

MYSORE HIGH COURT

Shri Ramakrishna

Vs

Chief Revenue Controlling Authority

Civil Referred Case No. 7 of 1959

(H. Hombe Gowda, K.S. Hegde and B.M. Kalagate, JJ.)

16.03.1962

JUDGMENT

Hombe Gowda, J.

1. This reference under Section 54(1) of the Mysore Stamp Act (which corresponds to Section 57 of the Indian Stamp Act) has been made by the Chief Controlling Revenue Authority (Commissioner of Stamps in Mysore) referring certain questions raised therein for the decision of this Court under Section 54 (2) of the Act in the following circumstance: The Managing Director of Sri Ramkrishna Theatre, Udipi, South Kanara executed a document in favour of Canara Industrial and Banking Syndicate for a consideration of ₹ 20,000/-. The said document was drawn up on a stamp paper of ₹ 1-50. When the said document was presented before the Assistant Registrar of Joint Stock Companies, he impounded the same and held that the document was a mortgage deed chargeable with a stamp duty of ₹ 300/- under Article 33 (b) of Schedule I-A of the Indian Stamp Act as amended by the Madras Stamp Act of 1922. On being called upon by the Assistant Registrar of Joint Stock Companies to pay the deficit stamp duty of ₹ 298-50 and a penalty of ₹ 50/-, the executant deposited the same. The Assistant Registrar recorded a certificate on the document under Section 42 of the Indian Stamp Act 1899, on 27-3-1952 as Collector under the Stamp Act.

Thereafter, the executant preferred an appeal to the Collector of South Kanara against the order of the Assistant Registrar of Joint Stock Companies and Collector of Stamps. The Collector of South Kanara entertained a doubt as to the nature of the document and the levy of stamp duty and therefore, referred the matter to the Madras Board of Revenue which was the Chief Controlling Revenue Authority in Madras. On receipt of the reference, the Board examined the document and held that the document in question was one coming under Article 33 (a) of Schedule I-A of the Indian Stamp Act, chargeable with a duty of ₹ 600/- and directed the Collector to collect a further sum of ₹ 300/- by way of stamp duty. On receipt of the opinion of the Chief Controlling Revenue Authority, the Collector passed orders directing the executant of the document to pay the deficit stamp duty of ₹ 300/- in addition to what he had already paid

before the Assistant Registrar of Joint Stock Companies and dismissed the appeal. Thereafter the executant filed a Writ Petition before the High court of Madras in Writ Petition No.295/56 challenging the order of the Assistant Registrar of Joint Stock Companies as well as of the Collector South Kanara, demanding stamp duty on the document construing the same as a mortgage deed and prayed for quashing of the said orders. The High Court of Madras dismissed the Writ Petition with the observation that it was still open to the petitioner-executant to avail of the statutory remedy under the Stamp Act. In the meanwhile, the Collector took necessary steps, issued a Demand Notice and collected the additional deficient stamp duty as per his orders. Thereafter the executant of the document made an application to the Chief Revenue Controlling Authority to direct the Collector to refund the stamp duty that he had illegally collected from him, treating the document as a mortgage deed and or in the alternative, to refer the matter for the decision of the High Court under Section 57 (2) of the Indian Stamp Act. Consequent upon the Re-organization of States, the matter was transferred to the Chief Controlling Authority (Commissioner of Stamps in Mysore), Bangalore. The Commissioner of Stamps in Mysore while expressing his opinion that the decision of the Board of Revenue Government of Madras, holding that the document in question is a mortgage deed chargeable with a duty of ₹ 600/- under Article 33 (a) of Schedule I-A of the Indian Stamp Act as amended by the Madras Stamp Act of 1922 was correct, has submitted the following questions for the decision of this Court under Section 54 (1) of the Mysore Stamp Act;

- (a) Whether the document in question came before the Assistant Registrar of Joint Stock Companies 'in the performance of his functions' (Section 33(1)),
- (b) Whether the certification under Section 42 on the document by the Assistant Registrar of Joint Stock Companies and Collector under Stamp Act, would be a bar to re-open the question of adequacy of stamp duty levied,
- (c) whether the instrument in question cannot be held as a mortgage deed for purposes of levying stamp duty on the grounds that the instrument is not attested by 2 witnesses and registered as defined in Section 58 of the Transfer of Property Act, and
- (d) Whether the stamp duty levied on the instrument in question held as mortgage deed under Article 33 (a) of Schedule I-A of the Indian Stamp Act is not in order and if so, the amount of Stamp duty leviable on this document.

2. It is clear from the above narration that the Collector of South Kanara held on the basis of the advice tendered to him by the Chief Revenue Controlling Authority that the document is a mortgage deed and levied a stamp duty of ₹ 600/-. He accordingly dismissed the appeal preferred by the executant of the document against the order of the Assistant Registrar of Joint Stock Companies. The question for consideration is whether in these circumstances the Commissioner of Stamps in Mysore could make the reference under Section 54 of the Mysore Stamp Act (which corresponds to Section 57 of the Indian Stamp Act) for our decision. Section 54 of the Mysore Stamp Act reads thus:

"54. Statement of case by Chief Controlling Revenue Authority to High Court.

- (1) The Chief Controlling Revenue Authority may state any case referred to it under subsection (2) of Section 53 or otherwise coming to its notice, and refer such case, with its

own opinion thereon, to the High Court.

(2) Every such case shall be decided by not less than three Judges of the High Court, and in case of difference, the opinion of the majority shall prevail".

3. Admittedly the Collector acting under Section 31 or Section 39 or Section 40, has not made any reference with his opinion, to the decision of the Chief Controlling Authority under sub-section (2) of Section 53. Similarly, the Chief Controlling Revenue Authority did not make any reference to this Court under Section 54 (1) on its own initiative. It is on the basis of an application made by the executant of the document that the levy and the collection of stamp duty on the document on the basis that it was in the nature of a mortgage deed was illegal, that the Commissioner of Stamps in Mysore has thought it fit to make this reference. Admittedly any 'case' relating to the charging of the document with stamp duty is not pending before the Collector or the Chief Controlling Authority. Section 54 (1) gives power to the Chief Revenue Controlling Authority to state any case referred to it under Section 53 (2) or otherwise coming to its notice, and refer such case, with its opinion thereon to the High Court. Section 55 deals with the power of the High Court to call for further particulars relating to the case stated, and Section 56 provides that the High Court shall decide the questions raised thereby and should deliver its judgment containing grounds on which such decision is founded. Then under Sub-section (2) of Section 56 the High Court will send its judgment to the Revenue Authority by which the case was stated and the Revenue Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

4. A preliminary objection is raised by Mr. Venkataswamy the learned High Court Government Pleader. It relates to our jurisdiction to decide the reference made by the Commissioner of Stamps. We will proceed to examine the same before we record our decision on merits. It is urged that the Commissioner for Stamps had no jurisdiction to make a reference to this Court under Section 54 of the Stamp Act, and the argument is that the Chief Revenue Controlling Authority having decided the matter, there was nothing pending before the Commissioner for Stamps and therefore, he could not make a reference under Section 54. In support of this argument Mr. Venkataswamy has placed reliance on a number of cases relating to Section 40 sub-section (2) of the Indian Stamp Act, of the several Indian High Courts. Mr. Ranganatha Rao for the executant of the document, was unable to cite any decision in support of his contention that the Commissioner of Stamps is competent to make a reference to this Court under Section 54 (1) of the Mysore Stamp Act (Corresponding to Section 57 of the Indian Stamp Act) for our decision even after he has finally decided the appeal filed before him, on merits.

5. The first case cited by Mr. Venkataswamy the learned High Court Government Pleader relates to a reference made under Section 57 of the Indian Stamp Act and the same is reported in Ref. under Stamp Act Section 57, ILR 25 Mad 751 (SB). In the said case the Collector had determined the duty with which the instrument was chargeable; thereafter, one of the parties to the document applied to the Board of Revenue for a refund of the duty and the Board referred the question to the Madras High Court. The High Court of Madras held that under Section 31 the Collector had determined the duty with which the instrument was chargeable and as the determination had become final and there being no 'case' pending to be disposed of by the Revenue Authority, there was no jurisdiction to make a reference under Section 57 of the Indian Stamp Act. The Special Bench observed as follows:

"In our opinion, this is not a case which can be referred by the Revenue Authority to the High Court under Section 57 of the Act. The word case as used in that section means a matter which has to be disposed of by the revenue Authorities conformably to the judgment of the High Court on the case referred to it for opinion by the Revenue Authorities (See Section 59 sub-section (2) of the Act). As in our opinion the point which has been referred to us is not a 'case' to which Section 57 of the Act applies, we must hold that we have no power to adjudicate the matter".

In Ref. under Stamp Act Section 57, ILR 25 Mad 752 (SB) which was a reference under Section 57 of the Stamp Act, the question was more elaborately considered by the Special Bench of the Madras High Court. In that case the Sub Registrar acting under Section 33 impounded two documents and forwarded them to the Collector who under Section 40 (1) (a) certified that they were exempt from stamp duty. At the instance of the Inspector General of Stamp Revenue the Board of Revenue referred the question under Section 57 of the Stamp Act to the Madras High Court. It was held by a majority of the Judges that constituted the Special Bench that the High Court had no jurisdiction to decide the question. The principle of the decision is that the expression 'case' in Section 57 means a case that has not been already finally and conclusively determined by the Collector or other competent authority, and that unless the Revenue Authority has still resting upon it the duty of disposing of a case, it is not intended by the Statute that it should have a right to make a reference to the High Court.

6. In *In re Cook and Kelvey*¹, the Collector had determined the duty under Section 31 without referring the case to the Chief Controlling Revenue Authority. The party to the document applied to the Board of Revenue to interfere with the ruling of the Collector, and the latter authority referred the matter to the High Court under Section 57 of the Act. The Calcutta High Court held that unless the Revenue Authority has still resting upon it the duty of disposing of a case there would be no right to make a reference to the High Court, as the opinion of the High Court was merely to guide it in disposing of an actual concrete case. Rankin C.J., who spoke for the Special Bench, observed in the course of his order as follows:

"The purpose of stating a case to the High Court and the High Court deciding the question raised thereby is entirely a practical purpose and unless the revenue authority has still resting upon it the duty of disposing of a case it is not intended by the statute that it should have a right to make a reference to the High Court. The opinion of the High Court is merely to guide in disposing of an actual concrete case. The words or otherwise coming to its notice' in Section 57 can only be given effect to in cases when the concluding words of

¹ AIR 1932 Cal 736 (SB)

Section 59 can also be given effect to. Consequently the revenue authority can exercise its powers of reference, even in cases otherwise coming to its notice, only if it has still resting upon it the duty of disposing of a case".

To the same effect is the decision of the Allahabad High Court in *Board of Revenue v.*

*Lakshmi Pat Singhania*², It is not necessary to multiply the decisions in support of this principle since no decision of any High Court which has taken a contra view has been cited before us by Mr. Ranganatha Rao for the executant of the document, at whose instance this reference has been made. The principle that emerges out, from an analysis of the decisions of the several High Courts which were cited before us, can be summarised as follows: The Board of Revenue has the power to make a reference to the High Court under Section 54 of the Mysore Stamp Act (corresponding to Section 57 of the Indian Stamp Act) and that power is very wide and the Board of Revenue can exercise its powers of reference even in cases 'otherwise coming to its notice'. All that is necessary to make a reference competent is that there should be a case still pending before the Revenue Authority. The word 'case' means a matter which has to be disposed of by the Revenue Authority conformably to the judgment of the High Court. If the Collector or the Board of Revenue has decided the question no reference can be made to the High Court by the Chief Revenue Controlling Authority under Section 57 (1) of the Act.

7. It is, therefore, clear from the above discussion that the reference made by the Commissioner of Stamps in Mysore for the decision of the questions referred to in his letter of reference submitted to this Court is incompetent and this Court derives no jurisdiction to decide them.

8. In the result, for the reasons stated above we reject the reference made to us by the Commissioner of Stamps in Mysore as being incompetent. In the circumstances of the case, there will be no order as to costs.

Reference rejected.

² AIR 1958 All 417 (SB)