

Himalaya House Co. Ltd. Bombay vs Chief Controlling Revenue Authority on 1 February, 1972

Equivalent citations: 1972 AIR 899, 1972 SCR (3) 322, AIR 1972 SUPREME COURT 899

Author: K.S. Hegde

Bench: K.S. Hegde, P. Jaganmohan Reddy

PETITIONER:
HIMALAYA HOUSE CO. LTD. BOMBAY

Vs.

RESPONDENT:
CHIEF CONTROLLING REVENUE AUTHORITY

DATE OF JUDGMENT 01/02/1972

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN

CITATION:
1972 AIR 899 1972 SCR (3) 322
1972 SCC (1) 726
CITATOR INFO :
D 1990 SC 485 (5)

ACT:
Indian Stamp Act (2 of 1899), Sch. I, art. 23-Determination
of value ,of consideration by Revenue-How should be done.

HEADNOTE:
The lessee of a plot of land from Government sub-leased it and the sub-lessee built a building on it consisting of Rats, shops and offices. The sub-lessee assigned the rights of occupation of those flats etc. under various .agreements. Thereafter, the appellant-company was incorporated and the sub-lessee purported to assign all his rights in the building to the appellant company. In the preamble to the deed it was recited that the company had been formed for the better administration of the building and for the

protection of the interests of the persons occupying the flats etc., and that the sub-lessee had agreed to assign to the appellant-company all his interests in the, land and the building. The consideration, mentioned in the document was nil and the document bore a stamp of 12 annas. When it was presented for registration, the authority impounded the deed, held that the appellant-company was formed of and for the persons who had purchased the flats etc., that the real consideration for the assignment was made up partly of what was paid by the occupiers of the flats etc., and determined the stamp duty and penalty under s. 40 of the Stamp Act, 1899.

On a reference to the High Court it was held, that the article in the Schedule to the Stamp Act applicable is art. 23. On the question of consideration, however, while one Judge held that the consideration was 'nil' as mentioned in the deed, the majority held that the Revenue was not bound to accept the quantum of consideration mentioned in the deed, that the deed incorporated into itself the various agreements entered into between the sub-lessee and the persons to whom rights were assigned in the flats etc., and that the consideration was the total amount payable to the sub-lessee by those assignees.

Allowing the appeal to this Court,

HELD: (1) Before the terms and conditions of an agreement can be said to have been incorporated into another document, it must be shown that the parties intended to do so. In the present case, the mere reference to the earlier transactions in the deed did not amount to an incorporation in it of the terms and conditions of those transactions. [338 F-H]

(2) In view of s. 27 of the Stamp Act the parties to a document are required to set forth in the document fully and truly, the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with duty. But a failure to do so is merely punishable under s. 64 of the Stamp Act. There is no provision empowering the Revenue authorities to make an independent inquiry of the value of the property conveyed for determining the duty, even assuming that the charging words in art. 23 do not mean that the Revenue must have regard

333

only to what the parties to the instrument have elected to state the consideration to be, but can assess the duty upon the value of the consideration as disclosed upon an examination of the terms of the instrument as a whole. [339 A-D]

(3) There is a long line of decisions of the High Courts holding that the Legislature had not empowered the Revenue to make an independent inquiry as regards the valuation of the right sought to be assigned. That view is correct and the question must also be held to be settled by state decision. [340 D-F]

Ramen Chetty v. Mohamed Ghouse, I.L.R. 16 Cal. 432, Sakharam Shankar v. Ramchandra Babu Mohire, I.L.R. 27 Bom. 279, Muhammad Muzaffar Ali, In re. I.L.R. 44 All. 339, Sri Sitaram Ramalla & Anr. v. State of Bihar, I.L.R. 39 Pat. 228 and Bharpet Mohammad Hussain Sahib & Anr. v. District Registrar, Kurnool, I.L.R. [1964] A.P. 1, approved.

(4) In any event, there was no basis for holding that the consideration for the deed was the amount received by the sub-lessee from the persons to whom he assigned rights in the flats etc. Those persons acquired an independent right and title-whether perfect or not en before the impounded deed was executed, and their rights did not flow from the impounded deed. [340 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 660 of 1967 and 58 of 1972.

Appeals by certificate/special leave from the judgment and decree dated August 11 / 12, 1964 of the Bombay High Court in Civil Reference No.. 6 of 1959.

S. T. Desai, P. C. Bhurtari, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant (in both the appeals).

V. S. Desai and B. D. Sharma, for respondent No. 1 (in both the appeals).

The Judgment of the Court was delivered by Hegde, J. Both these appeals, the former by certificate and the later by special leave arise from the decision of the High Court of Bombay in a reference under section 54 of the Bombay Stamp Act.

When Civil Appeal No. 660 of 1967 came up for hearing on a previous occasion, objection was raised as to the maintainability of the appeal on the ground that the High Court was not competent to grant a certificate in the case under Art. 133 of the Constitution. At that stage, the appellant sought an adjournment of the appeal so as to enable it to move this Court for special leave against the impugned decision. That prayer was allowed by this Court. Thereafter the appellant sought and obtained special leave of this Court to appeal against the decision in question. Hence Civil Appeal No. 58 of 1972 came to be filed. In view of this appeal, we may now proceed on the basis that Civil Appeal No. 660 of 1967 stands withdrawn and the same is disposed of accordingly. Hereafter we shall only deal with Civil Appeal No. 58 of 1972.

The facts leading up to this appeal are as follows On November 18, 1950, plot No. 79 at Palton Road, Bombay, admeasuring about 1,368 square yards was leased by the Government of Bombay for a period of 999 years from June 26, 1942 to one Lily Investment Corporation Ltd. On December 11, 1950, the said Lily Investment Corporation Ltd. gave a sub-lease of the said plot of land to Uttamchand Tulsidas for a term of 999 years (less one day), from June 26, 1942. thereafter

Uttamchand constructed a building called "Himalaya House" on that plot consisting of several flats, shops and offices. Under various agreements, he appears to have assigned the right of occupation in those flats, shops and offices to several persons. One such agreement was with one Motiram Shewarama Vallicha. That was in respect of one flat. That agreement is in the record. As the High Court has placed considerable reliance on that document, it is necessary to quote the relevant clauses therein viz. 2, 5 and 16. Those clauses read thus :

"2. That the Party hereto of the Second Part hereby agrees to acquire the block bearing No. 12 on the ground floor of the said building for the total sum of Rs. 10,000 (Rupees ten thousand only).

5. That the possession of the said block shall be delivered to the party hereto of the Second Part provided all the amounts due under this agreement and particularly indicated in condition No. 3 hereof are paid by the party hereto of the Second Part to the Party hereto of the First Part and upon the delivery of such possession the party hereto of the Second Part shall be entitled to the use and occupation of the said block without hindrance PROVIDED NEVERTHELESS that nothing contained in these presents shall be construed as a demise in law of the said leasehold lands or any part thereof or the buildings thereon, such demise to take place only upon the transfer by a formal conveyance to a Co-operative Society or Incorporated body to be formed as hereinafter agreed.

16. That the party hereto of the First Part shall form a co-operative society or any other incorporated body recognized in law and the party hereto of the Second Part shall join such co-operative society or any other incorporated body. The party hereto of the First Part agrees to convey transfer or assign to the said society or any other incorporated body as the case may be the aforesaid lands and buildings provided that the costs and expenses in connection with the requisition of such society or incorporated body, as well as the costs of preparing, approving, engrossing and stamping the Assignment, Transfer, or Deed of Conveyance required to be, executed by the party hereto of the First Part shall be borne by such society, or the incorporated body as the case may be."

On June 28, 1955, the appellant company was incorporated and registered under the provisions of the Indian Companies Act, 1913. On December 30, 1955, Uttamchand purported to assign all his rights in the building to the appellant company under a deed. In the preamble to that Deed after tracing, Uttamchand's title to the property, it is- recited "AND WHEREAS the Assignee Company has been formed for the better administration of the said building and for the protection of the interests of the persons occupying flats, offices and shops therein AND WHEREAS the Assignor has agreed to assign to the Assignee all his interests in the said piece of land and building." Clause 1 of that Deed provides as under :-

1. The Assignor (i.e. Respondent No. 2) doth hereby for no consideration assign into the Assignee (i.e. the Appellant Company) ALL THAT the piece of land comprised in

the before recited Lease together with the buildings and erections now standing and being thereon together with all rights easements and appurtenances thereto belonging and together with all the right title and interest whatever of the Assignor in the building known as Himalaya House EXCEPT AND RESERVED as in the before recited Lease more particularly mentioned TO HOLD the same unto the Assignee or all the residue now unexpired of the term of years granted by the before recited Lease SUBJECT to the rent reserved by and to the Agreements covenants and conditions contained in the before recited Lease henceforth on the part of the Assignee to be paid observed and performed."

The said document bore a stamp of annas 12 only. When the same was presented for registration, the Sub-Registrar of Bombay impounded the same and sent it to the Assistant Superintendent of Stamps, Bombay. That officer by his letter dated June 26, 1956 informed the appellant company that "as it was formed of and for the persons who had purchased the flats in the building. the real consideration for the Assignment was made up partly of what was paid by the flat holders and the status of the appellant company was that of the nominee of the flat holders so far as the Assignment was concerned." He further stated that in the absence of any mention of consideration in the document, the then value 887 SUP@CT/72 of the premises was an index of the consideration. He purporting to act under section 40 of the Indian Stamp Act, determined the stamp duty at Rs. 95,997 after valuing the building at Rs. 16,00,000. Further he imposed a penalty of Rs. 20,000. He called upon the appellant company to pay the stamp duty as well as the penalty. On receipt of that communication, the appellant company applied to the Chief Controlling Revenue Authority to revise the order of the Assistant Superintendent of Stamps or in the alternative refer the matter to the High Court for its opinion. Thereafter the Chief Controlling Revenue Authority made the reference referred to earlier to the High Court. He submitted two questions for the opinion of the High Court, viz :

"(1) Whether Himalaya House Co. Ltd. the Assignee in the Assignment dated 30th December 1955 is the nominee of the several flat holders who have purchased the flats in the Himalaya House and whether the Assignment in question is a Conveyance or a sale for a price which has passed from the hand of the flat holders long before the date of assignment. (2) Whether it was competent to the Assistant Superintendent of Stamps, under section 40 of the Indian Stamp Act, 1899 (now section 39 of the Bombay Stamp Act, 1958) to go beyond the terms of the document when it is mentioned in the document that no consideration is passed and assess the stamp duty in the manner men-

tioned by him in his order dated the 26th June 1956."

The matter came up for hearing before a bench of three Judges of the Bombay High Court presided over by the learned Chief Justice. At the hearing, the learned Judges opined that the questions submitted by the Chief Controlling Revenue Authority were not appropriate and, therefore, they recast those questions as follows :-

"1. Under which article in Schedule 1 to the Stamp Act should the Assignment Deed in question be stamped ?

2. If Article 23 applies in this case, what is the consideration for the Assignment Deed ?"

All the Judges unanimously held that the Article applicable to the case is Article 23 in the First Schedule to the Indian Stamp Act, which will be hereinafter referred to as 'the Stamp Act'. But while answering the second question, the learned Chief Justice and Naik. J. opined that "the consideration for the Assignment Deed is the total amount which was payable to the Assignor Tulsidas under the agreements between him and the persons to whom he had, under those agreements, given the right to occupy the Rats, offices and shops in the building." But Mody J. differed from his colleagues and came to the conclusion that "the consideration is ,as mentioned in the Deed of Assignment itself i.e. no consideration- All the Judges unanimously came to the conclusion that the consideration mentioned in the document is nil. This conclusion is obvious because Clause I of the Assignment Deed says that the Assignor assigns his rights 'for no consideration'. All of them were also unanimous in their conclusion that for finding out the consideration, the concerned authorities (who will be hereinafter referred to as 'Revenue') cannot travel outside the document; it should be 'as set forth therein'. But the majority took the view that the Revenue was not bound to accept the quantum of consideration mentioned in the document; it could determine the same by taking into consideration the facts available from the impounded document. They further held that the impounded document incorporates into itself the various agreements entered into between Uttamchand and the various persons to whom he had assigned certain rights in respect of flats, offices and shops referred to earlier. In their view, the consideration paid by those persons to Uttamchand formed part of the consideration for the Assignment Deed in. question. Naik J. went a little further and held that alternatively the Deed in question can be considered as a "gift" under Art. 33 of Schedule 1 to the Stamp Act Mody J. opined that there is no basis to hold that the agreements entered into between Uttamchand and the various persons to whom the flats, offices and shops had been assigned were similar to the agreement entered into between him and Motiram Shewarama Vallicha. He held that on the basis of the- material before the Court, it was not possible to come to the conclusion that they had entered into agreements with Uttamchand similar to the agreement entered into between Uttamchand and Motiram Shewarania Vallicha. He further held that on a plain reading of the Assignment Deed, it is not possible to come to the conclusion that the terms and conditions in the agreements entered into by Uttamchand with those to whom he had assigned flats, offices and shops, were incorporated into the Assignment Deed.

None of the Judges upheld the conclusion of the Assistant Superintendent of Stamps that the appellant company is a nominee of the persons to whom the flats, offices and shops had been assigned; nor did they agree with his conclusion that if in a document, the value of the rights assigned is not mentioned, it is permissible, for the Revenue to assess their value independently.

The contention that the appellant company is a nominee of the various persons to whom flats, offices and shops had been assigned was not pressed before us; nor was it urged before us that the Revenue is competent to make an independent assessment of the value of the rights assigned.

Though at one stage, it was feebly suggested that the Deed of Assignment may be considered as a gift but that contention was not elaborated; nor do we see any merit in that contention because in the first place, it does not purport to be a gift; secondly, the valuation of "gift" under Article 33 of the First Schedule has to be made on the same basis as the valuation of a "conveyance" under Article 23 of that Schedule. Article 33 specifically says that the duty payable on a gift deed will be "same as a conveyance for a consideration equal to the value of the property as set forth in such instrument."

For the purpose of this case, we shall proceed on the assumption, without deciding, that the charging words in Article 23 of the Stamp Act "where the amount or value of the consideration for such conveyance as set forth therein"

do not mean that the Revenue must have regard only to what the parties to the instruments have elected to state the consideration to be, but the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole. We are of the opinion, that the learned Chief Justice and Naik J. were not justified in holding that the Deed of Assignment incorporates into itself the various agreements entered into between Uttamchand and the persons to whom he assigned flats, offices and shops. The only reference to those persons in the Deed of Assignment is in the preamble wherein it is stated "AND WHEREAS the Assignor having erected a building known is Himalaya House on the said piece of land had granted to certain persons the right to occupy flats, offices and shops in the said building AND WHEREAS the Assignee Company has been formed for the better administration of the said building and for the protection of the interests of the persons occupying the flats, offices and shops therein." These clauses merely refer to the earlier transactions. They do not incorporate into the Assignment Deed the earlier agreements with the persons referred to therein. Mere reference to some earlier transactions in a document does not amount to an incorporation in that document, of the terms and conditions relating thereto. From the language used in the Assignment Deed it is not possible to come to the conclusion that the terms and conditions of the earlier transactions have been made a part of that Deed. Further barring one particular agreement, other agreements were not before the Court. Therefore, it is not possible to know what the terms and conditions of those agreements were. Before the terms and conditions of at, agreement can be said to have been incorporated into another document, the same must clearly show that the parties thereto intended ,to incorporate them. No such intention in available in this case.

It was urged that in view of section 27 of the Stamp Act, it was permissible for the Revenue to look into the terms and conditions of the agreements entered into by Uttamchand with the various persons to whom he had assigned flats, offices and shops, particularly in view of the fact that the impounded document makes reference to those agreements. We are not able to accept that contention. Section 27 prescribes that "The consideration (if any) and all other facts and circumstances affecting the charge ability of any instrument with duty, or the amount of the duty with which it is

chargeable shall be fully and truly set forth therein." It is true that in view of this provision, the parties to a document are required to set forth in the document fully and truly the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with the duty or the amount of the duty with which it is chargeable. But a failure to comply with the requirements of that section is merely punishable under section 64 of the Stamp Act. No provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable. Article 23 is the Article that governs the charging of Stamp duty on "conveyance". That Article to the extent relevant for our present purpose reads :

"23. Conveyance (as defined by section 2(10) not being a transfer charge or exempted under section 52 Where the amount or value of the consideration for such conveyance as set forth therein....."

This Article has come up for consideration before various High Courts on a number of occasions. In *Ramen Chetty v. Mohamed Ghouse*(1) the Calcutta High Court held that in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence must be looked at. In *Sakharam Shankar and Others v. Ramchandra Babu ohire*,(2) it was held that in determining the question whether a particular document is sufficiently stamped, the Court should look at the instrument as it stands. A Full Bench of the Allahabad High Court in the matter of *Muhammad Muzaffar Ali*(3) held that if in a deed of gift the value of the property dealt with is not set forth, the deed does not require any stamp, and it is not within the competence of the Collector to have the said property valued in order to assess the duty (1) (ILR 16 Cal 432). 2 (ILR 27 Bom 279).

(3) (ILR 44 All. 339).

payable. If, however, the value of the property is intentionally omitted with a view to defraud the Revenue, a prosecution will lie under section 64 of the Stamp Act. A Division Bench of the Patna High Court in *Sri Sitaram Ramalia and Another v. State of Bihar*(1) held that the Collector had no power under section 40 of the Stamp Act to embark upon an inquiry with regard to the market value of the properties covered by the document and require the payment of further stamp duty in accordance with his finding as to valuation and, therefore, that the impugned orders of the Collector, Commissioner and the Board were ultra vires and were liable to be set aside under Article 227 of the Constitution. Therein the Court was considering the scope of section 58 of the Stamp Act which requires that an instrument of settlement should be stamped with the same duty as a bond "for a sum equal to the amount or value of the property settled as set forth in such settlement." The Court observed that the words 'as set forth in the settlement' in the section refer back to the word "value" and not to the words "property settled". Recently the same view was taken by the Andhra Pradesh High Court in *Bharpet Mohammad Hussain Sahib and Another v. District Registrar, Kurnool*(2). No decision taking a contrary view was brought to our notice. The question arising for decision in this case is settled by stare decision. We are entirely in agreement with the view

expressed in those decisions. Even if we had been inclined to place a different interpretation on Article 23, we would have hesitated to do so in view of the long line of decisions to some of which we have already made reference. The Legislature may have had good reasons for not empowering the Revenue to make an independent inquiry as regards the valuation of the right sought to be assigned.

Under any circumstance, there was no basis to hold that the consideration for the impounded Deed is the total amount received by Uttamchand under the agreements entered into between him and the persons to whom he had assigned certain rights in the flats, offices and shops in the building. Those persons had an independent right of their own. Their rights did not flow from the impounded Assignment Deed. Whether the title obtained by them was perfect or not, there is no denying of the fact that they had acquired valuable rights even before the impounded Deed was executed. For the reasons mentioned above, we allow this appeal and in place of the answers given by the High Court, we answer the question formulated by that Court thus "1. The Article applicable in this case is Article 23 in the First Schedule to the Stamp Act, and (1) (ILR 39 Pat. 228).

(2) TLR. (1964) A.P. 1.)

2. the consideration is as mentioned in the Deed of Assignment itself i.e. no consideration." The first respondent shall pay the costs of the appellant in Civil Appeal No. 58 of 1972. There will be no order as to costs in Civil Appeal No. 660 of 1967.

V.P.S.