

Municipal Corporation of Delhi

Vs

Pramod Kumar Gupta

Civil Appeal No. 6081 of 1990

(L.M. Sharma, R.M. Sahai JJ)

17.12.1990

JUDGMENT

SHARMA J

1. Special leave is granted. The short question which arises in this appeal is whether duty is payable under S. 147 of the Delhi Municipal Corporation Act, 1957, on a sale certificate issued by the Civil Court under order XXI, Rule 94, Code of Civil Procedure.

2. The property in question was auction sold in execution of a decree in the civil Court and was purchased on August 4, 1986 by the respondent Pramod Kumar Gupta for a sum of Rs. 17,00,000/-. The sale was confirmed on November 6, 1986, and the High Court directed the issuing of the Sale Certificate under Order XXI, Rule 94, C.P.C. On the question of payment of Stamp Duty, the respondent contended that no duty was chargeable under S. 147 of the 1957 Act. The learned single Judge of the High Court agreed with him and directed payment of only the Stamp duty without surcharge for issuance of the Sale Certificate. The judgment was confirmed on appeal by a Division Bench. The petitioner-appellant Municipal Corporation of Delhi has challenged the High Court's decision in the present appeal.

3. Under the provisions of S. 147 of the Act, duty is levied on transfers of immovable property. The relevant part of sub-section (2) is mentioned below:-

"(2) The said duty shall be levied-

(a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899, as in force for the time being in the Union territory of Delhi. on every instrument of the description specified below, and

(b) at such rate as may be determined by the Corporation not exceeding five per cent., on the amount specified below against such instruments.-

(See table below)

Description of instrument Amount on which duty should be levied

1. Sale of immovable property. The amount or value of the consideration for the sale, as set forth in the instrument.

2. Exchange of immovable property. The value of the property of the greater value, as set forth in the instrument.
3. Gift of immovable property. The value of the property, as set forth in the instrument.
4. Mortgage with possession of immovable property. The amount secured by the mortgage, as set forth in the instrument.
5. Lease in perpetuity of immovable property. The amount equal to one-sixth of the whole amount or value of the rent which would be paid or delivered in respect of the first fifty years of the lease as set forth in the instrument."

The duty is thus payable "on every instrument of sale of immovable property. The question is whether a Certificate issued by Civil Court under Rule 94 of Order XXI, C.P.C., is an instrument of sale.

4. The expression "instrument" in S. 147 of the Act has the same connotation as the word has under the Stamp Act, the reference to which has been expressly made. Cl. 14 of S. 2 of the Stamp Act gives an inclusive definition of the expression as referring to any document by which any right or liability is purported to be created, transferred, limited, extended, extinguished or recorded. Clause 10 of the said section states that "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos. The expression 'instrument of sale of immovable property' under S. 147 of the Act must, therefore, mean a document effecting transfer. The title to the property in question has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest. A document merely stating as a fact 'that transfer has already taken place cannot be included within this expression. A paper which is recording a fact or is attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be treated to be such an instrument. The question, therefore, is as to whether a Certificate issued by a Court under Rule 94 of Order XXI can be said to be such an instrument so as to attract the provisions of S. 147 of the Act or not.

5. An examination of the relevant provisions of Order XXI of the Code of Civil Procedure will show that the title to the property put on auction-sale passes under the law when the sale is held. The owners and certain other interested persons are afforded opportunity under the Code to make a prayer for setting aside the sale on enumerated grounds, and after all such matters are disposed of without disturbing the sale, the sale is confirmed under Rule 92. The relevant part of Rule 92 reads as follows.-

"92. Sale when to become absolute or be set aside.- (1) Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute."

The stage for issuing a Certificate of sale arises only thereafter, and Rule 94 states:

"94. Certificate to purchaser.- Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate

shall bear date the day on which the sale became absolute."

It is manifest that the title passes under the auction-sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made. By the Certificate issued. under Rule 94, the Court is formally declaring the effect of the same and is not ,extinguishing or creating title. The object of issuance of such a Certificate is to avoid any controversy with respect to the identity of the property sold, and of the purchaser thereof as also the date when the sale becomes absolute. The use of past tense in the rule stating that the sale "became" absolute, is consistent with this interpretation. The Certificate, therefore, cannot be termed to be an instrument of sale so as to attract duty under S. 147 of the Delhi Municipal Corporation Act. The appeal is accordingly dismissed with costs.

Appeal dismissed.

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