

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE JAWWAD S. KHAWAJA, CJ
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA

**Civil Appeal No. 475-L of 2010, Civil Appeals Nos. 69-L to 78-L of 2014
And Civil Petition for leave to Appeal No. 1259 of 2014**

(On appeal from the judgment dated 18.6.2008 in W.P. No. 774/2008 and judgment dated 19.3.2012 in W.P. No. 25890/2010 passed by the Lahore High Court, Lahore)

Dy. District Officer (Revenue) Lahore (in CA 475-L/2010)
Muhammad Asif and others (in CA 69-L/2014)
Aurangzaib (in CA 70-L/2014)
Muhammad Shafique (in CA 71-L/2014)
Muhammad Saleem Butt and others (in CA 72-L/2014)
Sub Registrar, Ravi Town, Lahore & others (in CAs. 73-L to 78-L/14)

.... Appellants

Mian Faiz Ahmad and others (in CP 1259/2014)

.... Petitioners

Versus

Raja Muhammad Yousaf (in CA 475-L/2010)
Sub Registrar, Ravi Town Lahore & others (in CA 69-L to 72-L/ 2014 & CP 1259/2014)
Muhammad Shafique and another (in CA 73-L/2014)
Mian Faiz Ahmad and others (in CA 74-L/2014)
Mst. Rehana Kausar & others (in CA 75-L/2014)
Muhammad Asif & others (in CAs.76-L/2014)
Muhammad Saleem Butt & others (in CA 77-L/2014)
Aurangzaib (in CA 78-L/2014)

.... Respondents

For the Appellants:

Rana Shamshad Khan, Asstt. AG Punjab
(in CA 475-L/2010 & CAs 73-L to 78-L/2014)

Ch. Ali Muhammad, ASC
(in CAs. 69-L to 72-L/2014 & CP 1259/2014)

For the Respondents:

Mirza Hafeez-ur-Rehman, ASC
(in CA 475-L/2010)

Rana Shamshad Khan, Asstt. AG Punjab
(in CAs. 69-L to 72-L/2014)

Nemo (in CAs 73-L to 78-L/2014)

On Court Notice:

Mr. Sajid Ilyas Bhatti, DAG
Mian Arshad Jan, Addl. AG, KP
Mr. M. Ayaz Sawati, Addl. AG, Balochistan
Mr. Shehryar Qazi, Addl. AG, Sindh

Date of Hearing: 19th August 2015.

JUDGMENT

Qazi Faez Isa, J.- These appeals assail the judgments of the Lahore High Court, Lahore dated 18th June 2008 and 19th March 2012 respectively. The point for consideration is the value of a sale or conveyance deed prepared pursuant to a decree in a suit for specific performance and whether it should be stamped on the basis of the sale consideration mentioned in the sale agreement / decree or whether it is to be stamped on the basis of the notional/deemed value of the immovable property when it is presented for registration.

2. That against the judgment dated 18th June 2008 one Appeal has been filed and against the judgment dated 19th March 2012 the other ten Appeals have been filed (“**the impugned judgments**”). Seven of the said Appeals have been filed by the Province of Punjab/its functionaries and four Appeals have been filed by private parties against the Sub-Registrar. Civil Petition for Leave to Appeal (which is time barred) has been filed by a private party against the Sub-Registrar, Ravi Town, Lahore; since the same question and same judgment is also impugned in the said Petition and as sufficient reason for condoning delay has been provided the same is also converted into an appeal.

3. That vide Punjab Finance Act, 1986 (Act IV of 1986) (Gazette of Punjab, Extraordinary, 14th June 1986, PLD 1986 Punjab Statutes 69) section 27-A was added to the Stamp Act, 1899 (“**the Stamp Act**”). Subsequently, minor amendments were made in the said section 27-A from time to time by the: Punjab Finance Act, 1994 (Gazette of Punjab, Extraordinary, 29th June 1994, PLD 1995 Punjab Statutes 67); Stamp (Punjab Amendment) Ordinance, 2001 (Gazette of Punjab, Extraordinary, 1st November 2001, PLD 2002 Punjab Statutes 24); Punjab Finance Act, 2010 (Gazette of Punjab, Extraordinary, 28th June 2010, PTD 2010 Part V 387); Punjab Laws (Amendment) Act, 2011 (Gazette of Punjab, Extraordinary, 14th April 2011, PLD 2011 (Supplement) Punjab Statutes 58); Punjab Finance Act, 2012 (Gazette of Punjab, Extraordinary, 29th June 2012, PLD 2012

Punjab Statutes 67) and Punjab Finance Act, 2015 (which came into effect on 1st July 2015). Section 27-A (as amended) is reproduced hereunder:

“27-A. Value of immovable property.–

- (1) Where any instrument chargeable with *ad valorem* duty under Articles 23, 27-A, 31, 33 or 63 of Schedule I, relates to an immovable property, the value of the immovable property shall be calculated according to the valuation table notified by the District Collector in respect of immovable property situated in the locality.
- (2) Where an instrument, mentioned in sub-section (1), relates to an immovable property consisting of land and structure, it shall state the value of the land or structure separately and the value of the structure stated in the instrument shall, subject to the provision of this Act, be accepted.
- (3) Where the value of immovable property stated in an instrument to which sub-section (1) applies is more than the value fixed according to the valuation table, the value declared in the instrument shall be accepted as value for the purposes of stamp duty.
- (4) Where the value given in the valuation table notified under sub-section (1), when applied to any immovable property, appears to be excessive, the Commissioner or any other person notified by the Government may, on application made to him by the aggrieved person, determine its correct value and for that purpose the provisions of sections 31 and 32 shall apply as nearly as possible.”

4. That prior to the insertion of section 27-A the matter was attended to by section 27 of the Stamp Act, 1899 which is reproduced hereunder:

27. Facts affecting duty to be set forth in instrument.

The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Probably because buyers and sellers were mentioning a lesser amount than the actual sale consideration paid / received to evade stamp duty, the legislature deemed it appropriate to amend the Stamp Act and inserted section 27-A; sub-section (1) whereof enabled the District Collectors to notify valuation tables in respect of immovable properties situated in their localities.

5. That in addition *vide* the Punjab Finance Act, 2008 (Gazette of Punjab, Extraordinary, 27th June 2008, PLD 2009 Punjab Statutes 1), a new Article 27-A was inserted in Schedule I of the Stamp Act, reproduced hereunder:

27-A. DECREE, RULE OF A COURT OR AN ORDER OF A COURT based on mutual consent of parties in cases involving transfer of an immovable property including sale, exchange, gift or mortgage, declaring or conferring a right in or title to an immovable property.

Two percent of the value of the property.

EXPLANATION.—Value, in this Article, means value of the property in accordance with the valuation table as notified by the Collector or where valuation table is not available, the average sale price of a property of similar nature in the same revenue estate or locality in the preceding year as may be determined by the Collector.

6. The Stamp Act is a self-contained law on the subject of stamps and provides for the payment of stamp duty on different kinds of “*instruments*”. Section 10 of the Stamp Act states that, “*Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments by means of stamps (a) according to the provisions herein contained; or (b) when no such provision is applicable thereto as the Provincial Government may by rule direct.*” Section 17 of the Stamp Act stipulates that, “*all instruments chargeable with duty and executed by any person in Pakistan shall be stamped before or at the time of execution*”.

7. The Registration Act, 1908 (“**the Registration Act**”) attends to the registration of “*documents*”, the registration whereof is compulsory (section 17) or optional (section 18). The provisions of Part XII of the Registration Act are in respect “of Refusal to Register”; a registering officer may refuse to register a document. Rule 112 of the Punjab Registration Rules, 1929 specifically states that, “*When a document is presented for registration the first duty of the registering officer is to examine it so as to see that it is duly stamped...*”.

8. Section 29 of the Stamp Act mentions that, “*in the absence of an agreement to the contrary, the expense of providing proper stamp shall be borne*” by the persons mentioned

in clauses (a) to (g) thereof; and in the case of conveyance or sale of immovable property, in the absence of an agreement, by the buyer / purchaser.

9. We have gone through the impugned judgment dated 18th June 2008 which directs the registration of a sale deed prepared pursuant to a decree in a suit for specific performance on the basis of the price mentioned in the agreement to sell. The other impugned judgments all dated 19th March 2012 hold that the relevant date is the date when the suits for specific performance were filed (and not the date of the agreements), i.e. the stamp duty required to be paid / affixed would be as per the valuation table in force on the date of institution of the suit.

10. That we have heard the learned counsel for the appellants and the respondents who took us through the provisions of the laws as mentioned above. They also cited the following precedents, the brief facts and the question that were determined therein, are mentioned, below:

Khalid Pervaiz Khan Tareen v. D.C. / Registrar, Quetta (PLJ 1994 Quetta 4)

In this case the respondent had issued a 'letter' pursuant to section 71 of the Registration Act. This case, from the jurisdiction of Balochistan, is not relevant as it was decided before the insertion of section 27-A in the equivalent stamp law of the province.

Abdul Sattar v. Province of Punjab (NLR 1995 Civil 209)

On the basis of a decree in a suit for specific performance of an agreement to sell the sale deed was prepared and it was stamped on the basis of the sale consideration mentioned in the agreement / decree. The matter pertained to the year 1981 before the insertion of 27-A in the Stamp Act.

Province of Punjab v. Marhaba Dawakhana Regd (1999 CLC 450)

In a suit for specific performance of an agreement to sell the sale deed was stamped as per the sale consideration mentioned in the agreement / decree. A learned

Divisional Bench of the High Court found that, “*no notification under section 27-A of the Stamp Act was issued nor the valuation table was ever notified*” (paragraph 10), therefore, the price of land as mentioned in the sale deed had to be accepted.

Allah Ditta Bhatti v. Amjad Saeed (PLD 2009 Lahore 440)

A suit for specific performance of an agreement to sell was decreed pursuant to which a sale deed was prepared which was stamped on the basis of the sale consideration mentioned in the agreement / decree. The respondents declined to register the sale deed since as it was not stamped in accordance with the notional value fixed pursuant to section 27-A of the Stamp Act. The learned Single Judge following the judgment in the Marhaba Dawakhana case (above) concluded that the Sub-Registrar had to register the document which was prepared pursuant to a decree of the Court and could not demand it to be stamped in accordance with the valuation fixed pursuant to section 27-A of the Stamp Act, without appreciating that in the case of Marhaba Dawakhana the court had found that no notification under section 27-A of the Stamp Act has been issued nor the valuation table had been notified.

11. The impugned judgments to the extent that they have determined the applicable stamp duty on the basis of the sale consideration mentioned in a sale agreement which culminated in a decree or took the date of filing of the suit for specific performance, travelled beyond the provisions of the Stamp Act. A document which is presented for registration is required to be stamped as per the stamp duty applicable on such date, and it makes no difference whether the document was voluntarily presented by the executants thereof or has been prepared pursuant to a decree. The registering officer examines the document to determine whether it bears the requisite stamps or the requisite stamp duty has been paid. The date the document is presented for registration is the material date, and it is immaterial whether it has been prepared pursuant to a decree of a court. And, if a valuation table has been notified pursuant to section 27-A (1) of the Stamp Act then the amount of

the stamp duty is to be calculated on the basis of such notional / deemed valuation. This is the only conclusion that can be reached from a consideration of the applicable legal provisions mentioned above, including section 10, 17, 27 and 27-A of the Stamp Act.

12. We have also noted that in some of the judgments, including the impugned judgment dated 18th June 2008, it is presumed that if stamping is done on the basis of a notified valuation table which is not the sale price as mentioned in the decree it would be tantamount to modifying the decree of the court. With respect this is an incorrect understanding of the matter. The amount of stamp duty applicable at the time of the registration of a document, albeit a document executed pursuant to a court decree, and the stamp duty affixed thereon on the basis of a notional or deemed value, does not mean that it is tantamount to modifying the decree. These are two distinct matters. The sale deed prepared pursuant to a decree in a suit for specific performance is neither modified nor can it be presumed to be modified. The registration officer cannot change the contents of a document which is presented for registration, and is only concerned with determining the applicable stamp duty on the date when the document is presented for registration.

13. These appeals are disposed of in the following terms:

- (a) Conveyance / sale deeds prepared pursuant to a decree in a suit for specific performance shall be stamped in accordance with stamp duty as is applicable under the Stamp Act on the date that the same is presented for registration, however, if a valuation table has been notified pursuant to section 27-A (1) of the Stamp Act then the applicable stamp duty will be calculated in accordance therewith in respect of documents wherein the sale consideration that is mentioned is less than that specified in the said valuation table.
- (b) Since some confusion with regard to the matter of stamp duty had crept in due to the judgments mentioned above, therefore, the private parties hereto shall not be required to pay the stamp duty that presently prevails if it had increased, and

shall pay the stamp duty as applicable when they had presented their documents
before the registering officer.

(c) The parties are left to bear their respective costs.

Chief Justice

Judge

Judge

Announced in open Court

On 9th September, 2015

at Islamabad

Qazi Faez Isa, J.

Approved for Reporting

(M. Tauseef)