

Himalaya House Co. Ltd., Bombay

Vs

The Chief Controlling Revenue Authority

Civil Appeals Nos. 660 of 1967 and 58 of 1972

(K. S. Hegde, P. Jagmohan Reddy JJ)

01.02.1972

JUDGMENT

HEGDE, J. -

1. Both these appeals, the former by certificate and the later by special leave arise from the decision of the High Court of Bombay in a reference under Section 54 of the Bombay Stamp Act.

2. When Civil Appeal No. 660 of 1967, came up for hearing on a previous occasion, objection was raised as to the maintainability of the appeal on the ground that the High Court was not competent to grant a certificate in the case under Article 133 of the Constitution. At that stage, the appellant sought an adjournment of the appeal so as to enable it to move this Court or special leave against the impugned decision. That prayer was allowed by this Court. Thereafter the appellant sought and obtained special leave of this Court to appeal against the decision in question. Hence Civil Appeal No. 58 of 1972 came to be filed. In view of this appeal, we may now proceed on the basis that Civil Appeal No. 660 of 1967, stands withdrawn and the same is disposed of accordingly. Hereafter we shall only deal with Civil Appeal No. 58 of 1972.

3. The facts leading up to this appeal are as follows :

On November 18, 1950, plot No. 79 at Palton Road, Bombay, admeasuring about 1,368 square yards was leased by the Government of Bombay for period of 999 years from June 26, 1942, to one Lily Investment Corporation Ltd. On December 11, 1950, the said Lily Investment Corporation Ltd. gave a sub-lease of the said plot of land to Uttamchand Tulsidas for a term of 999 years (less one day), from June 26, 1942. Thereafter Uttamchand constructed a building called "Himalaya House" on that plot consisting of several flats, shops and offices. Under various agreements, he appears to have assigned the right of occupation in those flats, shops and offices to several persons. One such agreement was with one Motiram Shewarama Vallicha. That was in respect of one flat. That agreement is in the record. As the High Court has placed considerable reliance on that document, it is necessary to quote the relevant clauses therein viz., 2, 5 and 16. Those clauses read thus :

"2. That the Party hereto of the Second Part hereby agrees to acquire the black bearing No. 12 on the ground floor of the said building for the total sum of Rs. 10,000 (rupees ten thousand only).

5. That the possession of the said block shall be delivered to the party hereto of the

Second Part provided all the amounts due under this agreement and particularly indicated in condition No. 3 hereof are paid by the party hereto of the Second Part to the party hereto of the First Part and upon the delivery of such possession the party hereto of the Second Part shall be entitled to the use and occupation of the said block without hindrance PROVIDED NEVERTHELESS that nothing contained in these presents shall be constructed as a demise in law of the said leasehold lands or any part thereof or the buildings thereon, such demise to take place only upon the transfer by a formal conveyance to a Co-operative Society or incorporated body to be formed as hereinafter agreed.

16. That the party hereto of the First Part shall form a Co-operative Society or any other incorporated body recognised in law and the party hereto of the Second Part shall join such Co-operative Society or any other incorporated body. The party hereto of the First Part agrees to convey transfer or assign to the said society or any other incorporated body as the case may be the aforesaid lands and buildings provided that the costs and expenses in connection with the requisition of such society or incorporated body, as well as the costs of preparing, approving, engrossing and stamping the Assignment. Transfer, or Deed of Conveyance required to be executed by the party hereto of the First Part shall be borne by such society, or the incorporated body as the case may be."

4. On June 28, 1955, the appellant-company was incorporated and registered under the provisions of the Indian Companies Act, 1913. On December 30, 1955, Uttamchand purported to assign all his rights in the building to the appellant-company under a deed. In the preamble to that deed after tracing Uttamchand's title to the property, it is recited "AND WHEREAS the Assignee Company has been formed for the administration of the said building and for the protection of the interests of the persons occupying flats, offices and shops therein AND WHEREAS the Assignor has agreed to assign to the Assignee all his interests in the said piece of land and building". Clause 1 of that Deed provides as under :

"(1) The Assignor (i.e. Respondent No. 2) both hereby for no consideration assign into the Assignee (i.e. the Appellant-Company) ALL THAT the piece of land comprised in the before recited Lease together with the buildings and erections now standing and being thereon together with all rights, easements and appurtenances thereto belonging and together with all the right, title and interest whatever of the Assignor in the building known as Himalaya House EXCEPT AND RESERVED as in the before recited Lease more particularly mentioned TO HOLD the same unto the Assignee or all the residue now unexpired of the term of years granted by the before recited Lease SUBJECT to the rent reserved by and to the Agreements, covenants and conditions contained in the before recited Lease henceforth on the part of the Assignee to be paid, observed and performed."

5. The said document bore a stamp of annas 12 only. When the same was presented for registration, the Sub-Registrar of Bombay impounded the same and sent it to the Assistant Superintendent of Stamps, Bombay. That officer by his letter, dated June 26, 1956, informed the appellant-company that as it was formed of and for the persons who had purchased the flats in the building, the real consideration for the Assignment was made up partly of what was paid by the flat holders and the status of the appellant-company was that of the nominee of the flat-holders so far as the Assignment was concerned". He further stated that in the absence of any mention of consideration in the

document, the then value of the premises was an index of the consideration. He purporting to act under Section 40 of the Indian Stamp Act, determined the stamp duty at Rs. 95,997/- after valuing the building at Rs. 16,00,000/-. Further he imposed a penalty of Rs. 20,000/-. He called upon the appellant-company to pay the stamp duty as well as the penalty. On receipt of that communication, the appellant-company applied to the Chief Controlling Revenue Authority to revise the order of the Assistant Superintendent of Stamps or in the alternative refer the matter to the High Court for its opinion. Thereafter the Chief Controlling Revenue Authority made the reference referred to earlier to the High Court. He submitted two questions for the opinion of the High Court, viz. :

"(1) Whether Himalaya House Co. Ltd., the Assignee in the Assignment, dated December 30, 1955, is the nominee of the several flat-holders who have purchased the flats in the Himalaya House and whether the Assignment in question is a Conveyance or a sale for a price which has passed from the hand of the flat-holders long before the date of assignment.

(2) Whether it was competent to the Assistant Superintendent of Stamps, under Section 40 of the Indian Stamp Act, 1899 (now Section 39 of the Bombay Stamp Act, 1958), to go beyond the terms of the document when it is mentioned in the document that no consideration is passed and assess the stamp duty in the manner mentioned by him in his order, dated June 26, 1956."

6. The matter came up for hearing before a bench of three Judges of the Bombay High Court presided over by the learned Chief Justice. At the hearing, the learned Judges opined that the question submitted by the Chief Controlling Revenue Authority were not appropriate and, therefore, they recast those questions as follows :

"(1) Under which article in Schedule I to the Stamp Act should the Assignment Deed in the question be stamped ?

(2) If Article 23 applies in this case, what is the consideration for the Assignment Deed ?"

All the Judges unanimously held that the article applicable to the case is Article 23 in the First Schedule to the Indian Stamp Act, which will be hereinafter referred to as "the Stamp Act". But while answering the second question, the learned Chief Justice and Naik, J., opined that "the consideration for the Assignment Deed is the total amount which was payable to the Assignor Tulsidas under the agreements between him and the persons to whom he had, under those agreements, given the right to occupy the flats, offices and shops in the building". But Mody, J., differed from his colleagues and came to the conclusion that "the consideration is as mentioned in the Deed of Assignment itself, i.e., no consideration".

7. All the Judges unanimously came to the conclusion that the consideration mentioned in the document is nil. This conclusion is obvious because Clause 1 of the Assignment Deed says that the Assignor assigns his rights "for no consideration". All of them also unanimous in their conclusion that for finding out the consideration, the concerned authorities (who will be hereinafter referred to as "Revenue") cannot travel outside the document; it should be "as set forth therein". But the majority took the view that the Revenue was not bound to accept the quantum of consideration mentioned in the document; it could determine the same by taking into consideration the facts available from the impounded document. They further held that the impounded document

incorporates into itself the various agreements entered into between Uttamchand and the various persons to whom he had assigned certain rights in respect of flats, offices and shops referred to earlier. In their view, the consideration paid by those persons to Uttamchand formed part of the consideration for the Assignment Deed in question. Naik, J., went little further and held that alternatively the Deed in question can be considered as a "gift" under Article 33 of Schedule I to the Stamp Act. Mody, J., opined that there is no basis to hold that the agreements entered into between Uttamchand and the various persons to whom the flats, and shops had been assigned were similar to the agreement entered into between him and Motiram Shewarama Vallicha. He held that on the basis of the material before the Court, it was not possible to come to the conclusion that they had entered into agreements with Uttamchand similar to the agreement entered into between Uttamchand and Motiram Shewarama Vallicha. He further held that on a plain reading of the Assignment Deed, it is not possible to come to the conclusion that the terms and conditions in the agreements entered into by Uttamchand with those to whom he had assigned flats, offices and shops, were incorporated into the Assignment Deed.

8. None of the Judges upheld the conclusion of the Assistant Superintendent of Stamps that the appellant-company is a nominee of the persons to whom the flats, offices and shops had been assigned; nor did they agree with his conclusion that if in a document, the value of the rights assigned is not mentioned, it is permissible for the Revenue to assess their value independently.

9. The contention that the appellant-company is a nominee of the various persons to whom flats, offices and shops had been assigned was not pressed before us, nor was it urged before us that the Revenue is competent to make an independent assessment of the value of right assigned.

Though at one stage, it was feebly suggested that the Deed of Assignment may be considered as a gift but that contention was not elaborated; nor do we see any merit in that contention because in the first place, it does not purport to be a gift; secondly, the valuation of "gifts" under Article 33 of the First Schedule has to be made on the same basis as the valuation of a "conveyance" under Article 23 of that Schedule. Article 33 specifically says that the duty payable on a gift deed will be "same as a conveyance for a consideration equal to the value of the property as set forth in such instrument".

10. For the purpose of this case, we shall proceed on the assumption, without deciding, that the charging words in Article 23 of the Stamp Act "where the amount or value of the consideration for such conveyance as set forth therein" do not mean that the revenue must have regard only to what the parties to the instruments have elected to state the consideration to be, but the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as whole. We are of the opinion that the learned Chief Justice and Naik, J., were not justified in holding that the Deed of Assignment incorporates into itself the various agreements entered into between Uttamchand and the persons to whom he assigned flats, offices and shops. The only reference to those persons in the Deed of Assignment is in the preamble wherein it is stated "AND WHEREAS the Assignor having erected a building known as Himalaya House on the said piece of land had granted to certain persons the right to occupy flats, offices and shops in the said building AND WHEREAS the Assignor Company has been formed for the better administration of the said building and for the protection of the interests of the persons occupying the flats, offices and shops therein". These clauses merely refer to the earlier transactions. They do not incorporate into the Assignment Deed the earlier agreements with the persons referred therein. Mere reference to some earlier transactions in a document does not amount to an incorporation in that document, of the terms and conditions relating thereto. From the language used in the Assignment Deed, it is not possible to come to the conclusion that the terms and conditions of

the earlier transactions have been made a part of the Deed. Further barring one particular agreement, other agreements were not before the Court. Therefore, it is not possible to know what the terms and conditions of those agreements were. Before the terms and conditions of an agreement can be said to have been incorporated into another document, the same must clearly show that the parties thereto intended to incorporate them. No such intention is available in this case.

11. It was urged that in view of Section 27 of the Stamp Act, it was permissible for the Revenue to look into the terms and conditions of the agreements entered into by Uttamchand with the various persons to whom he had assigned flats, offices and shops, particularly in view of the fact that the impounded document makes reference to those agreement. We are not able to accept that contention. Section 27 prescribes that "The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable shall be fully and truly set forth therein". It is true that in view of this provision, the parties to a document are required to set forth in the document fully and truly the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with the duty or the amount of the duty with which it is chargeable. But a failure to comply with the requirements of that section is merely punishable under Section 64 of the Stamp Act. No provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable. Article 23 is the article that governs the charging of stamp duty on "conveyance". That article to the extent relevant for our present purpose reads :

"23. Conveyance as defined by Section 2(10) not being a transfer charge or exempted under Section 52. Where the amount or value of the consideration for such conveyance as set forth therein....."

12. This article has come up of consideration before various High Courts on a number of occasions. In *Raman Chetty v. Mahomad Ghouse*, [ILR 16 Cal 432] the Calcutta High Court held that in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence must be looked at. In *Sakharam Shankar and Others v. Ramchandra Babu Mohire*, [ILR 27 Bom 279] it was held that in determining the question whether a particular document is sufficiently stamped, the Court should look at the instrument as it stands. Full Bench of the Allahabad High Court in the matter of *Mohammed Muzaffar Ali*, [ILR 44 All 339] held that if in a deed of gift the value of the property dealt with is not set forth, the deed does not require any stamp, and it is not within the competence of the Collector to have the said property valued in order to assess the duty payable. If, however, the value of the property is intentionally omitted with a view to defraud the Revenue, a prosecution will lie under Section 64 of the Stamp Act. A Division Bench of the Patna High Court in *Sri Sitaram Ramalia and Another v. State of Bihar*, [ILR 39 Pat 228] held that the Collector had no power under Section 40 of the Stamp Act to embark upon an inquiry with regard to the market-value of the properties covered by the document and require the payment of further stamp duty in accordance with his finding as to valuation and, therefore, that the impugned orders of the Collector, Commissioner and the Board were ultra vires and were liable to be set aside under Article 227 of the Constitution. Therein the Court was considering the scope of Section 58 of the Stamp Act which requires that an instrument of settlement should be stamped with the same duty as a bond "for a sum equal to the amount or value of the property settled as set forth in such settlement". The Court observed that the words "as set forth in the settlement" in the section refer back to the word "value" and not to the words "property settled". Recently the same view was taken by the Andhra Pradesh High Court in *Bharpet*

Mohammad Hussain Sahib and Another v. District Registrar, Kurnool. [ILR 1964 AP 1]. No decision taking a contrary view was brought to our notice. The question arising for decision in this case is settled by stare decisis. We are entirely in agreement with the view expressed in those decisions. Even if we had been inclined to place a different interpretation on Article 23, we would have hesitated to do so in view of the long line of decisions to some of which we have already made reference. The Legislature may have had good reasons for not empowering the revenue to make an independent inquiry as regards the valuation of the right sought to be assigned.

13. Under any circumstance, there was no basis to hold that the consideration for the impounded Deed is the total amount received by Uttamchand under the agreements entered into between him and the persons to whom he had assigned certain rights in the flats, offices and shops in the building. Those persons had an independent right of their own. Their rights did not flow from the impounded Assignment Deed. Whether the title obtained by them was perfect or not, there is no denying of the fact that they had acquired valuable rights even before the impounded Deed was executed.

14. For the reasons mentioned above, we allow this appeal and in place of the answers given by the High Court, we answer question formulated by that Court thus :

"(1) The article applicable in this case is Article 23 in First Schedule to the Stamp Act, and

(2) The consideration is as mentioned in the Deed of Assignment itself, i.e., no consideration."

The first respondent shall pay the costs of the appellant in Civil Appeal No. 58 of 1972. There will be no order as to costs in Civil Appeal No. 660 of 1967.

</html