G.M.Shahul Hameed vs Jayanthi R.Hegde on 9 July, 2024

Author: Dipankar Datta

Bench: Pankaj Mithal, Dipankar Datta

REPO

2024 INSC 493

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1188/2015

G.M. SHAHUL HAMEED …APPE

VERSUS

JAYANTHI R. HEGDE …RESPOND

JUDGMENT

DIPANKAR DATTA, J.

1. The substantial question arising for decision in this civil appeal is whether upon admission of an instrument in evidence and its marking as an exhibit by a court (despite the instrument being chargeable to duty but is insufficiently stamped), such a process can be recalled by the court in exercise of inherent powers saved by section 151 of the Code of Civil Procedure1 for the ends of justice or to prevent abuse of the process of the court.

CPC, hereafter Page 1

2. Assail in this civil appeal is to the judgment and order dated 26th September, 20112 passed by a learned Single Judge of the High Court of Karnataka at Bengaluru3 whereby His Lordship set aside the order dated 19th October, 2010 passed by the Court of Additional Senior Judge-III, Mangalore4 and allowed the petition5 preferred by the respondent under Article 227 of the Constitution.

3. The facts, relevant for the disposal of the present appeal, are adverted to in brief hereunder:

a. First Sale Agreement and Sale Deed: On 3rd October, 2003, a Sale Deed was executed regarding the suit property by one B. Ramesh Hegde in favour of his wife, who is the respondent here.

This Sale Deed was executed on the strength of a General Power of Attorney6 dated 16th September, 2003, which was allegedly executed by one Praveen Shetty in favour of B. Ramesh Hegde in respect of the suit property, authorizing him with power to sell the suit property.

b. Second Sale Agreement and Sale Deed: An agreement to sell the suit property was executed between the appellant and Praveen Shetty on 11th September, 2003. The appellant paid the consideration, and a Sale Deed was executed on 8th October, 2003 between the appellant and Praveen Shetty.

impugned order, hereafter High Court, hereafter Trial Court, hereafter Writ Petition No. 11653 of 2011 (GM-CPC) GPA, hereafter Page 2 c. Civil Suit by the appellant: The appellant instituted a civil suit7 against the respondent, B. Ramesh Hegde, and Praveen Shetty, seeking a declaration that the Sale Deed dated 3rd October, 2003 was null and void, and not binding on the appellant.

d. Civil Suit by the respondent: Conversely, the respondent also instituted a civil suit8 against the appellant and Praveen Shetty, seeking a declaration that the Sale Deed dated 8th October, 2003 was null and void, and not binding on the respondent.

e. Filing of GPA before the Trial Court: In the suit instituted by the respondent, witness action commenced. B. Ramesh Hegde, in whose favour the GPA was executed by the respondent, on 6th June, 2010 tendered the GPA in course of his examination-in-

chief. The appellant's counsel was engaged in another court;

hence, he was unable to appear. The junior counsel did not object that the GPA was insufficiently stamped and, thus, inadmissible in evidence. The Trial Court, in the absence of objection, admitted the GPA in evidence and marked it as an exhibit whereafter the matter stood adjourned for cross-examination.

f. Interlocutory Applications: On the next hearing date, 25th June, 2010 to be precise, the appellant filed two interlocutory applications9 in the suit filed by the respondent. In I.A. No. IX, the appellant sought a review of the order dated 6th June, 2010, and I.A.s, hereafter Page 3 in I.A. No. X, it was prayed that the GPA be impounded on the ground that it has been insufficiently stamped. The appellant contended that since the GPA was executed in favour of a third party with power to sell the property, article 41 of the Schedule to the Karnataka Stamp Act, 195710 was applicable, necessitating payment of requisite stamp duty based on the market value of the

property. The GPA was prepared only on a stamp paper worth Rs.100, rendering it insufficiently stamped and in accordance with section 34 of the 1957 Act, an insufficiently stamped document had to be impounded and a penalty of ten times the duty value paid.

g. The respondent objected to the I.A.s asserting that the appellant had to avail his remedy under section 58 of the 1957 Act and that being available, the appellant could not seek a review. Further, it was claimed that no proof had been furnished that the appellant's counsel was otherwise engaged at that time. Lastly, it was contended that once a document had been admitted in evidence, the stamp duty could not subsequently be questioned on the ground that it has been insufficiently stamped, as per section 35 of the 1957 Act.

4. Vide order dated 19th October, 2010, the Trial Court allowed the I.A.s and directed the respondent to pay the deficit stamp duty, along with 1957 Act, hereafter Page 4 the penalty, as required for a power of attorney under article 41(eb) of the Schedule to the 1957 Act.

5. Dissatisfied with the aforesaid order of the Trial Court, the respondent approached the High Court whereupon the petition was allowed by the impugned order, inter alia, recording that:

> "2. It is evident from the material that the document has been marked and admitted in evidence and exhibited. It is the contention of the respondent under order 13 rule 4 there should be a specific statement to the effect that the document has been so admitted and endorsement shall be signed and initialed by the Judge. In the absence of the said requirement, marking of document does not mean admission of document in evidence. The argument of the counsel for the respondent is untenable. In the normal procedure when the document is produced, it is marked and exhibit number has assigned and beneath the said exhibit Judge puts his initial. This procedure fully complies with the requirement under Order 13 Rule 4 of the Act. Therefore, the contention that the document has not been properly marked and it should be rejected in evidence on the ground of insufficiently stamped is untenable. The trial court will have no jurisdiction to reconsider the issue. The remedy available for the respondent is only under section 58 of the Stamp Act. Accordingly, the writ petition is allowed."

6. It is the legality of the impugned order that we are tasked to examine while answering the question formulated at the beginning of this judgment.

7. Mr. Chaturvedi, learned counsel for the appellant, while laying a challenge to the impugned order argued that admission of an insufficiently stamped instrument in a casual manner by mechanically marking it as an exhibit, without any application of judicial mind, should not preclude the court seized of the proceedings from reconsidering whether such document is sufficiently stamped and could have at all been admitted in evidence.

Page 5 Various provisions of the 1957 Act were referred to by him for persuading us to hold that the view taken by the High Court was grossly erroneous. Accordingly, it was prayed by him that the impugned order be set aside and the civil appeal be allowed with liberty to the respondent to take steps in accordance with the order of the Trial Court.

8. Mr. Guru, learned counsel for the respondent, defended the impugned order by asserting that it is correct both in law as well as on facts. It was argued that setting aside of the Trial Court's order by the impugned order was indeed justified since the GPA having been admitted in evidence, such admission could not have been reviewed by the same court under any circumstance. Emphasis was placed on the need for an objection to the document's admissibility being raised when it was first tendered for being admitted and then marked as an exhibit. Citing section 35 of the 1957 Act, it was contended that once an instrument is admitted in evidence, the admission cannot be questioned by the trial court or any appellate or revisional court; and that the only remedy that the 1957 Act provides is a revision under section 58 thereof in the manner as provided. Thus, he submitted that the civil appeal being devoid of any merit deserved outright dismissal.

9. A short but interesting question has engaged our consideration. There is no doubt that the GPA is insufficiently stamped. What we need to consider on facts and in the circumstances is, which of the two conflicting views taken by the Trial Court and the High Court is right.

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10. Despite the GPA having been admitted in evidence and marked as an exhibit without objection from the side of the appellant, we propose to hold for the reasons to follow that the Trial Court did have the authority to revisit and recall the process of admission and marking of the instrument, not in the sense of exercising a power of review under section 114 read with Order XLVII, CPC but in exercise of its inherent power saved by section 151 thereof, and that the other remedy made available by the 1957 Act was not required to be pursued by the appellant to fasten the respondent with the liability to pay the deficit duty and penalty.

11. We may refer to the statutory framework of the 1957 Act. Sections 33, 34, 35 and 58, to the extent relevant for a decision on this appeal, read as follows:

> "33. Examination and impounding of instruments.-
>
> (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.
>
> (2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of

Karnataka when such instrument was executed or first executed:

Provided that,—

(a) ***

(b) *** (3) For the purposes of this section, in cases of doubt, the Government may determine,—

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in charge of public offices.

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34. Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that,—

(a) ***

(b) ***

(c) ***

(d) ***

35. Admission of instrument where not to be questioned. – Where an instrument has been admitted in evidence such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

58. Revision of certain decisions of Courts regarding the sufficiency of stamps. – (1) When any Court in the exercise of its Civil or Revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under Section 34, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the application of the Deputy Commissioner, take such order into consideration. (2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under Section 34, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such

instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced. (3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Deputy Commissioner and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

Page 8 (4) The Deputy Commissioner may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under Section 41, or in Section 42, prosecute any person for any offence against the stamp law which the Deputy Commissioner considers him to have committed in respect of such instrument.

Provided that, -

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under Section 34, is paid the Deputy Commissioner, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purpose of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under Section 41." (emphasis ours)

12. Read in isolation, a literal interpretation of section 35 of the 1957 Act seems to make the position in law clear that once an instrument has been admitted in evidence, then its admissibility cannot be contested at any stage of the proceedings on the ground of it not being duly stamped. A fortiori, it would follow that any objection pertaining to the instrument's insufficient stamping must be raised prior to its admission.

13. However, section 35 of the 1957 Act is not the only relevant section. It is preceded by sections 33 and 34 and all such sections are part of Chapter IV, tiled "Instruments Not Duly Stamped". Certain obligations are cast by section 33 on persons/officials named therein. Should the presiding officer of the court find the instrument to be chargeable with duty but it is either not stamped or is insufficiently stamped, he is bound by Page 9 section 33 to impound the same. Section 34 places a fetter on the court's authority to admit an instrument which, though chargeable with duty, is not duly stamped. The statutory mandate is that no such instrument shall be admitted in evidence unless it is duly stamped.

14. The presiding officer of a court being authorised in law to receive an instrument in evidence, is bound to give effect to the mandate of sections 33 and 34 and retains the authority to impound an instrument even in the absence of any objection from any party to the proceedings. Such an absence of any objection would not clothe the presiding officer of the court with power to mechanically admit a document that is tendered for admission in evidence. The same limitation would apply even in case of an objection regarding admissibility of an instrument, owing to its insufficient stamping, being raised before a court of law. Irrespective of whether objection is raised or not, the question of

admissibility has to be decided according to law. The presiding officer of a court when confronted with the question of admitting an instrument chargeable with duty but which is either not stamped or is insufficiently stamped ought to judicially determine it. Application of judicial mind is a sine qua non having regard to the express language of sections 33 and 34 and interpretation of pari materia provisions in the Indian Stamp Act, 189911 by this Court. However, once a decision on the objection is rendered – be it right or wrong – section 35 would kick in to bar any question being raised as to admissibility of the instrument on the ground that it is not duly stamped at any stage of the proceedings and the 1899 Act, hereafter Page 10 party aggrieved by alleged improper admission has to work out its remedy as provided by section 58 of the 1957 Act.

15. Profitable reference may be made to the decision of this Court in Javer Chand and others v. Pukhraj Surana12. There, provisions of section 36 of the 1899 Act, which is pari materia section 35 of the 1957 Act, came up for consideration. A Bench of four Hon'ble Judges of this Court held that when a document's admissibility is questioned due to improper stamping, it must be decided immediately when presented as evidence. The relevant paragraph is extracted hereunder:

> "4. *** Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement 'admitted in evidence' under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction." (1962) 2 SCR 333 Page 11 (emphasis ours)

16. Once again, addressing a matter concerning section 36 of the 1899 Act, a Bench of three Hon'ble Judges of this Court in Ram Rattan v. Bajrang Lal13 held as follows:

> "6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was

> inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objects in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, Section 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The court, and of necessity it would be trial court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting Section 36 (see Javer Chand v. Pukhraj Surana) [AIR 1961 SC 1655] . The endorsement made by the learned trial Judge that 'Objected, allowed subject to objection', clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted." (emphasis ours) (1978) 3 SCC 236 Page 12

17. The pivotal aspect emerging for consideration on the terms of sections 33 and 34 of the 1957 Act, with which we are concerned, is that whether the Trial Court did judicially determine the question of admissibility. It is here that we need to ascertain the rationale behind the Trial Court's approach to go behind admission of the GPA in evidence and marking thereof as an exhibit, leading to the order under challenge before the High Court. Relevant portions of the order of the Trial Court read thus:

> "2. *** There are two suits before this court, one is the present suit and another suit is OS No. 301/03. In the present suit, the GPA holder of plaintiff filed an affidavit by way of chief examination in the morning session and the documents were marked. While marking the documents he was held up in the court of Civil Judge (Jr. Dn.), Mangalore and hence no objection regarding the deficiency of stamp duty on GPA could be raised before this court. Accordingly the matter has been adjourned for cross examination of PW1. The alleged GPA is in favour of third party with power to sell the property and hence article 41 of the Karnataka Stamp Act 1957 is applicable and stamp duty on the market value has to be paid on the same. The GPA is executed on a stamp paper of value of Rs.100/- only. As per Section 33 of the Karnataka Stamp Act, 1957, the court shall impound the said GPA even without the objections by the advocate for 1st defendant. His absence at the time of chief examination of PW1 is not intentional but as he was held up in another court.

3. The 1st defendant has also filed IA No. IX under Sec. 114, R/w.

Sec. 151 of CPC to review the order of marking Ex.P2 which is insufficiently stamped and to hear the objections regarding inadequacy of stamp duty on the similar grounds.

7. The points that arise for consideration are:-

1. Whether Ex.P2 GPA is insufficiently stamped and plaintiff is liable to pay deficit duty and penalty?

2. Whether the order permitting the plaintiff to mark the document requires to be reviewed?

8. The points are answered in affirmative for the following:

Reasons Page 13

9. *** The clauses are very specific that the power of attorney has been given powers to sell the properties and the power of attorney has acted upon the GPA and has execute the sale deed in favour of the plaintiff as per Ex.P3. Under Article 41(e), when the power of attorney is given for consideration and authorizing the attorney to sell the immovable property, the duty payable is same duty as a conveyance for a market value equal to the amount of the consideration. As stated above, no consideration has been mentioned in the GPA., but the GPA has been given authorizing to sell the immovable property. The GPA has been issued to a third party, ... article 41(ab) is applicable. The learned counsel for plaintiff objected for considering these applications on the ground that document is already marked with out any objections and hence the question of reviewing the order considering the question of stamp duty at this stage does not arise. As seen from the order sheet, the plaintiff was examined on 6.6.2010 and document was marked on same day. Immediately on the next date of hearing the counsel has filed IA No. IX and X to consider the aspect of payment of stamp duty and penalty i.e., on the day on which the matter was posted for cross examination of PW1. It is certain that the senior counsel appearing for the plaintiff was not present at the time of examination of PW1 in chief as the court remembers that the junior counsel was present and probably being unaware of the question of stamp duty has not raised any objections. The court has marked the document as an exhibit and has put the seal for having marked the document as to who has produced the document and admitted through which witness and marked for plaintiff. No doubt, there is mention that the document is admitted through PW1 and Ex.P2, but the court has not applied its mind while marking the document as to whether document is sufficiently stamped or insufficiently stamped.

10. *** The circumstances under which the application is being filed and circumstances under which the document came to be marked, clearly show that the document was marked without application of the mind of the court and without objection of the other side and this court is of the view that the admissibility of the document could be considered at this stage.

ORDER The IA Nos. IX and X are allowed."

18. On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the Trial Court did not deliberate on its admissibility, much less Page 14 applied its judicial mind, resulting in an absence of judicial determination. In the absence of a 'decision' on the question of admissibility or, in other words, the Trial Court not having 'decided' whether the GPA was sufficiently stamped, section 35 of the 1957 Act cannot be called in aid by the respondent. For section 35 to come into operation, the instrument must have been "admitted in evidence" upon a judicial determination. The words "judicial determination" have to be read into section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by section 35. However, in a case of "no judicial determination", section 35 is not attracted.

19. In the light of the aforesaid reasoning of the Trial Court of admitted failure on its part to apply judicial mind coupled with the absence of the counsel for the appellant before it when the GPA was admitted in evidence and marked exhibit, a factor which weighed with the Trial Court, we have no hesitation to hold that for all purposes and intents the Trial Court passed the order dated 19th October, 2010 in exercise of its inherent power saved by section 151, CPC, to do justice as well as to prevent abuse of the process of court, to which inadvertently it became a party by not applying judicial mind as required in terms of sections 33 and 34 of the 1857 Act. We appreciate the approach of the Trial Court in its judicious exercise of inherent power.

20. Reference to section 58 of the 1957 Act by learned counsel for the respondent is without substance. The clear language of section 58 refers to a situation, where an order is passed admitting an instrument in evidence as duly stamped or as one not requiring a stamp, for its attraction. As Page 15 evident from a bare reading of the order dated 19th October, 2010, the Trial Court did neither hold the GPA as duly stamped or as not requiring a stamp and, therefore, its applicability was not attracted.

21. We may not turn a blind eye to the fact that the revenue would stand the risk of suffering huge loss if the courts fail to discharge the duty placed on it per provisions like section 33 of the 1957 Act. Such provision has been inserted in the statute with a definite purpose. The legislature has reposed responsibility on the courts and trusted them to ensure that requisite stamp duty, along with penalty, is duly paid if an unstamped or insufficiently stamped instrument is placed before it for admission in support of the case of a party. It is incumbent upon the courts to uphold the sanctity of the legal framework governing stamp duty, as the same are crucial for the authenticity and enforceability of instruments. Allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the state. The courts ought to ensure that compliance with all substantive and procedural requirements of a statute akin to the 1957 Act are adhered to by the interested parties. This duty of the court is paramount, and any deviation would set a detrimental precedent, eroding the integrity of the legal system. Thus, the court must vigilantly prevent any circumvention of these legal obligations, ensuring due compliance and strict adherence for upholding the rule of law.

22. Having regard to the aforesaid discussion, we answer the substantial question in the affirmative. Finding no error in the order of the Trial Court dated 19th October, 2010, we set aside the impugned order of Page 16 the High Court dated 26th September, 2011, meaning thereby that the order of the Trial Court is restored. Since proceedings of the civil suit remained stalled because of pendency of this appeal, we expect the Trial Court to proceed expeditiously and in accordance with law.

23. The appeal is, accordingly, allowed without any order for costs.

……J (DIPANKAR DATTA) ……J (PANKAJ MITHAL) New Delhi.

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