

Tejmal Vs. Rajesh

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Court : Madhya Pradesh

Decided On : Feb-01-2006

Reported in : AIR2006MP131; 2006(2)MPHT149

Judge : N.K. Mody, J.

Acts : Indian Stamp Act, 1983 - Sections 35 - Schedule - Article 23; Stamp Duty Act - Sections 36 and 61; Bombay Stamp Act

Appeal No. : Writ Petition No. 1398/2004

Appellant : Tejmal

Respondent : Rajesh

Advocate for Def. : S.D. Bohara, Adv.

Advocate for Pet/Ap. : B.I. Mehta, Adv.

Judgement :

ORDER

N.K. Mody, J.

1. Being aggrieved by the Order dated 1-11-2004 passed by IInd ADJ, Indore, in Civil Suit No. 1-A/2003 whereby the objection of the petitioner that the document in question is not properly stamped was rejected, the present petition has been filed.

2. Short facts of the case are that the respondent filed a suit for specific performance against the petitioner alleging that on 15-12-1994 respondent entered into an agreement for purchasing the suit property from the petitioner for a sum of Rs. 1,55,000/- of which consideration has already been paid by the respondent. In the suit it was prayed that a decree for specific performance of contract be passed in favour of respondent. The suit was contested by the petitioner on various grounds including the ground that the document of which petitioner is placing reliance is not admissible in evidence. On the basis of the pleadings of the parties learned Court below framed the issues and fixed the case for recording the evidence. In evidence the objection was taken by the petitioner on account of inadmissibility of the document, which has been turned down by the impugned order.

3. Learned Counsel for the petitioner submits that undisputedly the documents in question is on stamp paper of Rs. 10/-. From perusal of the record it is evident that entire consideration has been paid and the possession has also been delivered to the respondent. As the respondent has not prayed the relief of possession in the suit. On the contrary it has been alleged that the respondent is in possession of the suit property.

4. Learned Counsel submits that in view of the explanation of Article 23 of Schedule 1-A of Indian Stamp Act the respondent is liable to pay the stamp duty at the rate of seven and half per cent of such market value. For this contention reliance is placed on a decision in the matter of Veena Hasmukh Jain v.State of Maharashtra and Ors. reported in : [1999]1SCR302 , wherein the Hon'ble Apex Court has considered the impact of Explanation I to Article 23 of Schedule I of Indian Stamp Act, 1983, (which shall be referred herein after as 'Stamp Act'). Explanation 1 of Article 23 of Stamp Act reads as under :-

Explanation 1: For the purposes of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution, or after execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

5. In this case the Hon'ble Apex Court has observed : 'That the agreement entered into clearly provides for sale of an immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in a question clearly falls within the scope of Explanation 1. It is open to the legislature to levy duty on different kinds of agreements at different rates. If the legislature thought that it would be appropriate to collect duty at the stage of the agreement itself if it fulfills certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later (sic : agreement) stage itself though right, title and interest may not have passed as such. Still, reason of the fact that under the terms of the agreement, there is an intention of sale and possession of the property has also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that is exactly what has been done in the present case. Therefore, it can not be said that levy of duty is not upon the instrument but on the transaction'.

6. Further reliance was placed on a decision in the matter of Yogendra Verma v. Dharmendhra and Ors. reported in 2005(1) MPLJ 118, wherein in a suit for specific performance of a registered agreement of sale where property in question occupied by tenants and right to recover rent and dealing with tenants was transferred to the purchaser from the date of the agreement it was held that it shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

7. Further reliance is also placed on a decision of this Court in the matter of Sml. Vijyawanti and Anr. v. Jiyanalal and Ors. reported in 2000(1) MPJR 177, in which the part payment of sale price was made and possession also obtained it was held that such document is required to be stamped as a conveyance. It was observed that the document on its bare reading shows that possession of the property has been given to the purchaser, because of the explanation appended to Article 23 the document would be deemed to be conveyance and stamp duty thereon would

be leviable as is leviable on a conveyance.

8. Reliance is also placed on a decision of this Court in the matter of Anokhilal v. Sadashiv and Ors. passed on 31-8-2004, in W.P. No. 739/2004, wherein this Court has taken the view that since the possession of the land is with the vendee (plaintiff) and hence, it attracts the rigour of explanation appended to Article 23 of the Schedule 1-A of stamp Act as amended by the State of M.P. being in pan materia with the provisions of Bombay Stamp Act.

9. Shri B.D. Bohra, learned Counsel for respondent submits that the document was already admitted in evidence in the proceedings which was pending between the respondent and the petitioner. It is submitted that since once the document is already admitted in evidence, therefore, it can not be challenged at this stage. For this reliance is placed on Section 36 of Stamp Duty Act, which reads as under :-

36. Admission of instrument when not to be questioned.- Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61 be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

10. Learned Counsel for the respondent placed reliance on a decision, in the matter of Babulal v. Mohammad Sharif and Ors. reported in 1996 MPLJ 461, wherein this Court has held that document admitted by Trial Court by passing order that it stands admitted in evidence, the admission of said document can not be challenged in second appeal.

11. Further reliance was placed on a case of Shyam Narain Vishwakarma v. Ajay Patel reported in 1998(1) MPWN, Note 93, wherein this Court has held that it is well settled that once a document is admitted in evidence rightly or wrongly, whether with or without objection from any party it is not permissible to the Court, whether it is a Court of Appeal, Revision or Trial Court, to reject it on the ground that it has not been duly stamped.

12. Learned Counsel submits that since document has already admitted in evidence, therefore, at the subsequent stage it can not be rejected.

13. From perusal of the explanation of Article 23 Schedule 1-A of Stamp Act and also from the law laid down by the Hon'ble Apex Court in the matter of Veena Hasmukh (supra), it is evident that petitioner is in possession of property and not claiming possession of the property, therefore, stamp duty is payable as per Article 23 of the Stamp Act. So far as the second objection of the respondent that the document has already admitted in evidence Shri B.I. Mehta, learned Counsel for the petitioner submits that the document in question was never admitted in evidence on earlier occasion. It is submitted that the document in question was admitted in evidence in some other case in which petitioner was not party. Facing to this Shri S.D. Bohra, learned Counsel for respondent submits that in that suit mother of the petitioner was party.

14. Facts remains that in the present suit the document was never admitted in evidence on earlier occasion. In the suit in which the document was admitted in evidence, petitioner was not the party. Therefore, the rider of Section 35 of the Stamp Act is not coming in the way of the petitioner. So far as the objection made by the Counsel for respondent is concern, since the document has not been admitted in evidence in this very suit, therefore the contention of the respondent can not be accepted, because as per Section 36 of the Act, where an instrument been admitted in evidence such admission shall not be called in question at any stage of the same suit except as provided in Section 61 be called in question at any stage of the same suit.

15. In view of this the petition is allowed. The impugned order is set aside. The learned Court below is directed to proceed with the case after making of payment of Stamp Duty as per Article 23 of the Act by the respondent.

16. With the aforesaid observations the petition stands disposed of.