

Shantidevi L. Singh

Vs

Tax Recovery Officer and Others

And

Kapoor Sons and Co.

Vs

Tax Recovery Officer and Others

Civil Appeal Nos. 1936 and 1937 of 1990

(S. Ranganathan, A. M. Ahmadi JJ)

23.04.1990

JUDGMENT

RANGANATHAN J. -

1. After hearing counsel for all parties, we grant special leave in these two petitions and proceed to dispose of the appeals finally by this common order as the point involved is a common one. We are dealing with the matter at some length as it raises certain important aspects of the Stamp Act, 1899 and the Registration Act, 1908 which are likely to come up for consideration frequently.

2. Smt. Shanti Devi, the petitioner in SLP No. 15093 of 1989, was the highest bidder at an auction sale of house property bearing No. A-205, Defence Colony, New Delhi conducted on February 29, 1988 by the Tax Recovery Officer (TRO) for realising the income tax dues of its owner. Her bid was accepted and the sale confirmed on April 13, 1988. On April 14, 1988 a certificate of sale was issued by the TRO to the petitioner. Under the relevant rules, a copy of the certificate of sale should have been endorsed to the Sub-Registrar but it was actually sent to the Sub-Registrar on May 12, 1988. The petitioner in SLP No. 138 of 1990 purchased property bearing Nos. 112-113, Gautam Nagar, Delhi at an auction conducted by the income tax department. A certificate of sale in their favour was issued on May 23, 1988. A copy of the sale certificate was forwarded by the TRO to the Sub-Registrar.

3. The purchasers thereafter attempted to get the property registered by the Sub-Registrar in their names. The Sub-Registrar and the Collector of Stamps did not accede to this request apparently on the ground that this could not be done unless stamp duty was paid on the certificate of sale. On the petitioner's request, the TRO also addressed a couple of letters to the Sub-Registrar and Collector which may be referred to here. With his letter dated May 12, 1988 to the former, the TRO enclosed an extract from the Tax Recovery Inspectors Manual issued by the income tax department which reads as follows :

"After confirmation of sale of immovable property a certificate in Form ITCP-20

will be issued. The original of this sale certificate is liable for stamp duty and a further duty of Rs. 4.50 is also chargeable on the copy of the sale certificate to be forwarded to the Sub-Registrar. These charges (which may vary from State to State) are to be borne by the auction purchaser. The original sale certificate thus issued will be the title for the property and it has the same value as a sale deed and it does not require registration by the purchaser. Thus the auction purchaser is saved expenses of registration etc. This office itself will send a copy of the sale certificate for registration to the concerned Sub-Registrar for making necessary entries in his registers."

The Collector of Stamps was addressed directly by the TRO on September 29, 1988 in relation to the Gautam Nagar property. In that letter the TRO stated that he had received legal advice that no stamp duty was payable on the certificate of sale. The attention of the Collector was drawn to the fact that a copy of the sale certificate had been sent to the Sub-Registrar as required under Rule 21 of the Income Tax (Certificate Proceedings) Rules - ITCR rules - which runs as follows :

"21. Every Tax Recovery Officer granting a certificate of sale to the purchaser of immovable property sold under the second schedule shall send a copy of such certificate to the Registering Officer concerned under the Indian Registration Act, 1908 (18 of 1908) within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate."

The Collector was requested to inform the Sub-Registrar accordingly to make necessary entries in the registers regarding the auction sale of the above immovable property on the basis of the copy of sale certificate sent to him.

4. Apparently, no further action was taken by the Sub-Registrar or Collector in the matter and, hence, each of the petitioners applied to the Delhi High Court under Article 226 of the Constitution. The TRO, the Collector, the Sub-Registrar, Delhi Administration and the Municipal Corporation of Delhi were impleaded as respondents. The petitioner prayed for a writ of mandamus or any appropriate writ or order or direction to the respondents to register the certificate of sale and mutate the property in the name of the petitioner. The Delhi Administration and the Municipal Corporation were added as parties since they did not respond to the petitioner's request to effect mutation entries in the Corporation Register, presumably on account of the petitioner's failure to pay the "transfer fees" leviable as additional stamp duty under the Delhi Municipal Act. The writ petition was dismissed at the stage of admission by the Delhi High Court. The learned Judges passed a short order to the following effect :

"Under Section 29(f), read with Schedule I (Article 18) and Section 3 of the Stamp Act, the liability to pay the stamp duty is of the purchaser, unless there is a specific contract to the contrary in this regard. In this case the auction notice is silent as to who is to pay the stamp duty. In other words, it does not create liability for the government to pay the stamp duty. Hence the general provisions of law which are quoted above would be applicable. Dismissed."

Each of the petitioners has thereupon, preferred this special leave petition before this Court.

5. On the above facts, three different and separate questions arise for consideration : (1) What is the action to be taken by the Sub-Registrar when the copy of a certificate of sale is forwarded to him by

the TRO ? (2) Is the vendee in a sale by the TRO entitled to ask the TRO (sic Sub-Registrar) to make entries regarding the transfer in his records on the basis of the copy of the certificate of sale sent to him by the TRO ? (3) What is the procedure to be followed by the Sub-Registrar when the original certificate of sale is produced before him by the vendee ?

6. The first of the above questions is directly answered by Section 89 of the Indian Registration Act, 1908. This section provides for the procedure to be followed in certain situations; in particular, in cases where sales are effected either by courts under the Code of Civil Procedure or by revenue officers in pursuance of a revenue recovery certificate. Under Section 89(2), every court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate. Sub-section (4) of Section 89 makes a similar provision in respect of immovable properties sold by public auction by a revenue officer who issues a certificate of sale in pursuance of the auction. The sub-sections further provide that when the copy of the certificate of sale is so received, such "registering officer shall file the copy or copies, as the case may be, in his Book No. 1". So far as sales for recovery of income tax are concerned, Rule 21 of the ITCP Rules, quoted earlier, makes a like provision requiring the concerned TRO to send a copy of the certificate of sale to the registering officer concerned. A doubt may arise whether the expression 'revenue officer' in Section 84(4) of the Registration Act includes a TRO; and, if not, whether, without an appropriate amendment of Section 89(2) or (4) of the Registration Act, the mere framing of a rule by the Central Board of Direct Taxes under the Income Tax Act, 1961 will be sufficient to oblige the registration officer to file a copy of the certificate of sale sent to him by the TRO in his Book No. 1. In our opinion, there is no need to read the term 'revenue officer' in any restricted sense and that it is wide and comprehensive enough to include the TRO who effects a compulsory sale for the recovery of an income tax demand. We are therefore clear that, in the present case, the registration officer has to act in terms of Section 89(4) of the Indian Registration Act read with Rule 21 of the ITCP rules. This is to file the copy of the certificate of sale received by him from the TRO in his Book No. 1.

7. This takes up to the second question as to whether filing of a copy of the certificate in Book No. 1 within the meaning of Section 89 is tantamount to the registration of the document under the Registration Act or it is a totally different concept. The registration of a document under the Act is conditional on the fulfilment of several requirements (Sections 32 to 35). The document has to be presented for registration by a person competent to do so. The person executing the document should appear before the Sub-Registrar and admit or deny execution of the document. The Sub-Registrar may conduct an enquiry, where needed, to satisfy himself as to the proper execution of the document. He will decide to admit the document to registration only if he is satisfied on this. What he has to do once he admits a document to registration is laid down in Sections 51 to 67. First, he is bound to endorse full particulars and details of the registration on the document presented to him and also obtain the signature of every person presenting the document. He should then, without delay copy the entire document in the appropriate book maintained for the purpose (which, in respect of non-testamentary instruments relating to immovable property, is Book No. 1). The entries in each book have to be consecutively numbered yearwise and corresponding entries should be contemporaneously made in current indices to be maintained in every office. The officer should affix his signatures to the endorsements made in his presence and then endorse a certificate on the document that it is registered together with the registration particulars which shall be signed, sealed and dated by him. The document is then returned to the person presenting it for registration. The books and indices are available for public inspection and certified copies thereof are to be given to parties applying for them. This, in brief, is the process of registration.

8. On the other hand, the process of filing that is contemplated under the Act is somewhat different though the Act does interchange the two expressions in some places. For instance, Section 51(2) itself refers to all documents or memoranda registered under Section 89 being entered or filed in Book No. 1. But there appear to be vital differences between the two processes :

(i) It is the original of a document that is registered whereas only copies or memoranda are filed;

(ii) The executant of a document which is required to be registered, has to present it for registration and go through the attendant and subsequent processes described above. A copy to be filed under Section 89 or memoranda that are filed under Sections 64 to 66 is simply transmitted to the concerned Sub-Registrar for being filed. Apparently, the procedure of presentation is dispensed with in regard to the latter because they are issued by public authorities discharging their official duties.

(iii) Additional particulars relevant to a document admitted to registration need to be got endorsed thereon from time to time as contemplated in Sections 58 and 59 but this rule does not apply to a copy or memorandum filed under the Act.

(iv) When a document is registered, the entirety of the document has to be copied out into the relevant book and the original document returned to the person who presents the document with necessary endorsements. This requirement is absent in the case of a copy or memorandum which is just filed.

(v) Where a document is registered, a certificate or registration has to be issued which will be admissible to prove the due registration of the document.

9. There are thus some differences between the two procedures and this aspect has been touched upon in some very early decisions under the Registration Act, 1877 : vide, *Fatteh Singh v. Daropadi* (1908 Punj Rec Case No. 142 : 1908 PWR 186), *Siraj-un-nissa v. Jan Muhammad* (2 All WN 1), *Masarat-un-nissa v. Adit Ram* ((1883) ILR 5 All 568 (FB) : 1883 AWN 159). Reference may also be made to *Premier Vegetable P. Ltd. v. State of M. P.* (AIR 1986 MP 258) We need not, however, consider for the purposes of this case whether filing and registration mean one and the same thing for all purposes and what the legal effect of these differences is. For, though the processes are different, the purchaser at a court or revenue sale is under no disadvantage because of the lack of registration. The certificate of sale itself not being a compulsory registrable document : vide Section 17(2)(xii), the transfer of title in his favour is not vitiated by the non-registration of the certificate. The copy of the certificate filed in Book No. 1 contains all the relevant details. These details are reflected in the indices maintained under Section 55 which are open to inspection to all persons. [We may point out here that Section 55(2) only refers to memoranda filed but it seems clear, particularly in the light of various State amendments, that the index to Book No. 1 should also contain the details of copies of document filed by him]. These requirements are sufficient to ensure that any person intending to purchase or deal with the property is put on notice about the principal contents of the certificate of sale provided he inspects the relevant book and/or index. It is sufficient to say, for the purposes of this case, that all that the Sub-Registrar required to do is to file the copy of the certificate in Book No. 1 and no more. He does not have to copy out the certificate or make any other entries in Book No. 1.

10. We now come to the last question and that is whether the certificate of sale is liable to stamp

duty and, if so, what the consequences are. The High Court has referred to Section 3, Section 29(f) and Article 18 of Schedule I to the Stamp Act. This provision applies in the absence of a contract to the contrary. Prima facie, therefore, the view taken by the High Court - and there are other decisions also to the same effect - is correct unless a contract to the contrary can be spelt out. The auction notice did not promise any exemption from stamp duty. The extract quoted earlier from the Departmental Manual (viz. that both the certificate and copy are liable to stamp duty) also renders it unlikely that any promise was given by the TRO at the time of sale that no stamp duty will be payable. However the TRO's letter to the Collector referring to the legal advice obtained by him strikes a somewhat inconsistent note. Even if there had been any such mention by the TRO or the auctioneer, the question would arise whether it can be construed as contract to the contrary binding on the Union for the purposes of Section 29(f) of the Stamp Act. Sri Mehta requests that we may not now go into these questions but leave the issue to be decided as and when the petitioners seek to have the certificate of registration registered or introduced in evidence before any court or authority entitled to take evidence which is at present a remote contingency.

11. There are two provisions in the Stamp Act which provide for the adjudication of stamp duty. Under Section 31, it is open to the executants of any document, at any stage but within the time limit set out in Section 32, to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for an authoritative decision (Sections 32 and 56). This procedure could have been followed by the petitioners if they wished to seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under Section 32 has run out. The other provision that may become applicable is Section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his duty to impound the document and send it on to the Collector of Stamps for necessary adjudication (Section 38). This contingency has also not happened. The third contingency, also provided for in Section 33 is when a party wishes to rely upon the certificate of sale as a piece of evidence before a court or an authority entitled to take evidence. Such court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage.

12. We should, however, like to deal with a contention raised in the grounds that even if the certificate of registration is sought to be presented for registration by the petitioners, the Sub-Registrar has no jurisdiction to refuse registration on the ground that the document is insufficiently stamped. As already pointed out, Section 17(2)(xii) of the Registration Act makes it clear that the certificate of sale issued in a court sale or by a revenue officer does not need registration. (Though this provision, like Section 89, relates only to a certificate of sale granted to the purchaser of any property sold by public auction by a civil court or revenue officer, for the same reasons as have been set out earlier, we think that the certificate issued by the TRO is also covered by this provision). It is, therefore, clear that it is not obligatory on the purchaser of property in a tax recovery sale to get the certificate of sale registered in order to perfect his title. However, if he presents the original certificate of sale to the Registration Officer for registration, the Registration Officer will have to comply with the relevant statutory provisions in this regard. However this situation has not arisen as

yet and it is necessary to anticipate it and decide the point. We therefore do not express any opinion thereon.

13. This leaves for consideration the question in regard to the municipal transfer fee. No details have been placed before us on this issue. The payability of the municipal transfer fee perhaps depends upon the payability of stamp duty but our attention has not been invited to the relevant statutory provisions on their interpretation. The High Court has given no separate finding on this issue. We also express no opinion particularly since we are not expressing any opinion on the question as to whether stamp duty is payable on the certificate of sale or not. It will be open to the petitioners to contest this levy in other appropriate proceedings.

14. For the above reasons, we are of the opinion that these appeals have to be allowed in part. The Sub-Registrar is directed to file the copy of the certificate of sale received by him from the TRO in his Book No. 1 as required by Section 89(4) of the Act read with Rule 21 of the Income Tax (Certificate Proceedings) Rules, 1962. The petitioners are entitled to ask for nothing more. We express no opinion on the question as to whether any stamp duty or municipal transfer fees are payable in respect of the original certificate of sale. The appeals are accordingly disposed of. There will be no order as to costs.

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