamps in respect of a lease deed dated the 15th of September, 1947. By this lease deed an immovable property was let out to the respondents for a period of ninety years on rent. The stipulations

relating to rent are contained in paragraph 1 Clauses (a), (b), (c) and (d) of the instrument. According to the terms mentioned in the said lease the rent for the first twenty years i.e., from 1947 to 1967, was stipulated to be Rs. 275/- per month. The total amount at this rate worked out to Rs. 88,600/-. A rebate of Rs. 10,000/- was, however, allowed if a sum of Rs. 36,000/- was paid in advance on the date of the commencement of the lease, and the remaining amount of Rs. 20,000/- was paid by two equal instalments of Rs. 10,000/- each on the 1st February, 1948, and the 1st May, 1948. The whole amount of Rs, 56,000/- thus represented an adjustment towards rent for the entire period beginning from the 15th September, 1947, and ending on the 14th September, 1967. So far as the rent for the second period of 20 years, i.e., 1967 to 1987, is concerned, it was also stipulated to be Rs. 275/- per month. With regard to the third period of twenty years, i.e., 1987 to 2007, the rent was stipulated to be Rs. 310/- per month. For the last remaining period of thirty years i.e., 2007 to 2037, the rent was stipulated as payable at the rate of Rs. 356/8/- per month.

2. According to the report of the Chief Inspector of Stamps, the valuation of the Stamp on which the above deed should have been drawn up works out as follows:-

i. On the advance rent of Rs. 36,000/- at Rs. 18/12/- per thousand under Article 35 (c) ... . Rs. 675/-.

ii. On four times the average annual rent i.e., Rs. 3208/3/6 x 4--Rs. 12,832/14/- at Rs. 18/12/- per thousand or part, under Articles 35(a) (vi) .... Rs. 243/12/-.

The document having been executed on Stamps of the value of Rs. 282/4/- only, there was deficiency in stamps to the extent of Rs. 636/8/--The trial Court should not, therefore, have admitted the document, without realising the deficiency of Rs. 636/8/- with a penalty of Rs. 6,365/- under Section 35 of the Stamp Act. Acting as Collector under Rule 325 of the U. p. Stamp Manual, the Chief Inspector of Stamps, therefore reported that this Court should make a declaration under Section 61 of the Stamp Act that the document is deficiently stamped by Rs. 636/8/-, and the said deficiency with penalty be realised from the party liable for the same.

3. Having heard the learned counsel for the parties, we are of opinion that the report of the Chief Inspector of Stamps should be rejected.

4. A preliminary objection to the maintainability of this reference is taken on the ground that the provisions of Section 61 of the Indian Stamp Act 1899 (Act II of 1899) are not attracted in the present case. Section 61(1) runs as follows:-

"When any Court in the exercise of its civil or revenue jurisdiction or any criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring stamp, or upon payment of duty and a penalty under Section 35, the Court to which appeals lie from, or reference are made by, such first mentioned Court may of its own motion or on the application of the Collector, take such order into consideration.'

5. A perusal of the above provision of law clearly indicates that before Section 61 can be applied to a case there must be an order of a Court 'admitting any instrument in evidence as duly stamped or as not requiring stamp, or upon payment of duty and a penalty under Section 35'. These words indicate that the Court should have applied its mind to the question as to whether the stamp duty paid on an instrument is sufficient or not. An order made by a Court admitting an instrument without applying its mind to this aspect of the matter cannot, therefore, be said to be ah order contemplated by Section 61 of the Indian Stamp Act. The words 'makes an order admitting an instrument in, evidence' used in Section 61 present a marked contrast with the words 'admitted in evidence' used in Sections 35 and 36 of the same Act. The difference in the phraseology of the two modes of expression used in different sections of the same Act is significant. It indicates that the order in the former case was not intended by the legislature to be a merely mechanical order passed in a routine fashion.

In this connexion it is also instructive to note that the term 'order' is defined in Section 2(14) of the Civil Procedure Code as 'the formal expression of any decision of a Civil Court which is not a decree'. Further, the last part of Section 61(1) of the Stamp Act directs that the higher Court will 'take such order into consideration' To enable the higher Court, to properly comply with this direction it should havebefore it the reasons given by the Court of firstinstance, in support of the said order. Moreover,a fiscal enactment like the Stamp Act is to bestrictly interpreted, and, where words in suchan enactment are capable of lending themselvesto an obvious interpretation which is favourableto the subject, there is every reason to preferthe same. We are, therefore, of opinion thatwhat Section 61 contemplates is an express orderand not an order by implication. The same viewwas taken in a decision of the Lahore High Courtin Emperor v. Gyan Chand, AIR 1946 Lah 265.There is, therefore, force in the preliminary objection relating to the maintainability thepresent reference.

6. We have, however, considered the matteron merits also, and are of opinion that the stampduty paid on the instrument is quite enough.The Chief Inspector of Stamps has reported thatin the present case Article 35(c) of the StampAct as amended by the U.P. Act is the provisionof law that is applicable. Article 35 (c) of theStamp Act lays down that stamp duty would bepayable under that provision of law 'where thelease is granted for a fine or premium or formoney advanced in addition to rent reserved.'In the present case it cannot be said that theamount of Rs. 56,000/- which was to be paidby the lessee was for fine or premium or formoney advanced in addition to rent reserved. Itwas an amount paid in lieu of rent and not inaddition to rent. In the present case the stampduty was paid under Article 35(a)(vi) of the StampAct as amended by the U.P. Act. Article 35 (a)(vi) applies to a case 'where the lease purportsto be for a term exceeding thirty years but notexceeding one hundred years.' Column 2 of thesaid item lays down that the stamp duty payablein such a case would be on a consideration equalto four times the amount or value of the averageannual rent reserved. In our opinion the stampduty was properly paid in the present case underthis provision of law. The stamp duty paid Onthe instrument in question is, therefore, sufficient

7. For the above reasons we reject the report of the Chief Inspector of Stamps.