

**SUPREME COURT OF INDIA**

Gopi Krishna Trivedi

Vs.

Sudama Prasad Ojha

C.A.No.5414 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

01.09.2008

**ORDER**

**Dr.Arijit Pasayat, J.**

1. Heard learned counsel for the parties.

2. Leave granted.

3. Challenge in this appeal is to the order passed by a learned Single Judge of the Calcutta High Court allowing the revision petition filed by the respondent. In a Suit for specific performance of the contract for sale of immovable property, the present respondent took the stand that he had entered into an oral agreement with the defendant, i.e. the present appellant for purchase of the Suit property for a consideration of Rs.6,01,000/-. Following the execution of the contract, an amount of Rs.3,51,000/- was stated to have been paid. It was followed by another payment of Rs.1, 11,618/-. The defendant acknowledged the factum of acceptance of part payment of the consideration amount. When the Suit came up for hearing, the respondent came up with the application for accepting certain documents, i.e. the documents containing the terms and conditions of agreement and certain rent receipts. The appellant took the stand that these documents cannot be admitted because there was no payment of stamp duty. The Trial Court took the view that the document is nothing but a letter incorporating the terms and conditions of an agreement for sale of a property and the receipts were just acknowledgment of the factum of acceptance of money. Accordingly, the Trial Court refused to impound the aforesaid documents.

4. Challenging the order, a revision petition was filed before the High Court. Reliance was placed before the High Court on a decision of this Court in *Brij Mohan and Ors. Vs. Sugra Begum and Ors.*<sup>1</sup> to contend that when the vital and fundamental terms of an agreement for sale of immovable property were effected through an oral agreement, the written agreement incorporating the terms and conditions of the oral agreement would be deemed to be a formal agreement only. Since no rights or liabilities have been created through the document

incorporating the terms and conditions of oral agreement, it cannot be called to be an instrument either.

5. The High Court, after considering the rival submissions and with reference to explanation appended to item No.5 of Schedule 1-A of Stamp Duty on Instruments in West Bengal, concluded as follows:

“The purported letter contains all the terms and conditions of an agreement for sale of immovable property. What were the terms and conditions of the alleged oral agreement are not known. There is nothing on record to show that rights and interest had been created following execution of an oral agreement. What we find is the existence of a document incorporating of terms and conditions of an agreement for sale of an immovable property and receipts acknowledging receipts of consideration amount. The agreements containing terms and conditions for transfer of an immovable property, as such, are required to be properly stamped in terms of the recent amendment of Stamp Act in West Bengal. Adequate stamp not having been paid, the trial court is not right in making the observation that the documents in question are not to be impounded. Since it is the agreement for sale, stamp duty will have to be paid in terms of Schedule 1A as amended. Right and liability having been created or purported to have been created, transferred and extended or recorded, the documents in question will come within the meaning of "instrument" as defined in Section 2(14) of the *Indian Stamp Act*.”

6. Ultimately, the High Court held that right and liability having been created or purported to have been transferred and extended or created, the documents in question come within the meaning of 'instrument' as defined in Section 2(14) of the *Indian Stamp Act, 1899* (in short 'the Act'). Therefore, the revision petition was allowed and the Trial Court was directed to take steps for impounding the documents before having been the documents being marked as exhibits.

7. Learned counsel for the appellant submitted that essentially the dispute related to the terms and conditions in an oral agreement and, therefore, the High Court was not justified in its view.

8. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.

9. In view of what has been stated in Brij Mohan's case (*supra*), the High Court was right in holding that the document in question being an agreement for sale, stamp duty will have to be paid by treating the document to be an 'instrument', as defined in Section 2(14) of the Act.

10. The appeal fails and is dismissed.

<sup>1</sup>(1990 (4) SCC 147)