

CASE NO.:
Appeal (civil) 1800 of 2001

PETITIONER:
CHILAKURI GANGULAPPA

Vs.

RESPONDENT:
REVENUE DIVISIONAL OFFICER, MADANPALLE AND ANR.

DATE OF JUDGMENT: 14/04/2001

BENCH:
K.T. Thomas & R.P. Sethi

JUDGMENT:

THOMAS, J.@@
JJJJJJJJJJ

Leave granted.
L...I...T.....T.....T.....T.....T.....T.....T...J

When a document was found to be insufficiently stamped the further proceedings were, unwittingly, diverted through a wrong track. After it covered a long distance everybody concerned realised that the lis was proceeding through a wrong course. It has now to be reversed and put in the proper track.

Appellant filed a civil suit before the Munsif Court, Madanapalle (Andhra Pradesh) as early as 1988. The main relief claimed in the suit is enforcement of an agreement executed on 26.6.1986 for sale of an immovable property. When the agreement was produced in court it was found to be insufficiently stamped and the learned Munsif impounded it and forwarded the instrument to the Revenue Divisional Officer (RDO) for the purpose of taking further action on it (the Collector must have delegated his powers to the R.D.O. in that behalf). He called for a report from a subordinate revenue officer regarding the real market value of the property which is mentioned in the document.

On the strength of the said report the R.D.O. found that the market value of the property was Rs.64,880/- and hence the agreement of sale should have been stamped with an additional duty of Rs.3,895/-. As the instrument was stamped only with a stamp of Rs.5/- the R.D.O. imposed a penalty equivalent to ten times of the deficiency which amounted to Rs.38,950/-. The order of the R.D.O. was passed on 4.7.1998.

Appellant challenged the said order by filing an appeal before the Senior Civil Judge purportedly under Section 47A(4) of the Indian Stamp Act, 1899. (The said section is included in the Stamp Act as per a State amendment carried out by the State of Andhra Pradesh). Learned Senior Civil Judge found that the appeal was not maintainable for two

reasons. First is that the order challenged before him was not passed by the registering authority nor the procedure laid down in Section 47A of the Stamp Act was followed. He also found that appellant did not pay the amount of Stamp duty before preferring an appeal which is a condition precedent for filing such appeal. On both premises the appeal was dismissed as not maintainable. The Senior Civil Judge pronounced the judgment on 12.3.1999.

Appellant filed a revision petition before the High Court challenging the judgment of the Civil Judge. A Single Judge of the High Court of Andhra Pradesh pointed out that as per the proviso to Section 47A of the Act no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him. Even though the appellant made a plea before the High Court for giving him some time to pay the amount learned Single Judge found that no such time can be granted at that stage since he has already preferred the appeal. Learned Single Judge did not consider whether an appeal would otherwise have been maintainable before the Civil Judge. Hence the revision petition was dismissed with the following observations:

Deposit of amount is a condition precedent for filing the appeal. The Court has no power to grant any relaxation to any party in the matter of deposit of amount as required under the proviso. In fact, a duty is cast on the petitioner to deposit the amount in accordance with the proviso at the time of filing of the appeal. If any appeal is filed without deposit of the amount in accordance with the proviso, that appeal is clearly not maintainable. For these reasons, I do not find any merit in the petition. In the facts and circumstances of the case, I do not want to go into the question whether the learned Senior Civil Judge had the jurisdiction to hear the appeal or not.

It is the aforesaid order which the appellant has challenged in this Court by special leave. When petition for special leave was moved learned counsel for the appellant submitted on 22.11.1999 that the appellant was ready and willing to deposit the differential amount in court. In fact notice was issued to the respondent on the strength of the above submission.

The R.D.O. noted that the document was executed on a stamp paper worth Rs.5/- whereas the consideration involved was Rs.20,000/-. He also noted that the market value of the property was Rs.64,880/-. On its basis the R.D.O. directed the appellant to remit the stamp duty and penalty of Rs.42,845/-.

Unfortunately the entire proceedings got misdirected from the stage of the trial court dispatching the document to the R.D.O. Section 47A of the Stamp Act (as amended by the State of Andhra Pradesh) consists of a procedure when a document was found insufficiently stamped and when that document is presented for registration. Sub-section (1) of that section says that where the registering officer while registering any instrument has reason to believe that the market value of the property which is a subject matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared by the Government, he may keep such

instrument pending and refer the matter to the Collector for determination of the market value of the property.

Sub-section (2) of Section 47A of the Act says that the Collector shall have the power to determine the market value of the property which is the subject matter of such instrument and the duty payable thereon. Sub-section (3) empowers the Collector to take action, suo motu, within two years from the date of the registration. Sub-section (4) has to be read in this context. Any person aggrieved by the order of a Collector under sub-section (2) or sub-section (3) may appeal to the appellate authority specified in sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed in such manner, as may be prescribed by rules made under this Act. There is a proviso to sub-section (2) which contains a bridle on the appellate provision envisaged in sub-section (4). Hence that proviso has to be read:

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him.

We extracted the relevant sub-sections of Section 47A for the purpose of showing that the whole route followed hitherto was wrong as Section 47A would not come into picture at all since nobody has a case that the instrument concerned was ever presented for registration. In the context of this instrument being presented before the Civil Court the relevant provision to be noticed is Section 40 of the Stamp Act. Sub-section (1) of that Section says that when the Collector impounds an instrument under Section 33, or receives any instrument sent to him under Section 38(2) he shall adopt the procedure laid down in the sub-section. In this context Section 38 is to be looked into. It is extracted below:

38. Instruments impounded how dealt with.-

(1) Where the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits, such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

It is clear from the first sub-section extracted above that the court has a power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. When the court chooses to admit the document on compliance of such condition the court need forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid the Collector has no other option except to impound the document and forward the same to the Collector.

On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof.

In the present case, an argument is raised that the instrument is not actually an agreement of sale as envisaged in the Schedule to the Stamp Act (subject to amendment made by the State of Andhra Pradesh) but it is only a deed of compromise entered into by two disputing persons. We refrain from expressing any opinion on the said plea as it is open to the parties to raise their contentions regarding the nature of the document before the trial court. In the present case the trial court should have asked the appellant, if it finds that the instrument is insufficiently stamped, as to whether he would remit the deficient portion of the stamp duty together with a penalty amounting to ten times the deficiency. If the appellant agrees to remit the said amount the court has to proceed with the trial after admitting the document in evidence. In the meanwhile, the court has to forward a copy of the document to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty as provided in Section 40(1)(b) of the Act. Only if the appellant is unwilling to remit the amount the court is to forward the original of the document itself to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty. The penalty of ten times indicated therein is the upper limit and the Collector shall take into account all factors concerned in deciding as to what should be the proper amount of penalty to be imposed.

Inasmuch as none of the above proceedings had been adopted by any of the authorities including High Court we set aside the impugned orders. We direct the Munsif to consider first whether the document is insufficiently stamped and if he finds that question in the affirmative he has to adopt the next step indicated above.

This appeal is accordingly allowed.