Bhanwarlal Vs. Tejmal and ors.

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Court : Rajasthan

Decided On : Apr-03-1989

Reported in : AIR1990Raj1; 1989(2)WLN267; 1(1989)WLN(Rev)409

Judge : Milap Chandra, J.

Acts : Stamp Act, 1899 - Sections 29 and 38; Rajasthan Stamp Rules, 1955 - Rule 33

Appeal No. : Civil Revn. Petn. No. 69 of 1987

Appellant : Bhanwarlal

Respondent : Tejmal and ors.

Advocate for Def. : H.C. Jain, Adv.

Advocate for Pet/Ap. : D.S. Shishodia, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Milap Chandra, J.

1. This revision petition has been filed against the order of the Civil Judge, Barmer dt. Dec. 1, 1986 by which he was held that the sale deed dated April 14, 1980

executed by the petitioner Bhanwarlal in favour of the non-petitioner Babulal on Stamp papers of total value of Rs. 394/- is not duly stamped and has impounded it u/s. 38, Stamp Act. The facts of the case giving rise to this revision petitions may be summarised thus.

2. The plaintiff-non-petitioner No. 1 has filed Suit No. 17/82 for declaration and possession in the Court of the Civil Judge, Banner against the petitioner Bhanwarlal and other non-petitioners. The said sale deed was tendered in evidence during the statement of defendant-petitioner Bhanwarlal D.W. 1. Application Paper No. B54/ 1 was moved, by the plaintiff non-petitioner Tejmal that the stamps of the sale deed have been purchased on different dates, they bear different numbers, they have not been used within six months of their purchase and as such the sale deed is not duly stamped. It has been prayed that the sale deed be impounded and requisite stamp duty and penalty be realised before taking it in evidence. After hearing the learned counsel for the parties, the learned trial court passed the impugned order.

3. It has been contended by the learned counsel for the defendant petitioner that the said sale deed cannot be treated as not duly stamped and the learned trial Court has seriously erred in holding that the stamps of Rs. 384/- were purchased on different dates. He further contended that the stamps of requisite value are affixed and there is no breach of any provisions of the Rajasthan Stamp Rules, 1955 (hereinafter to be called as 'the Rules'). He relied upon (1888) ILR 11 Mad 377 and Queen Empress v. Trailakys Nath Baral, (1891) ILR 18 Cal 39.

4. In reply, it has been contended by the learned counsel for the plaintiff non-petitioner that the revision petition is not maintainable as the petitioner has no locus standi, he does not suffer any irreparable injury if the impugned order is allowed to stand and thestamp papers were purchased on differentdates. He also contended that the stamps usedare not in accordance with the provisions ofthe Rules. He lastly contended that certificateas requiared under Rule 33 of the Rules is notappended on any stamp paper on which thesaid sale deed is executed and as such itcannot be said that the sale deed is dulystamped within the meaning of Section 2(11),Stamp Act.

5. During the statement of Bhanwarlal DW 1, sale deed dt. 14-4-80 executed by the witness in favour of Babulal non-petitioner was tendered in evidence. On this, application, paper No. B 54/1, was moved by the plaintiff for impounding it and taking it in evidence after realising the requisite stamp duty and penalty. This sale deed has not been entered into general index of the file' as required under Rule 132(a), General Rules (Civil), 1952 despite the fact that it has been taken on record. Its photostat copy is on- the file on the miscellaneous case No. 3/82 and bears, papers No. C-10/19-24. The original sale deed shows that it has been executed on stamp papers of Rs. 200, 100, 60, 20, 7 and 7 of total Rs. 394/-. It is not in dispute that the stamp duty of Rs. 394/- was only required for this sale deed. The objection is that the said six stamp papers of total value of Rs. 394/-should not have been used but only one stamp paper of the denomination of Rs. 394/-should have been used and if stamp paper of Rs. 394/- was not available with the stamp vendor, a certificate should have been appended on the stamp papers as required under Rule 33 of the Rules. This Rule runs as under: --

'33. Procedure when stamps of the required denomination are not in stock: --

(1) should no sheet of the value required be in stock, the vendor shall supply the applicant with the smallest number of sheets which he can furnish so as to make up the required value. In the case of a licensed vendor, the applicant shall not be supplied with sheets to an aggregate value exceeding the limit authorised under Rule 24. If the impressed stamps required exceed this value a licensed vendor shall refer the applicant to an ex-officiovendor and shall not attempt to make up the stamp duty exceeding the said limit by the issue of two or more stamps of lower denominations.

(2) When a vendor is unable to furnish a single stamp of the value required by the purchaser he shall endorse on one of the stamps sold by him a certificate to that effect in the form below: --

FORM OF CERTIFICATE

Certified that a single stamp of the value of Rs........... required for this document is notavailable but in lieu thereof I have furnished a stamp of the next lower value available and made up the deficiency by the use of one or more adhesive/ impressed stamps of the next lower value available required to make up the exact amount of the duty'.

The learned counsel for the piaintiff-non-petitioners could not produce any material to show that the stamp paper of denomination of Rs. 394 /- is supplied by the Government. It is clear from the above quoted Sub-Rule (2) that the requisite certificate of the stamp vendor on one of the stamps sold is required if a single stamp of required denomination is not available. When the stamp of denomination of Rs. 394/- is not supplied by the Government for sale, there was no question of furnishing such a certificate.

6. There is also no force in the contention of the learned counsel for the plaintiff non-petitioner that the stamps of the said sale deed were purchased on different dates. He could not point out any Rule under which it was necessary for the vendor-petitioner to purchase all the stamp papers on one day and to utilise them within six months. The said sale deed cannot be held to be not duly stamped simply on the ground that it is not executed on minimum number of stamp papers and in other words, it is hot executed on stamp paper of highest denomination. In similar circumstances, the documents were held admissible in (1891) ILR 18 Cal 39 and (1888) ILR 11 Mad 377. It has been observed in Hindustan Steel Ltd. v. Dilip Construction Co., AIR 1969 SC 1238 at page 1240 para 5, as follows: --

'5. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clear. Section 35 of the Stamp Act operates as bar to an unstamped instrument being admitted in evidence or being acted upon; Section 40 provides the procedure for instruments being impounded, Sub-Section (1) of Section 42 provides for certifying that an instrument is duly stamped, and Sub-Section (2) of Section 42 enacts the consequences resulting from such certificate.'

7. There is no substance in the contention of the learned counsel for the plaintiff non-petitioner that the petitioner Bhanwarlal has no locus standi. Admittedly, the impugned sale deed was executed by him. It was his duty under Section 29, Stamp Act to bear the expenses of providing proper stamps. If the impugned order is allowed to stand, he will have to pay the amounts of the requisite stamps duty and penalty. Admittedly, no contract to the contrary has been set up.

8. Under these facts and circumstances, it is difficult to endorse the views of the Civil Judge, Banner, He has acted with material irregularity in the exercise of his jurisdiction. The order deserves to be set aside.

9. Consequently, the revision petition is allowed with costs. The order of the Civil Judge, Banner dt. 1-12-1986 is set aside. It is held that the sale deed is duly stamped.