Komal Chand and anr. Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-23-1965

Reported in : AIR1966MP20; 1965MPLJ606

Judge : P.V. Dixit, C.J., ;K.L. Pandey and ;N.M. Golvalker, JJ.

Acts : Stamp Act, 1899 - Sections 33, 33(1) and 35; Registration Act - Sections 69; Registration Rules - Rule 4

Appeal No. : Misc. Civil Case No. 208 of 1962

Appellant : Komal Chand and anr.

Respondent : The State of Madhya Pradesh

Advocate for Def. : R.J. Bhave, Govt. Adv.

Advocate for Pet/Ap. : Y.S. Dharmadhikari and ;M.L. Shrivastava, Advs.

Judgement :

Dixit, C.J.

1. This is a reference under Section 57(1) of the Indian Stamp Act, 1899 (hereinafter referred to as the Act) by the Board of Revenue as the Chief Controlling Revenue Authority pursuant to an order made by a Division Bench of this Court on 9th January 1962 in Misc. Petition No. 283 of 1961 directing the Chief Controlling Revenue Authority to state the case of the petitioners for the

opinion of this Court on the following questions :

1. Whether after the registration of a document the registering authority can hold an enquiry regarding the value of the property covered by the deed and call upon the executant to pay the deficit stamp duly?

2. Whether the stamp duty payable on the deed executed by the petitioner Komalchand is as for a partition deed or for a settlement deed?

2. The material facts are that after the registration on 31st October 1956 of a deed described as 'Takseemnama' (deed of partition) executed by the petitioner Komalchand, the Sub-Registrar, Jabalpur, sent the document to the Collector, Jabalpur, purporting to act under paragraph 232 of the Registration Manual reporting that the deed was insufficiently stamped The Sub-Divisional Officer, Jabalpur, before whom the report of the Sub-Registrar came up for disposal, accepting the report, held that the value of the property to which the deed related was Rs. 2,93,000/- and not Rs. 30,000/ as stated in the deed. Accordingly he made an order directing the petitioner to deposit Rs. 2,859/- being the deficit stamp duty. The Sub-Divisional Officer treated the deed as one of sale The petitioners then made an application under Section 56 of she Stamp Act before the Board of Revenue which is the Chief Controlling Revenue Authority. Thatauthority took the view that the document was a settlement deed and chargeable to stamp duty under Article, 58 of Schedule I-A to the Stamp Act; and that the executant had not stated in the deed the true value of the property which was Rs. 2,93,000/-.

3. The answer to the first question turns on the provisions of Section 33(1) of the Act which runs as follows:

'Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, stall, if it appears to him that such instrument is not duly stamped, impound the same.'

It will be observed that under this provision the power to impound an instrument can be exercised only by a person having by law or consent of parties authority to receive evidence and in every person in charge of a public office, excepting a police officer, and only when the instrument is produced before them in the performance of their functions. The authorities mentioned in Section 33(1) have no power to impound an instrument if it is produced before them, or comes up before them, or is with them otherwise than in the performance of their functions. The expression 'any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions' necessarily implies that the power to impound under Section 33(1) can be exercised only so long as the function is not performed or completed and not afterwards.

The Sub-Registrar appointed under Section 7 of the Indian Registration Act, 1908, for registration of documents is no doubt a person in charge of a public office who has to perform the duty and function of registering a document under the Registration Act, and when a document is presented before him for registration it comes up before him in the performance of his functions.

Section 35 of the Stamp Act, inter alia, says that no instrument chargeable with duty shall be registered by any public officer unless such instrument is duly stamped This provision thus casts a duty on the registering officer to examine whether an instrument presented for registration is duly stamped. If, as Section 35 says, an instrument chargeable with duty shall not be registered unless such instrument is duly stamped, then it follows that the registering officer must perform the duty of seeing whether an instrument presented for registration is or is not duly stamped before admitting it to registration and not afterwards If he finds that the document is not duly stamped, then he must impound it under Section 33 of the Act. Neither in the Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument already registered was or was not duly stamped and to impound it. As soon as the registering officer registers a document presented to himfor registration, the function in the performance of which the document was produced before him is over and thereafter becomes functus officio having no power under Section 33 to impound the instrument.

4. The matter is really concluded by the decision of the Supreme Court in Govt. of Uttar Pradesh v. Mohammad Amir Ahmad Khan, AIR 1961 SC 787. That was a case where the question arose whether the Collector has any power to impound an instrument sent to him for adjudication under Section 31 of the Stamp Act. The Supreme Court held that under that Section the Collector had no such power, as the provision gave him the power only to give his opinion as regards the duty with which in his judgment the instrument was chargeable and when that function was performed by the Collector he became functus officio.

It was observed by the Supreme Court that the power to impound only exists when an instrument is produced before judicial officers or other officers performing judicial functions as evidence of any fact to be proved, or before other public officers who have to perform any function in regard to those instruments as, for example, registration. The Supreme Court also approved the decisions in Collector. Ahmednagar v. Rambhau, AIR 1930 Bom 392 (FB); Paiku v. Gaya, ILR (1948) Nag 950 (AIR 1949 Nag 214) and Panakala Rao v. Kumaraswami, AIR 1937 Mad 763 where the doctrine of functus officio was applied and it was held that the Court had no power to recall and impound a certificate of sale after executing it and delivering it to the purchaser, or to reopen a case and impound documents proved after signing the decree, or to impound an instrument admitted in evidence after delivery of judgment. Here, when the Sub-Registrar had registered the document in question on 31st October 1956 he became functus officio on that date and thereafter he had no power to impound the same

In the present case, the Sub-Registrar purported to act under paragraph 232 of the Registration Manual when he made a report to the Collector that the 'Takseemnama' was not duly stamped But on reading paragraphs 231 and 232 it is clear that they do not say that after a document is admitted to registration the registering officer can make a report to the Collector that it was not sufficiently stamped. On the other hand, paragraph 231 expressly lays down a direction that before taking any further action that is to say, in the matter of registration, the registering officer must see that the document is duly stamped The words 'after registering the document' occurring in paragraph 232 obviously refer to the entry of the document in the Register maintained of documents presented for registration.

They do not mean that the registering officer can make a report about insufficiency of stamp after the document has been admitted to registration.

5. For these reasons, our answer to the first question is that after registration of the'Takseemnama' on 31st October 1956 the registering authority had no power to hold an enquiry regarding the value of the property covered by the deed and call upon the executant to pay the deficit stamp duty. This answer to the first question renders it unnecessary for us to answer the second question.

6. In the circumstances of the case, we leave the parties to bear their own costs of this reference.

Golvalker, J.

7. I gave my most anxious consideration to the opinion of my Lord the Chief Justice with which Pandey J., my other respected colleague on the Bench, has agreed. But I regret my inability to concur with the same, and hence 1 am expressing respectfully my differing opinion.

8. It is held by my learned colleagues that the registering authority has no powers to examine whether the instrument in question has been duly stamped or not after having registered it. This is being held on the simple ground that after registration of that instrument it becomes functus officio. In support of this embargo views expressed in the following cases are being followed (a) AIR 1961 SC 787: (b) AIR 1930 Bom 392; (c) AIR 1937 Mad 763; (d) ILR (1948) Nag 950: (AIR 1949 Nag 214).

9. In my opinion, which I most respectfully venture to express, there was, strictly speaking, no question of any authority being functus officio in the case before the Supreme Court. As I have been able to understand that decision of the Supreme Court, what their Lordships of the Supreme Court have decided is that there was no occasion at all for the Collector performing his functions under Section 31 of the Stamp Act to impound the instrument and proceed to recover penalty and deficiency in the stamp duty.

Further, according to their Lordships, the functions contemplated by and within the purview of Section 33 of the Stamp Act which alone makes provisions for impounding of the instrument not duly stamped are distinct and separate from that under Section 31 of the Stamp Act which is complete by itself and ends with the opinion one way or the other given by the Collector. If the functions under Section 33 of the Stamp Act were also to cover those under Section 31 of the said Act, the position, according to their Lordships, would be 'extra-ordinary' in the sense of never being intended. This is how they have expressed the position to be 'extra-ordinary:'

'Chapter IV of the Act which deals with instruments not duly stamped and which contains Sections 33 to 48, provides for impounding of documents, how the impounded documents are to be dealt with. Collector's powers to stamp instruments impounded and how the duties and penalties are to be recovered. It would be an extra-ordinary position if a person seeking the advice of the Collector and not wanting to rely upon an instrument as evidence of any fact to be proved nor wanting to do any further act in regard to the instrument so as to effectuate its operation should also be liable to the penalties which unstamped instruments used as above might involve. The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under Section 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under Section 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of Section 33 have no application. The provisions of that Section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done.'

The views expressed by the Supreme Court should properly be read along with the views expressed by the High Court of Allahabad which were being upheld in appeal therefrom in Mohammad Amir Khan v. Deputy Commr., (S) AIR 1956 All 453 (FB). It will then be very clear why there was no question of any authority being functus officio, although that expression has been used by the Allahabad High Court also.

10. So far as the other cases relied upon are concerned, a perusal of the same would disclose that the doctrine of functus officio did arise and was rightly applied. There the authority concerned having fully and finally performed its function including that with respect to the instrument in question, could not retrace its steps and start over again by impounding the document and proceeding to recover the penalty and stamp duty. In this connection Section 36 of the Stamp Act may be seen. In the instant case also if the registering authority had parted with the instrument it could not have been, entitled to call it back and impound it or deal with it for that purpose What the expression 'produced or comes in the performance of his functions' means has been pointed out in In re Narayandas, ILR (1943) Nag 520: (AIR 1943 Nag 97). So, though in the case before the Supreme Court views expressed in the aforesaid cases relied upon have been upheld, the acceptance has to be understood in the light of the circumstances involved in those cases.

11. The expression 'functus officio' means having fulfilled the function, having discharged the duty: having discharged the office, or accomplished the purpose and therefore of no further force or authority. If this meaning is kept in view it will be apparent that in the instant case the registering authority was performing no function or duty as such with respect to the instrument in question from that point of view of its extent or liability for the stamp duty thereon. Its sole function was to receive the same if duly presented as required by the Registration Act and to proceed to register the same in the manner provided therein. True it is, that after presentation of the instrument before it, it could certainly examine the same to see whether it is duly stamped or not, and if not, defer its registration till after it is impounded and either validated in that respect or certified as it is to be duly stamped by the authority concerned However, this examination of the instrument would not have been a part of its statutory function under the Registration Act. Insufficiency of stamp duty paid on an instrument is no bar provided under the

Registration Act.

It is also well settled that an instrument not duly stamped can be validly registered under the Registration Act and the infirmity in the matter of stamp duty or other infirmity not ousting the jurisdiction of the registering authority does not affect its registration. This is because the said infirmities do not affect the jurisdiction of the registering authority to register the instrument See: Ma Pwa May v. S.R.M.M.A. Chettiar Firm AIR 1929 PC 279; Miss Dottie Karan v. Lachmi Prasad Sinha, AIR 1931 PC 52: Satindra Nath Choudhury v. Jatindra Nath Choudhury, AIR 1935 PC 165 and Seth Suganmal v. Mt. Umraobi, 1938 Nag LJ 403 : (AIR 1938 Nag 550).

12. So if the invalidity or insufficiency in the matter of stamp duty on any instrument had no bearing one way or the other on the function of the registering authority, it cannot be correctly said that it became functus officio so soon as it registered the instrument. For, it was no part of its function as registering authority under the Registration Act to examine the instrument from the point of its liability under the Stamp Act. 1 am aware that under Rule 4 of the Rules framed under Section 69 of the Registration Act it is provided that the registering authority shall examine the instrument with a view to see if it is duly stamped or not But the very fact, that the Act itself lays down no such provision or debars the registering authority from registering the instrument not duly stamped, rather supports my view that examination of the instrument to see whether it is duly stamped or not, even though expected under the rules to be done before proceeding to register the instrument, is not by way of any function or part of function which the registering authority as such performs under the Registration Act. Since the infirmity in the matter of stamp duty paid on the instrument does not affect the jurisdiction as such of the registering authority, the examination of the instrument as aforesaid would not also be a step in aid of its registration or in due performance of the function of registration. In this view there can be no question of the registeringauthority being functus officio after the registration of the instrument by it.

13. Therefore in the view I would hold that the registering authority had power to report to the Collector that the instrument in question was not duly stamped and sent that instrument to the Collector in order that proceedings, if need be, be taken

to recover the penalty and deficient stamp duty. The question that has been referred to this Court on this matter is not, in my opinion, properly framed. The real question is whether the registering authority, in the instant case, can, after registration of the instrument, impound the same under Section 33 of the Stamp Act and send it to the Collector under Section 38 of that Act for further proceedings under Section 40 thereof.

14. Since the view of the majority constituting this Bench is to prevail 1 need not answer the second question.

BY THE COURT:

15. In view of the majority opinion, our answer to the first question is that after the registration of the 'Takseemnama' on 31st October 1956 the registering authority had no power to hold an enquiry regarding the value of the property covered by the deed and call upon the executant to pay the deficit stamp duty. This answer to the first question renders it unnecessary for us to answer the second question.

16. In the circumstances of the case, weleave the parties to bear their own costs ofthis reference.