

RAJASTHAN HIGH COURT

M/s Khandaka Jain Jewellers

Vs.

State of Rajasthan

S.B. Civil Writ Petition No. 133 of 1997

(S.K. Keshote, J.)

09.10.2001

ORDER

S.K. Keshote, J.

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India and has prayed therein for direction to the respondents Nos. 2 and 3 to register the sale deeds sent to them by the Court of Addl. District Judge No. 1, Jaipur City, Jaipur in Execution Appln. No. 15/94 and 16/94 and to send back the same to the Court immediately after registration.
2. It is next prayed that the respondents may further be directed to register the sale deeds on the stamps on which it is executed by the Executing Court and not to charge more stamp duty from petitioner.
3. It is further prayed that the proceedings taken under Section 47A(1) and 47A(2) and the consequential notice issued by respondent No. 1 under Section 47A(2) of the Stamps Act, 1952 in cases No. 442/95 and 443/95 and the orders dated 4.3.1997 (Annexures 5 and 6) be quashed and set aside.
4. Lastly it is prayed that the respondents be directed to refund Rs. 5,000/- on the stamps on which the sale deed was prepared for being executed by Prem Chand Ajmera.
5. Heard learned counsel for the parties and perused the writ petition, and its enclosures.

6. The facts of the case are that the petitioner is a registered firm. The petitioner firm entered into two agreements to purchase of properties with one Sh.Prem Chand Ajmera s/o Nemi Chand Ajmera resident of 2148, Haldiyon Ka Rasta, Jaipur. By one agreement to sale dated 20.10.1983 the property was agreed to purchase for a sum of Rs. 1,41,000/- out of which Rs. 20,000/- were paid at the time of agreement. As the seller failed to comply with the terms of the agreement the petitioner firm filed the suit for specific performance of the contract in the Court of District Judge, Jaipur City, Jaipur, which was later on transferred to the Court of Additional District Judge No. 1, Jaipur City, Jaipur and registered as No. 216/86. The suit was decreed vide judgment and decree dated 2.2.1994. In pursuance of the said decree, the petitioner firm deposited an amount of Rs. 1,21,000/- in the Court on 9.5.1994 through CCD No. 557 dated 10.5.1994. The sale deed was not executed by the seller, therefore, the petitioner firm filed the Execution Application No. 16/94 before the Court of Addl. District Judge No. 1 Jaipur City, Jaipur.

7. By another agreement dated 20.10.1983 the seller Prem Chand agreed to sell a portion of the property for a sum of Rs. 50,000/-, out of which Rs. 10,000/- were paid at the time of agreement. The petitioner firm purchased the stamp of Rs. 5,000/- and the sale deed was got typed. The seller failed to fulfil the conditions of the agreement and to execute the sale deed. Consequently the petitioner firm had to file another suit for specific performance of the contract in the Court of District Judge, Jaipur City, Jaipur, which was later on transferred to the Court of Additional District Judge No. 1, Jaipur City, Jaipur and registered as No. 151/91. The suit was decreed vide judgment and decree dated 2.2.1994. The petitioner firm was directed to pay/deposit the remaining amount of Rs. 40,000/- and the judgment debtor would execute the sale deed and hand over the possession. If judgment debtor fails to do so the decree holder would be entitled to get the sale deed registered and to get the possession. In pursuance of the said decree, the petitioner firm deposited an amount of Rs. 40,000/- in the Court on 9.5.1994 through CCD No. 558 dated 10.5.1994. But the judgment debtor failed to execute the sale deed, therefore the petitioner firm filed the Execution Application No. 15/94 before the Court of Addl. District Judge No. 1, Jaipur City, Jaipur.

8. In both the execution applications No. 15/94 and 16/94, the Executing Court ordered the petitioner firm to submit the stamps for the execution of two sale deeds. Consequently the petitioner firm submitted stamp appears worth Rs. 14,100/- for

execution of sale deed of the property purchase price of which was Rs. 1,41,000/- and the stamp papers worth Rs. 5,000/- for execution of sale deed of the property whose purchase price was Rs. 50,000/-. Learned Executing Court executed the sale deeds and sent the same on 17.3.1995 for registration before the respondent No. 3 i.e. Sub Registrar, Registration Department, Collectorate, Bani Park, Jaipur.

9. The Sub Registrar exercising its powers under Section 47A (1) of the Stamp Act sent these two sale deeds to respondent No. 2 i.e. Collector (Stamp), Jaipur for determining the market value and to assess and charge the stamp duty.

10. The respondent No. 2 initiated two cases Nos. 442/95 and 443/95 and issued notices to the petitioner firm. The respondent No. 2 passed the order dated 5.3.1997 in case No. 442/95, whereby it has assessed the value of the property as Rs. 5,60,000/- and deficient stamp duty as Rs. 41,900/-, deficient registration fees as Rs. 1,500/- and levied the penalty also of Rs. 1,000/-. The total amount to be recovered from petitioner, firm has been shown as Rs. 44,000/-. As also in the case No. 443/95, it has assessed the value of the property as Rs. 3,87,580/- and deficient stamp duty as Rs. 33,758/- deficient registration fees as Rs. 1,500/- and a penalty of Rs. 1,000/-. The total amount to be recovered from petitioner firm has been shown as Rs. 36,288/-.

11. The petitioner firm has filed the writ petition challenging the action of respondents Nos. 2 and 3 of issuing the notice to petitioner firm (Annexure 3 and 4) and to quash the orders dated 5.3.1997 (Annexures 5 and 6) passed by respondent No. 2 in cases Nos. 442/95 and 443/95.

12. Learned counsel for the petitioner relies on the judgment in case of *Sub Registrar Kodad Town and Mandal v. Amaranaini China Venkat Rao*,¹ submits that the respondents Nos. 2 and 3 should have taken into consideration the sale price as has been mentioned in the documents. Because the sale deeds of the property in dispute are to be executed through the Court in pursuance of the decree passed by it in a suit for specific performance of contract and the respondents Nos. 2 and 3 could not have undertaken the exercise of assessing the market value of the property in dispute as on the date of presentation of sale deeds and they cannot charge the excess stamp duty, registration charges and penalty.

13. It has next been contended that in the case where the sale deed is to be executed of

a property by the Court in pursuance of its decree, the provisions of Section 47A(1) and (2) of the Stamps Act, 1952 are not attracted. The sale consideration as mentioned in the documents by the Court cannot be questioned.

14. The next contention of learned counsel for the petitioner is that where the valuation of the property in dispute has been made on the basis of decree passed by the Civil Court, then the provisions of Section 47A of the Stamps Act, 1952 cannot be made applicable. It is the Civil Court, which is competent to decide the market value of the property. The respondents Nos. 2 and 3 have no authority or jurisdiction under the law to take recourse to Section 47A of the Act. It is a case of decree passed by Civil Court and execution of documents the sale deeds cannot be questioned.

15. Lastly it is contended that the sale deeds were prepared but not executed by the seller, therefore, the suit filed and on decree the sale deeds were presented for registration as such the respondents Nos. 2 and 3 could not have initiated the proceedings. The respondents Nos. 2 and 3 have made hostile discrimination by assessing the market value of the property and levying excess registration fees and penalty.

16. Learned counsel for the respondents firstly prays for adjournment of the matter on the ground that the reply to writ petition is to be filed. Secondly it is submitted that the copy of amended writ petition has not been supplied to him by counsel for petitioner.

17. On merits, learned counsel for respondent Mr. Chauhan raised preliminary objection regarding maintainability of the writ petition. It is next contended that the valuation of the property of which the sale deed is to be registered should be as on the date of decree passed by civil Court. The sale price as mentioned in the agreement to sale cannot be taken to be the value of property or the purpose of registration of sale deed. Lastly it is submitted that the writ petition is not maintainable as the impugned orders are perfectly and justified.

18. I have given my thoughtful consideration to the rival submissions of learned counsel for the parties.

19. The preliminary objection raised by the learned counsel for respondent, in the facts and circumstances of the case, is not fatal to the maintainability of this writ

petition. It is true that initially the petitioner came up in this writ petition against the show cause notice issued to him, but it is not disputed that during pendency of the writ petition the final order has been passed in the matter. After passing of the final order, the petitioner prayed for permission to challenge the legality, propriety and correctness of those orders. The application filed by petitioner for amendment of the writ petition has been allowed and the petitioner was permitted to challenge the impugned orders. So now the final orders are under challenge in this writ petition and I do not find any force in the preliminary objection raised by learned counsel for the respondent.

20. The State Government and more particularly its officers connected with the recovery of stamps duty, I am constrained to observe are not behaving and acting as an officer of the welfare State. Their approach is perverse and totally unbecoming an officer of welfare State. It is true that when the duty/fee/tax are levied under the Statute, it is the duty of the citizen to pay the same. But at the same time these officers are to act within the approach and understanding that they are not the persons to extract money from the citizen and consider the matter only with that object. Their approach should be fair, reasonable and justice oriented. Each matter has to be considered and decided on its own fact and not with approach, object and purpose to extract money. Approach should have been to do justice with the tax or duty payers. In this background if this matter is considered certainly it will come out that the officers connected with the collection of stamp duty have acted totally contrary to what it is expected from them.

21. The petitioner entered into agreement to sale of the properties in question. The sale consideration of the property has been mentioned in the agreement. In case ultimately those a agreements to sale could not have been materialised they have to pay the stamp duty on the sale deed as per the consideration or as per what the market value of the property would have been assessed by the Stamp Duty Officer as on that day. This assessment of the stamp duty on this sale deed would have been made as on the date of presentation thereof at the relevant time.

22. It is unfortunate for the petitioner that the vendor of the property has back out from the agreement to sale and the petitioner had to file the suit for specific performance of contract. The date of agreement to sale of the property is 20.10.1983. The suit was filed for specific performance of the contract in the year 1986. It is different matter that the Court has taken a long time in deciding the suits. The first suit had been filed

in the year 1986 and the second suit had been filed in the year 1991, but both the suits were decided on 2.2.1994. Even after the suits decreed the vendor had not executed the sale deed and ultimately the petitioner had to file the execution petition. Accordingly the sale deeds were executed by the Court, which presented for registration and then the officers of the Registration office have become active and started the proceedings. They are demanding the stamps duty on the sale deeds as per prevalent market value of the property on the date of the decree of suits. I failed to see any justification, reasonableness and fairness in this approach of the officers. The date of the decree of suit cannot be taken to be the relevant and material date for the purpose of assessment of market value. They are to find out the appropriate date with reference to which the market value could have been assessed. Learned counsel for respondents has failed to show any justification in this approach of respondents. In case the date of the decree of the suit is taken a relevant date for the purposes of assessing the market value for payment of stamp duty it will adversely affect the party. There are all the possibilities that in one case the suit is decided immediately and the vendor to pay less stamp duty at the same time in case the suit is decided after long time the stamp duty may be more. It is difficult to accept it to be a relevant date for assessment of market value of the property.

23. I do not find any merit in the contention of learned counsel for petitioner that in the case where the sale deed is to be executed by the Court, whatever the sale consideration as mentioned in the agreement to sale is to be accepted by Stamp Duty Officer. In case this contention is accepted it will adversely affect the State Revenue. The Court has not decided the market value of property. It would have been a different matter where the Court decides the market value of property in the suit after recording the evidence and hearing the parties. In that case possibly the decision of the civil Court remarket value of the property may be binding on the State, but it is not the case herein. In this case the market value of the property was not in issue. The Court has executed the sale deed on behalf of the Vendor, who has not complied with the orders of the Court. The Court is (sic) not sold the property, but as the Vendor has not complied with the order of the Court to register the sale deed, therefore the Court sent the sale deed for registration, on the consideration as mentioned in the agreement to sale which was in dispute, for and on behalf of the Vendor. In these facts the Stamp Duty Officer is legally justified to assess the market value of the property in question. To that extent there may not be any objection in his approach.

24. The question which does call for consideration of the Court is which is the relevant and material date for the assessment of the market value of the property in dispute for the stamp duty leviable on the sale deed thereof in such cases. In the matter of this category possible relevant and material dates are the date of the agreement to sale of the property, the date of the suit filed for the specific performance of the agreement to sale, the date of the decision and the date on which this sale deed is presented by the Court for registration thereof.

25. In the suit filed by the litigant for the specific performance of the agreement to sale of the property in case where after decree of the suit the Vendor does not execute the sale deed of the property in favour of the Vendee the Court is to execute the sale deed in his favour for and on behalf of the vendor. It is not the case where the Court is executing the sale deed for itself of its own property. It is execution of the decree for the specific performance of the agreement to sale and the Court has to act for and on behalf of the vendor for the execution of the sale deed. The matter is to be considered keeping in view the aspect that the Government may not suffer loss of the revenue which may be ultimately a loss to the public. It is not unknown that the transactions of the transfer of the immovable properties are normally under-valued by the contracting parties. This has been done for many fold reasons, object and purposes and one of them may be to evade the stamp duty to be paid on this document.

26. Learned counsel for the petitioner submits that the relevant date for the assessment of the market value for the levy of stamp duty on the transfer document thereof (sale deed) is the date of the agreement to sale. I do not find any substance in this contention for the reason that the parties may evade the stamp duty which is to be paid on this document by their convenience and connivance. Otherwise also if this is taken to be the relevant and material date for the purpose of the value of the property for the purpose of levy of stamp duty it is certainly detrimental to the interest of the revenue of the State. Not only this if this way it is permitted then unscrupulous contracting parties to a document of transfer of the immovable property will make it convenient to evade the stamp duty. They will execute a document (agreement to sale) at a price and that too under-value the same and keep it in the pocket for years together and then one fine morning they will file a suit and get a decree for specific performance and that is how though really property would have been purchased in the later years this way the possibility of the evading the stamp duty cannot be excluded.

27. The matter can be looked into and examined from another aspect. The limitation for filing of the suit for specific performance is three years and the suit for this category can be filed within three years of the agreement to sale and that is who (why?) the property will not be subjected to the real valuation for the purpose of assessment of the stamp duty or levy of stamp duty.

28. Taking into consideration the totality of the facts of this case and keeping in view the wider interest of the revenue of the State Government, I am of the considered opinion that the relevant and material date for the assessment of the value of the property for the levy of the stamp duty is the date of the filing of the suit.

29. In this case the suit for the agreement to sale has been filed by the petitioner in the year 1986 on the basis of the document of 20.10.83. The appreciation in the cost of the immovable property is there and within three years certainly its market cost/price is bound to increase. On the sale deed executed for the property which was subject matter of this agreement to sale the stamps duty is paid on the sale consideration as mentioned in the agreement to sale and it may certainly result in direct loss of revenue to the State. The sale consideration of the property in the agreement to sale is not relevant for the purpose of the levy of the stamp duty as the relevant and material date for the assessment thereof is the date of the filing of the suit.

30. Learned counsel for the respondent though contended that in all the eventualities the relevant date for the assessment of the stamp duty on the sale transaction is the date of the decision of the suit but that cannot be accepted for the reason that normal life of litigation in the Court is long and for this ordinarily the party to the litigation may not be responsible. Looking to the heavy pendency of the matters in the Courts normal life of the litigation day by day is increasing and for which neither of the parties of the litigation can be blamed. It is a system or the procedure over which the parties to the litigation may not have any control, say or regulation. Whatever delay is there in deciding the suit in almost cases is as a result of the heavy pendency of the matters or workload in the Courts and is not attributable to, either of the litigants to the lis. So as what is suggested by the learned counsel for the respondent the date of the decree of the suit cannot be taken to be the relevant and material date for the purpose of assessment of the market value of the property in dispute for levy of the stamp duty,

31. Learned counsel for the petitioner does not dispute that the Stamp Duty Officer are

conferred with the power and duty under the Act to assess/determine the market value of the property for the levy of the stamp duty.

32. The decision of the Andhra Pradesh High Court on which strong reliance has been placed by the learned counsel for the petitioner is not of any help to it. With all due respect to the learned Judge who decided that matter, I cannot subscribe to the views taken therein. The agreement to sale and more particularly consideration mentioned therein may be binding on the parties to it but not on the Government. The Government is not a party to that agreement nor in the suit filed for the specific performance of agreement to sale after notice and opportunity of hearing to the State Government the Court has fixed the market price of the property for the purpose of levy of the stamp duty. The Stamp Duty Officer is empowered to examine the document and assess/determine the market value of the property on the date of the presentation of the document that is a sale deed for registration. The view taken by the Andhra Pradesh High Court is accepted then the concerned authority (Stamp Duty Officer) shall have no power to undertake exercise of assessing/determining the market value of the property on the date of the presentation of the document or the date of the filing of the suit and that is how there will be evasion of the stamp duty by unscrupulous litigant.

33. As a result of the aforesaid discussions I am of the opinion that the following aspects are to be taken care of and noted while determining the market value in a matter of execution and registration of the sale deed in pursuance of the execution of the decree as ordered by the executing Court :

- (1) in a suit for specific performance of agreement to sale the sale deed on the success of the plaintiff Vendee and where the Vendor did not comply the same is to be executed by the Court in execution of the decree.
- (2) the Stamp Duty Officer in that case is competent to exercise the powers to assess the market value of the property for the purpose of charging the stamp duty thereon etc. and the fees of the registration of the document.
- (3) The sale consideration as mentioned in the document of the transfer of the property is not conclusive and binding on the State Government and its Officers.
- (4) In the case where the sale deed is to be executed by the Court in execution of the decree of the specific performance of agreement to sale passed by it and

where the market value of the property has been determined by the Court for the purpose of stamp duty after hearing the parties and State Government then that decision shall be binding on the Government.

(5) For the purpose of charging the stamp duty etc. the relevant date for the assessment of the market value except in the case of category aforesaid of the property in dispute for the levy of the stamp duty shall be the date on which the suit for specific performance of the agreement to sale has been filed.

34. In the result this petition succeeds and the same is allowed. The orders dated 4.3.97 (annexures 5 and 6) of the authorities are quashed and set aside. The respondents are directed to pass the fresh order regarding the market value of the property in question for the purpose of levy of the stamp duty as on the date of the filing of the suit. The respondents are further directed to undertake this exercise keeping in view the observation made in this judgment within a period of one month from the date of receipt of certified copy of this order after notice to the petitioner. In the facts of this case no order as to costs.

Petition allowed.

Cases Referred.

1. AIR 1998 AP 252