

# SUPREME COURT OF INDIA

Terai Tea Company Limited

Vs.

Kumkum Mittal

C.A.No.8198-8199 of 2019

(Mohan M.Shananagoudar and Ajay Rastogi,JJ.,)

22.10.2019

## JUDGMENT

**Ajay Rastogi,J.,**

SLP(C )No.19774-19775 of 2017

1. Leave granted.
2. These appeals are directed against the order dated 13th April, 2017 passed by the Division Bench of the High Court of Calcutta directing the suit Court to impound the document (dt. 15th January, 1990) and take appropriate steps in accordance with law for the assessment of the stamp duty, penalty and the like thereon.
3. The brief facts of the case are that one Dharendra Nath Bhowmick (since deceased), as the sole proprietor and & perpetual lessee had agreed to sell a tea estate namely, M/s. Dharanipur Tea Estate comprising of a tea garden measuring about 1140.59 acres in favour of the appellant-plaintiff along with all the liabilities on a consideration of Rs. 10,11,000/- and he executed an agreement to sell to that effect on 15th January, 1990 after accepting a part consideration amount of Rs. 2,11,000/-. Dharendra Nath Bhowmick failed and/or neglected and/or refused to fulfil his obligations under the said agreement to sell dated 15th January, 1990, by not executing and registering the Deed of conveyance within the time specified, despite the appellant-plaintiff being fully ready and willing to discharge its part of obligations including the payment of balance consideration amount on or before 15th March,1990.
- 4.The appellant-plaintiff filed the suit for specific performance of the agreement before the High Court. In the said suit, an application for interim injunction was refused by the Single Judge vide Order dated 1st April, 1991 that came to be challenged at the instance of the appellant in letters patent appeal before the Division Bench of the High Court. During pendency of the appeal, both the parties entered into a compromise and the Division Bench of the High Court vide its order dated 2nd August, 1991 passed the consent decree in the

appeal and accordingly disposed of the Suit No. 240 of 1990 and observed that the verbal compromise constitute the fresh agreement as the original agreement dated 15th January, 1990 was modified upon enhancement of consideration from the original amount of Rs. 10,11,000/- to Rs. 12,11,000/-. As the defendant in the suit agreed to execute the deed of conveyance in favour of the appellant-plaintiff, two drafts, amounting to Rs. 9,00,000/- and Rs. 2,00,000/-, both bearing dated 25th July, 1991, being the balance of the consideration money of the said tea estate were paid. Accordingly, late Bhowmick executed the conveyance deed no. 11248/1991 in favour of the appellant. It is not disputed that the appellant paid full stamp duty of Rs. 1,85,000/- on the deed of conveyance dated 3rd August, 1991.

5. It may be relevant to notice that the respondent- defendant in the suit concealed material information that the earlier suit no. 8 of 1984 was filed by Dharendra Nath Bhowmick and his wife for declaration that the transfer of controlling interest in the shares of M/s. The New Red Bank Tea Company Private Ltd. was not valid and a declaration was sought that the said Dharendra Nath Bhowmick had all equitable right, title and interest in respect of the said Dharanipur Tea Estate and for restoration of possession. 6. The decree for specific performance granted by the Court in Suit No. 240 of 1990 came to be challenged in this Court in Civil Appeal No. 3569 of 1991 by The New Red Bank Tea Company Private Ltd. (respondent No. 6) impleading the present appellant and the interested parties as respondents. This Court observed that while the decree of specific performance was granted by the Court in Suit No. 240 of 1990 dated 2nd August, 1991, the earlier Suit No. 8 of 1984 pending in the High Court of Calcutta remain unnoticed and both the suits ought to have been tried together, taking note thereof, the decree of specific performance passed in Suit No. 240 of 1990 for the aforesaid reason was set aside and the High Court was directed to dispose of both the suits as expeditiously as possible. Obviously in consequence thereof, the deed of conveyance which was executed in furtherance of the decree of specific performance also came to be cancelled.

7. It is indisputed that the present appellant with all bonafides proceeded to pay the full consideration of the suit property in question and pursuant to the decree of specific performance dated 2nd August, 1991, deed of conveyance was executed on which the required stamp duty of Rs. 1,85,000/-<sup>4</sup> was also paid but obviously after the decree of specific performance dated 2nd August, 1991 been set aside by this Court, consequent thereto, the deed of conveyance dated 3rd August, 1991 remain non-existent and the appellant indisputedly was at liberty to claim refund of the stamp duty of Rs. 1,85,000/- which was paid on the deed of conveyance dated 3rd August, 1991.

8. After Suit No. 240 of 1990 came to be restored pursuant to the order of this Court dated 9th September, 1991 to be heard along with Suit No. 8 of 1984, at this stage application was filed by the respondent for impounding the document (agreement to sell dated 15th January, 1990) taking assistance of Section 35 of the Indian Stamp Act, 1899. The Single Judge of the High Court under its order dated 14th February, 2017 noticed that appellant had already paid the stamp duty of Rs. 1,85,000/- on the deed of conveyance which has been cancelled and he was at liberty to claim the refund. In the given circumstances, his

right of specific performance of the agreement based on the agreement to sell dated 15th January, 1990 shall be decided as a moot question by the Court as per the evidence to be adduced by the parties to the suit.

9. Learned counsel for the appellant has raised submissions questioning the maintainability of the appeal preferred against the interim order passed by the Single Judge of the High Court dated 14th February, 2017 in pending suit No. 240 of 1990 and that apart submits that the appellant had paid a stamp duty of Rs. 1,85,000/- on the deed of conveyance but after the judgment being passed by this Court dated 9th September, 1991, the decree of specific performance dated 2nd August, 1991 and consequently deed of conveyance executed pursuant thereto has been cancelled but appellant is entitled to seek refund of the stamp duty of Rs. 1,85,000/- paid by it and no one has disputed the same before the Division Bench of the High Court in seeking refund of the duty paid by it. In the given circumstances, it remains a technical plea that the agreement to sell dated 15th January, 1990 being unstamped, it will be harsh in the given facts to impound the document without the matter being adjudicated and it was the direction of this Court to consolidate both the suits to be heard on merits.

10. Learned counsel further submits that impounding of the document at this stage during pendency of the suit indeed frustrate the very plea which he has raised in the pending suit and in the given circumstances, it will be unjust to non-suit the claim of the appellant after the suit remain pending in the Court for almost 29 years.

11. Per contra, learned counsel for the respondent, on the other hand, while supporting the order passed by the Division Bench of the High Court submits that recovery of stamp duty which was paid on the deed of conveyance which the appellant is indisputedly at liberty to recover by due process of law but that will not give any benefit in reference to the agreement to sell dated 15th January, 1990 which indisputedly was unstamped and in the given circumstances, the High Court has not committed any error in impounding the document.

12. We have heard learned counsel for the parties and with their assistance perused the material available on record.

13. The indisputed facts which can easily be discernible from the records are that in reference to the suit property, there was an agreement to sell dated 15th January, 1990 executed by late Dharendra Nath Bhowmick in favour of appellant-plaintiff for the sale of tea estate namely, M/s. Dharanipur Tea Estate for a consideration of Rs. 10,11,000/- for which part payment of Rs. 2,11,000/- was made and since late Dharendra Nath Bhowmick failed to fulfil his obligation, suit for specific performance no. 240 of 1990 at the instance of the appellant came to be instituted. In the said pending suit no. 240 of 1990, since the interim injunction was refused, appeal came to be preferred and during pendency of the appeal, the parties to the proceedings entered into a compromise and the Division Bench of the High Court vide its order dated 2nd August, 1991 granted consent decree on enhancement of a consideration from original amount of Rs. 10,11,000/- to Rs.

12,11,000/- . In sequel thereto, the deed of conveyance was executed on 3rd August, 1991 and stamp duty of Rs. 1,85,000/- was paid by the appellant and full consideration of Rs. 12,11,000/- was paid by the appellant to Dharendra Nath Bhowmick.

14. This fact was not in the notice of the appellant that prior to filing of the suit no. 240 of 1990, earlier suit no. 8 of 1984 was filed by Dharendra Nath Bhowmick and his wife for declaration that the transfer of controlling interest in the shares of the company, namely, M/s. the New Red Bank Tea Company Private Ltd. was not valid and a declaration was sought that he had legal and equitable right, title and interest in respect of the said Dharanipur Tea Estate and restoration of possession was pending adjudication. The consent decree dated 2nd August, 1991 pursuant to which the deed of conveyance was executed on 3rd August, 1991 and stamp duty of Rs. 1,85,000/- was paid that came to be challenged in this Court by M/s. New Red Bank Tea Company Private Ltd. who indisputably was not party to the proceedings which was instituted at the instance of the appellant (Suit No. 240 of 1990).

15. After the parties being heard, this Court allowed the civil appeal under its order dated 9th September, 1991 and set aside the consent decree dated 2nd August, 1991 on the premise that suit no. 240 of 1990 and suit no. 8 of 1984 ought to have been tried together and the suit for specific performance could not have been decreed by consent without determining the legal title and factum of possession of the suit property. The title and possession could not have been decided without impleading the respondent M/s. The New Red Bank Tea Company Private Ltd. as a defendant to the suit. By setting aside the consent decree dated 2nd August, 1991, in the consequence, the deed of conveyance dated 3rd August, 1991 also came to be cancelled and after the order of this Court in Civil Appeal No. 3569 of 1991 dated 9th September, 1991, it reveals that M/s. the New Red Bank Tea Company Private Ltd. has been impleaded as a defendant in suit no. 240 of 1990 filed at the instance of the appellant and under the directions of this Court, both the suits are clubbed and to be heard together on merits.

16. In the peculiar facts and circumstances, where the parties to the proceedings originally in Suit No. 240 of 1990 filed at the instance of the appellant have consented to obtain a consent decree of specific performance dated 2nd August, 1991 pursuant to which deed of conveyance was executed on 3rd August, 1991 and full stamp duty of Rs. 1,85,000/- was paid by the appellant and no objection was raised by the respondent at any stage in reference to the agreement to sell dated 15th January, 1990 in the suit for specific performance and the decree dated 2nd August, 1991 although it has been set aside by this Court at the instance of the third party to the proceedings, namely, M/s. the New Red Bank Tea Company Private Ltd. and once the finding has been affirmed that the appellant is entitled for refund of Rs. 1,85,000/- towards stamp duty which was paid on the deed of conveyance, the appellant who has always shown his bonafides in transfer of full consideration after which deed of conveyance was executed and stamp duty of Rs. 1,85,000/- was paid which he is indisputably entitled for refund, it is not open for the respondent(s) to question as they always remained consented to the decree passed by the Court dated 2nd August, 1991 which although came to be set aside at the instance of the

third party, namely, M/s. the New Red Bank Tea Company Private Ltd.

17. In the facts and circumstances, it will not give any cause of action to the respondent to raise an objection for impounding of the document invoking Section 35 of the Indian Stamps Act, 1899 more so when the appellant had paid the stamp duty of Rs. 1,85,000/- and is entitled for refund which indisputedly was never claimed. In our considered view, in the facts and circumstances of the case, it was not open for the Division Bench under the impugned judgment to set aside the order of the Single Judge which was one of the possible view in the peculiar facts and circumstances of the case.

18. Consequently, the appeals deserve to succeed and are accordingly allowed. The judgment of the Division Bench of the High Court dated 13th April, 2017 is hereby quashed and set aside. No costs.

19. Pending application(s), if any, stand disposed of.