

indrawati Tiwari Vs. Sheo Alias Sew Saran Sharma and ors.

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Court : Kolkata

Decided On : Jul-25-2007

Reported in : 2008(2)CHN460

Judge : Sailendra Prasad Talukdar, J.

Acts : Stamp Act - Sections 33 and 38(1); ;[Constitution of India](#) - Article 227

Appeal No. : C.O. No. 1156 of 2007

Appellant : indrawati Tiwari

Respondent : Sheo Alias Sew Saran Sharma and ors.

Advocate for Def. : Purnasish Gupta, Adv. for opposite party No. 2 and ;Bidisha Basu Roy Chowdhury, Adv. for opposite party No. 1

Advocate for Pet/Ap. : Mahindra Prasad Gupta, Adv.

Judgement :

Sailendra Prasad Talukdar, J.

1. Order No. 44 dated 20th March, 2007 passed by the learned 2nd Court of Civil Judge (Senior Division), Howrah in Title Suit No. 6 of 2004 is under challenge in this application under Article 227 of the Constitution.

2. Grievances of the petitioner, as ventilated in the instant application, may briefly be stated as follows
3. Petitioner, as plaintiff, filed the suit being Title Suit No. 6 of 2004 before the learned 2nd Court of Civil Judge (Senior Division), Howrah against the opposite parties/defendants for specific performance of contract on cancellation of document as well as for permanent injunction.
4. The petitioner, as plaintiff, claimed that the suit property is a three storied building having more or less 24 rooms. It is let out to different tenants including the husband of the plaintiff since long by defendant No. 1. During such stay of the plaintiff, there was a talk of transfer of the property and accordingly an agreement for sale was executed on 20th August, 2003 between the plaintiff and the defendant No. 1. It is mutually agreed upon that the suit property would be sold out to the plaintiff by defendant No. 1 at a consideration money of Rs. 8 lacs only and accordingly, a sum of Rs. 25,001/- was paid as earnest money.
5. Said amount a sum of Rs. 24,001/- was paid by bearer cheque No. 125341 dated 28th August, 2003 drawn on UCO Bank, Liluah Branch and the remaining amount of Rs. 1,000/- was paid in cash. The said cheque was duly encashed by defendant No. 1 upon execution of the agreement for sale dated 28.8.2003 by putting signature on each of the page of the said deed of agreement. It was further agreed that such transaction would be completed within a period of six months or to such extended period as agreed to by and between the parties. The said period as stipulated has not expired as yet. The plaintiff after a couple of months requested defendant No. 1 to accept the part of the balance consideration money. Such requests were repeated on a number of occasions. Defendant No. 1 was further requested to fix up a date of execution of the deed of sale but that was delayed time and again on flimsy grounds. The said defendant No. 1 ultimately demanded exorbitant amount of Rs. 10 lacs and thus avoided to accept further money in terms of the earlier agreement.
6. Plaintiff is always ready and willing to purchase the property and discharge her obligations as per terms of the said agreement for sale on payment of balance consideration money. On 24.12.2003, the plaintiff through her Advocate Mr. L.

Tripathy issued a letter expressing her readiness and willingness to purchase the property. A public notice was also issued in the newspaper Sanmarg on 28.12.2003. On behalf of the defendant, there was denial of any contract for purchase. Subsequently, on enquiry the plaintiff could learn that defendant No. 1 had transferred the suit property in favour of the defendant No. 2 by a deed of sale dated 2.1.2004, thereby violating the terms of the agreement for sale dated 20th August, 2003. The registration of such deed of sale dated 2.1.2004 was not complete. A legal notice dated 24.12.2003 through learned Advocate was thereafter sent with a copy of the same, addressed to the District Registrar, Howrah. In spite of the receipt of the said notice, registration of the same was made on 2nd January, 2004.

7. In such circumstances, the plaintiff being left with no choice filed the said suit.

8. The opposite parties, as defendants, are contesting the said suit by filing the written statement, thereby denying all the material allegations made in the plaint. On 9th January, 2007 the O.P. No. 2 filed an application praying inter alia, to declare the impugned unregistered deed of agreement for sale dated 20th August, 2003 filed by the plaintiff as an impoundable document for non-payment of required stamp duty. Direction was also sought for remitting the same on payment of deficit part of the stamp-duty at the rate of 10% with penalty amounting to 10 times of the deficit amount before the learned Court within a short period in view of the order passed by the Hon'ble High Court in connection with C.O. No. 3695 of 2005.

9. The petitioner filed a written objection and prayed for rejection of the said application, the said application dated 9th January, 2007 filed by the O.P. No. 2 was heard on 20th March, 2007 by the learned Trial Court. By an order dated 20th March, 2007 the learned Court kept the same in abeyance with a direction for consideration of same at the time of trial. The suit was thereafter fixed for peremptory hearing on 27th March, 2007. On the said date, the petitioner filed an application praying, inter alia, for impounding the agreement for sale.

10. It was claimed that the agreement was executed on a stamp paper of Rs. 10/-. Since the objection had already been raised on the ground of insufficiency of

stamp-duty, consideration of the prayer for impounding of the said document was sought for, as the petitioner/plaintiff was ready to pay the deficit stamp-duty as well as the penalty. No written objection was filed as against the said application.

11. Both the applications which in effect related to the same controversy were taken into consideration by learned Court and by the impugned order dated 27th March, 2007, the learned Court disposed of the applications with a direction upon the Sheristadar of the Court to estimate deficit stamp duty upon the document dated 20th August, 2003. Thereafter, by subsequent order No. 47 dated 27th March, 2007, on the basis of the reports submitted by the Sheristadar, the learned Trial Court directed the plaintiff/petitioner to deposit the deficit stamp duty amounting to Rs. 7,99,990/-.

12. Being aggrieved by such direction, the petitioner/plaintiff approached this Court with the said application under Article 227 of the Constitution.

13. It was submitted that the learned Trial Court was not at all justified in referring the matter to the Sheristadar of the Court for the purpose of calculating the deficit stamp-duty, if any and thereafter, to act on the basis of such report, it was also submitted that by such a direction for payment of an amount of about Rs. 8 lacs the learned Court inflicted injustice on the petitioner/plaintiff. Besides, determination of the actual stamp-duty depends on the nature of a document as well as its contents. Even the parties before a Court have a right to have their say in that, regard. The learned Court did not give any such opportunity and proceeded in an arbitrary manner even without any proper application of its own mind.

14. This according to the learned Counsel for the petitioner was done in defiance of the established procedure of law and though the order impugned suffers from jurisdictional error thereby requiring interference by this Court, it was further mentioned on behalf of the petitioner that mere fact that the document is not properly stamped does not necessarily suggest that it is to be ignored altogether. It may very well be used and utilised for collateral purpose.

15. Before proceeding, further it is perhaps necessary to mention that a document in order to get its proper legal recognition is required to be properly stamped according to the provisions of the Stamp Act. Failure in doing so naturally invites controversy and since, payment of stamp duty being a matter which is not necessarily confined to the litigating parties, the Court is under obligation to take care of the same. Thus, if in a situation, there is no objection raised by either party regarding the stamp-duty paid in respect of a particular document, it does not necessarily mean that a Court can afford to remain a passive on looker. It is the duty on the part of the learned Court to take care of the same and if the said document is found to have insufficient stamp-duty, the Court is required to take appropriate legal step and may even be under painful compulsion to impound the said document. For the purpose of realization of the penalty and the deficit stamp-duty; the Court may have to refer the matter to the Collector for necessary legal action.

16. In the present case, the learned Court was not at all justified in directing the Sheristadar to assess the amount of the stamp and penalty required to be paid. Such a task, which requires effective interpretation of the provision of the statute and that too, of highly technical nature, ought not to have been thrust upon the Sheristadar, who functions as the Chief Ministerial Officer.

17. Since no serious objection has been raised in that regard, it is now for the Court to ascertain whether the learned Court was justified in directing payment of the said amount of Rs. 7,99,990/-.

18. If such payment is made, this brings the controversy to an end. If not, learned Court is under statutory obligation to refer the concerned deed to the Collector for necessary follow up action, and it is not permissible for the learned Court to admit such a document/deed in evidence and place reliance upon it.

19. True, the Collector on receipt of such deed/document is not under any compulsion to impose the maximum amount of penalty. He has the discretion in that regard and such a discretion is to be exercised properly and upon consideration of the facts and circumstances of each particular case.

20. If the concerned party in compliance with the direction of the learned Court pays/deposits the amount of Rs. 7,99,990/-, the said document be marked as exhibit. The Court can thereafter proceed accordingly and place reliance upon it. An authentic copy of the same may, however, be sent to the Collector.

21. In the case of *Chilakuri Gangulappa v. Revenue Divisional Officer, Madanpalle and Anr.* reported in : [2001]2SCR419 , it was held that the Court, when faced with such instrument, has power under Section 38(1) read with Section 33 to admit the document in evidence upon payment of duty with penalty and to send an authenticated copy to the Collector along with the amount realised.

22. It will perhaps be needless to repeat that document is required to be impounded and sent to the Collector only if the party concerned refuses to pay.

23. In the case of *Peteti Subba Rao v. Anumala Narendra* reported in : (2002)10SCC427 , the Hon'ble Apex Court clarified that Collector is not obliged to impose the maximum duty; he must take into account various circumstances, including the financial status of the person concerned.

24. In a Single Bench decision of this Court in the case of *Biswajit Chakraborty v. Mira Sen Ray* reported in 2002 (2) CLJ 449, it was observed that when a document is tendered in evidence by a party and an objection is raised by the other side that the document is insufficiently stamped, at that stage the Court assumes the jurisdiction to impound the document as it was obligatory to apply the mind of the Court in accordance with the relevant provisions of the said Act. In another decision in the case of *Om Prakash Gupta and Ors. v. Saraswati Shaw and Ors.* reported in 2002(1) CLJ 452, the learned Single Judge of this Court observed that it is for the Court to assess the duty and penalty when such document deserving to be impounded is produced. It is for the party to elect whether accept assessment and pay the amount as calculated by the learned Court. Alternatively the party may pray for sending the document to the Collector. When such a document as sent to the Collector, after being impounded, it cannot be admitted in evidence but this will certainly not justify staying further proceeding with the suit.

25. In fact, this Court would like to go step further by mentioning emphatically that whether one of the parties raises objection or not, it is the duty against upon the learned Court to consider whether a document/deed is properly stamped or not. Such revenue matter involves the interest of the State. The Court of Law on the plea that no objection has been raised as regards the sufficiency of the stamp duty paid cannot afford to remain a passive onlooker.

26. Be that as it may, it appears from the impugned order that learned Court initially directed the Sheristadar to calculate the deficit stamp-duty in respect of the document dated 20.8.2003 and upon receipt of a report in this regard, directed the plaintiff to deposit the deficit stamp-duty amounting to Rs. 7,99,990/-. While so directing, learned Court further ordered that the agreement would thereafter be considered.

27. In view of the discussion made earlier, there does not appear to be any such manifest error in the impugned order except what has been indicated earlier. Argument was rather advanced by learned Counsel for the parties in regard of the future course of action. Since the learned Court by the impugned order directed the plaintiff to deposit an amount of Rs. 7,99,990/- which the plaintiff is under legal obligation to comply, there is no scope for any manner of interference. But if the said amount is not paid, the document in controversy is thereafter required to be dealt with in the manner as discussed earlier.

The present application being CO. No. 1156 of 2007 stands accordingly disposed of with the aforesaid observations.

No order as to costs.

28. Xerox certified copy be supplied to the parties as expeditiously as possible after due compliance with the legal formalities.