

Kunwarpal Sharma and anr. Vs. State of U.P. and ors.

Kunwarpal Sharma and anr. Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/488387

Court : Allahabad

Decided On : Sep-04-2002

Reported in : AIR2003All7

Judge : G.P. Mathur and ;R.P. Misra, JJ.

Acts : [Stamp Act, 1899](#) - Sections 17 and 23

Appeal No. : C.M.W.P. No. 8792 of 2001

Appellant : Kunwarpal Sharma and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : K.S. Singh, S.C.

Advocate for Pet/Ap. : Manoj Misra, Adv.

Disposition : Petition allowed

Judgement :

G.P. Mathur, J.

1. Who is liable to pay the stamp duty on a deed of conveyance of immovable property is the question which requires consideration here.

2. This petition under Article 226 of the Constitution has been filed for quashing of the proceedings initiated against the petitioners in pursuance of recovery certificate dated 12-3-1997 issued by ADM (Finance and Revenue) for recovery of Rs. 96,400/-towards deficiency of stamp duty. The learned standing counsel was granted time on 28-3-2001 and on several occasions thereafter to file counter affidavit but no counter affidavit has been filed. Since the issue involved is a purely legal one, the writ petition has been finally heard with the consent of the parties.

3. A sale deed of certain agricultural plots owned by the petitioners was executed on 2-5-1996 in favour of M/s Reliance Farms Limited a company having its office at 94, Indra Nagar, Bareilly, and the deed was registered in the office of the Sub-Registrar, Khair, district Aligarh on 1-6-1996. According to the petitioners, the sale deed had been obtained from them by playing fraud and no consideration was paid to them. They accordingly filed O. S. No. 504 of 1998 in the Court of Civil Judge ((Jr. Div.), Havall, Aligarh for cancellation of the sale deed. The suit was decreed ex-parte by the judgment and decree dated 11-8-1999 and thereafter information was also sent from the Court of Civil Judge (Jr. Div.) to the Sub-Registrar, Khair for making an endorsement that the sale deed has been cancelled. According to the petitioners, the decree passed in the suit has become final as neither any application to set-aside the decree nor any appeal has been preferred. It appears that proceedings under Section 47A of the Stamp Act were initiated against the vendees, namely, M/s Reliance Farms Limited and the ADM (F & R), Aligarh, by his order dated 6-3-1998 determined the market value of the subject matter of sale deed as Rs. 9,99,750/-. On the aforesaid valuation of the property, the proper stamp duty according to the Schedule of the Stamp Act was Rs. 1,45,000/-whereas the duty actually paid was Rs. 48,600/- and thus, a deficiency of Rs. 96,400/- was determined. The ADM (F & R) passed an order on the same day i.e. on 6-3-1998 directing that the deficiency in stamp duty amounting to Rs. 96,400/-should be paid by the vendee (purchaser of the property). A copy of the order has been filed as Annexure-5 to the writ petition and this shows that the notice of the proceedings had been issued to the vendees and they had also contested the matter. The vendees did not deposit the amount and accordingly proceedings were initiated to recover the same by the attachment and sale of the property which was the subject matter of the sale deed dated 2-5-1996.

When the petitioners came to know about the attachment and proposed auction of their land, they moved an application before the Tehsil authorities informing that the sale deed had been cancelled by the judgment and decree dated 11-8-1999 passed in O. S. No. 504 of 1998. The Naib Tehsildar submitted a report on 14-9-1999 that in view of the decree passed by the Civil Court, the sale deed stood cancelled and, therefore, the recovery of the deficiency in stamp duty could not be made by attachment and sale of the property of the petitioners. The Tehsildar, Khair, accordingly returned the recovery certificate by making a note to that effect on 4-10-1999. It appears that some audit objection was raised and the Board of Revenue, U.P., Lucknow sent a reminder for recovery of the amount and thereafter ADM (F & R) passed an order on 1-12-2000 directing the Deputy District Magistrate, Khair, to recover the deficiency in stamp duty. It is in these circumstances that the petitioners, who are the owners of the property and were vendors of the sale deed dated 2-5-1996 on 1-6-1996 have filed the writ petition for quashing of the recovery proceedings initiated against them.

4. Sri Manoj Mishra learned counsel for the petitioners has submitted that in view of Section 29(c) of the Stamp Act, the liability to pay the stamp duty is upon the grantee, namely, the vendee and not that of the vendor and, therefore, the proceedings initiated against the petitioners for recovery of the amount are illegal. He has further submitted that sale deed having been cancelled by a decree of the Civil Court the effect thereof would be as if no sale deed was executed and in such circumstances, the authorities cannot recover any amount as deficiency in stamp duty. Sri Kripa Shankar Singh, learned standing counsel has, on the other hand, submitted that Section 29(c) of the Stamp Act comes into play only between a vendor and vendee and it has no bearing or effect upon the right of the State to recover the balance amount of stamp duty. Sri Singh has submitted that Section 29(c) regulates the liability of the parties inter se and gives a right to the vendor to recover the amount from the vendee but the Collector or the State in their discretion can recover the entire duty from any one or from all the parties. He has further submitted that the payment of entire stamp duty is the condition precedent for registration of a document and the subsequent cancellation of the deed by a decree of the Civil Court has no bearing at all and the parties to the document cannot escape their liability to pay full amount of stamp duty merely on the ground

that the deed has been subsequently cancelled by a decree of the Court.

5. Chapter II of the Stamp Act (as applicable to State of Uttar Pradesh) deals with Stamp Duties and the heading of Part E is 'Duty by whom payable.' Sections 29(c) and 48 reads as under :

'29. Duty by whom payable--In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,--

(c) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease--by the lessee or intended lessee. 48. Recovery of duties and penalties--All duties, penalties and other sums required to be paid under this Act may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.'

6. Section 29(c) clearly lays down that in the case of a conveyance in absence of any agreement to the contrary, the expenses for providing proper stamps shall be borne by the grantee. The language used in the section is very clear and this provision makes it obligatory upon the vendee to pay the stamp duty. This section casts no obligation upon the vendor to pay the stamp duty. Section 48 empowers the Collector to recover the duties, penalties and other sums required to be paid under the Act by distress and sale of the movable property of the person from whom the same are due or by any other process for the time being in force for the recovery of the arrears of land revenue. This provision clearly provides that deficiency in stamp duty can be recovered only from the person from whom it is due and not from every person who may be a party to the deed. For finding out the person from whom the duty is due, one will have to refer to Section 29 of the Act. It, therefore, follows as a corollary that in the case of a sale deed of immovable property the deficiency in the stamp duty can be recovered from the vendee only and not from the vendor. Section 44 contemplates a situation where any duty or penalty has been paid under Sections 35, 37, 40 or 41 by any person in respect of an instrument and by agreement or under the provisions of Section 29 some other person was bound to bear the expenses of providing the proper stamp for such

instrument. In such a case that person is entitled to recover the amount from the person who was bound to bear the expenses of providing the proper stamp for such instrument in accordance with Section 29. This provision again shows that the liability to pay stamp duty has to be ascertained in accordance with Section 29 of the Act and the person who has paid the amount under Sections 35, 37, 40 or 41 of the Act is entitled to recover the amount from the said person. These provisions show in unequivocal terms that in case of a sale deed of immovable property, the liability to pay stamp duty is that of the vendee and not that of the vendor.

7. Sri Kripa Shankar Singh, learned standing counsel, has submitted that Section 17 of the Act makes it obligatory that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. Section 62(b) makes the execution or signing, otherwise than as a witness, an instrument chargeable with duty without the same being duly stamped, an offence. He has thus submitted that if there was no liability on the vendor to pay the stamp duty, the legislature would not have made a provision for making him liable for criminal prosecution if the instrument was deficiently stamped. Shri Singh has further submitted that the Stamp Act is a fiscal enactment whose main object is to prevent evasion of stamp duty and the aforesaid provisions referred by him clearly show that so far as the State and Collector are concerned they can recover the stamp duty from any party to the conveyance including a vendor. We are unable to accept the submission made. Section 17 only enjoins that all instruments chargeable with duty shall be stamped before or at the time of execution. It neither makes reference nor has any bearing on the question as to who is liable to pay the stamp. Section 62 no doubt makes a vendor liable for punishment in case the instrument executed by him has not been duly stamped but this provision cannot lead to an inference that the stamp should also be provided by him. It is noteworthy that the offence under Section 62 is punishable with fine only which may extend to five hundred rupees. The intention behind this section appears to be that the vendor should also take care and should not execute the deed until the same is properly stamped. The effect and import of Section 29 cannot be changed or altered by giving an extended meaning to Section 62 of the Act. We are, therefore, clearly of the opinion that in case of sale deed of immovable property,

the liability to pay the proper stamp is that of the grantee or vendee.

8. The problem may be examined from another angle. A copy of the plaint of O. S. No. 504 of 1998 filed by the petitioners in the Court of Civil Judge (Jr. Div) Havall, Aligarh is on the record as Annexure-2 to the writ petition. The plaintiffs filed the suit on the ground that the defendants played fraud and by misrepresentation and deceit, obtained at sale deed from them. It is specifically pleaded that no amount of sale consideration was paid to the plaintiffs and their consent was obtained by fraud and had they known the true facts they would not have executed the sale deed. It was also pleaded that the sale deed was not a voluntarily and conscious act of the plaintiffs and they were kept totally in dark about the true state of affairs and the sale deed being without only consideration, was void. Instances of sale deed being obtained by playing fraud and without paying, any sale consideration are not unknown. Suits for cancellation of sale deeds on the ground of fraud are often filed especially those relating to agricultural land as people in the rural area are not very educated and conversant with the matters relating to execution and registration of deeds. If the contention of the learned standing counsel is accepted, it would mean that even where a person has not voluntarily executed a sale deed but the same has been obtained by a clever person by deceit and playing fraud, the vendor would be further saddled with liability to pay deficiency in stamp duty in the event the sale deed is not properly stamped. Take the case of a forged sale deed where the deed has not been signed by the real owner but his signatures have been forged. In such a case, the task of the forgery would become still easier as he may pay a very nominal stamp duty on the conveyance deed by which he may have got a very valuable property. If the State's contention is accepted then in such a case also the vendor would be compelled to pay the stamp duty though in reality he had never executed the deed. Section 40(1)(b) of the Act empowers the Collector to levy penalty which may extend to ten times the amount of deficiency in stamp duty and thus the total amount recoverable can be fairly heavy. Even here, the Collector may initiate proceedings for recovery of deficiency in stamp duty and penalty against the vendor and not against the vendee. The Interpretation sought to be placed by the learned standing counsel may cause immense injury in a given case and, therefore, such an interpretation has to be avoided.

9. We may now briefly refer to the cases cited by the learned counsel for the parties. In *M/s. Bhavya Colonizers v. State of U.P.*, 1998 Rev. Decision 402, a Division Bench of this Court has held that under Section 29 of the Stamp Act, the liability to pay the stamp duty on sale deed is on the vendee. In *Collector Ahmadnagar v. Rambhau*. AIR 1930 Bombay 392, a Full Bench while interpreting Section 29 of the Act held that it is the duty of the purchaser to bear the expenses of the proper stamp for a certificate of sale which the Court has to issue to him. In *P. Apparao v. District Magistrate*. : AIR1975 Ori209 , it was held by a Division Bench that the vendee and not the vendor is liable to pay the stamp duty. In *Board of Revenue v. Appalanarsimhulu*. AIR 1957 AP 237, a Full Bench speaking through Subba Rao, C.J. (as his Lordship then was) held that persons liable to pay stamp duty under Section 29 are the persons from whom the same is due within the meaning of Section 48 of the Act. We are in respectable agreement with the view taken in these decisions.

10. Learned standing counsel has referred to *Balkrishna Biharilal v. Board of Revenue* : AIR 1970 MP74 , wherein a Full Bench has held that Section 29 and Section 44, in effect, only regulate the liabilities as between the parties inter se and the Collector can proceed to recover the entire duty and penalty from anyone or from all those parties in his discretion. He has also referred to *Subramaniam Shettiar v. Revenue Divisional Officer* AIR 1956 Madras 45, wherein, it has been held that the person against whom the Collector could proceed under Sections 40 and 48 has to be searched for else where than under Sections 29 and 44 and where several persons jointly execute a document he can proceed under Section 40 against any one of them as they are all jointly or severally liable.

11. With profound respects, we are unable to accept the view taken in the decisions cited by learned standing counsel that Sections 29 and 44 of the Act only regulate the liabilities as between the parties inter se. Section 54 of Transfer of Property Act de-fines a sale and it provides that sale is a transfer of ownership in exchange for a pricepaid or promised or part paid and part promised. The consideration for sale of an immovable property is a matter of agreement between the vendor and vendee. They can also enter into an agreement regarding the expenses of providing the proper stamp duty, There was no requirement of making

a legislation which may deal with expenses for providing proper stamp duty as between a vendor and vendee of immovable property as such a matter can always be settled by mutual agreement. If in a case of a conveyance the stamp duty is paid by the grantor, the deed would not be rendered invalid nor it would violate any provision of law. Under the scheme of the Act, the Collector has been empowered to recover any deficiency in stamp duty. The purpose of enacting Section 29(c) is that he may recover the amount from the grantee and not from the grantor. This also appears to be logical as the vendee who acquires title over the property by the deed of conveyance should be held liable to pay the requisite stamp duty.

12. We are, therefore, clearly of the opinion that in the case of a sale deed of immovable property, the liability to pay the stamp duty is that of the vendee. Therefore, the proceedings initiated against the petitioners, who are the vendors and not vendees of the sale deed dated 2-5-1996 is wholly illegal and has to be set-aside.

13. The second ground urged by the learned counsel has absolutely no Substance. Section 17 provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. Therefore, the liability to pay stamp duty arises before or at the time of the execution of the instrument. The subsequent cancellation of the sale deed by a decree of Court can, therefore, have no bearing. There is no provision in the Act to the effect that in the event of cancellation of the instrument by a decree of Court, the liability to pay stamp duty would cease.

14. For the reasons mentioned above, the writ petition succeeds and is hereby allowed. The proceedings initiated against the petitioners in pursuance of recovery certificate dated 12-3-1999 (Annexure 6 to the writ petition) for realisation of deficiency of stamp duty on the sale deed dated 2-5-1996 as per the order dated 6-3-1998 passed by ADM (F & R) in Case No. 164 of 1995-96 are quashed.

15. It is made clear that it will be open to the authorities to recover the deficiency in stamp duty from any other person in accordance with law.

