

Aruby Sales And Services (P) Ltd vs State Of Maharashtra on 28 October, 1993

Equivalent citations: 1994 SCC (1) 531, JT 1993 (6) 217, AIR ONLINE 1993 SC 358, 1994 (1) SCC 531, 1994 AIR SCW 528, (1993) 2 RENTLR 749, (1993) 3 SCJ 630, (1993) 6 JT 217 (SC), (1994) 1 BANKCAS 495, (1994) 1 RRR 551, (1994) 2 BOM CR 248, 1994 ALL CJ 1 424, 1994 UJ(SC) 1 41, (1995) 1 BOM CR 518

Author: Yogeshwar Dayal

Bench: Yogeshwar Dayal, Kuldip Singh

PETITIONER:

ARUBY SALES AND SERVICES (P) LTD.

Vs.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT 28/10/1993

BENCH:

YOGESHWAR DAYAL (J)

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YOGESHWAR DAYAL (J)

KULDIP SINGH (J)

CITATION:

1994 SCC (1) 531 JT 1993 (6) 217

1993 SCALE (4) 280

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by YOGESHWAR DAYAL, J.- Civil Appeal No. 3477 of 1992 and other connected matters raise a common question of law under the Bombay Stamps Act, 1958 (hereinafter referred to as 'the Act').

2.The question involved in all these matters is whether a consent decree whereunder the title to immovable property is conveyed expressly falls under the definition of "conveyance" under Section 2(g) or an "instrument" under Section 2(1) of the Act or such consent decree falls outside the ambit and scope of the definition of "conveyance" or "instrument" under the Act.

3.According to the appellants before us the consent decree is not covered by the definition of "conveyance" or "instrument". The consent decrees in all these matters are almost identical.

4.The Single Judge of the High Court while construing the aforesaid definitions held that the consent decree does not fall in any of these definitions and, therefore, such a decree is not liable for payment of stamp duty.

5.The State of Maharashtra being dissatisfied with the judgment of the Single Judge dated December 10, 1990 went up in Letters Patent Appeal. The Division Bench took the view that having regard to the recital in the consent decree itself, the consent decree on its true interpretation, is a conveyance itself and is covered by the definition of "conveyance" under the Act and at any rate the consent decree fulfils all the requirements of transfer under the consent decree in favour of the vendees i.e. the writ petitioners/appellants before us and such a consent decree would be liable to stamp duty under Entry 25 of Schedule to the Act.

6.The Single Judge while holding the opposite view to the view of the Division Bench had relied on the decision of the Bombay High Court in Sharanbasappa Tippanna Indi v. Sanganasappa Sridramappa Shahapur 1.

7.It will be noticed that Sharanbasappa case' arose out of a reference made by a Subordinate Judge of Bijapur under Section 60 of the Stamp Act. This reference was heard by a Full Bench. The question which arose before the Full Bench was as to whether a consent decree creating a charge on the immovable property which was not subject-matter of the suit requires the stamp. The suit itself was filed for recovery of loan advanced. The suit was compromised in terms of the compromise and the defendants therein agreed that a certain sum was to be paid by them and that sum was charged on immovable property belonging to the defendants and consequently a charge was created by consent of the defendants. The immovable property was not the subject- matter of suit. The question that fell for consideration before the Full Bench was as to whether in such circumstances the consent decree is an instrument whereby for the purpose of securing existing or future debt one person creates in favour of another a right in respect of a specified property. Under the decree a charge was created and this was by the agreement between the parties. The Full Bench took the view that the decree of such a nature is not liable to stamp duty.

8.The argument before the Full Bench was that the consent decree itself fell within the definition of "mortgage deed"

but the Full Bench took the view that the definition was not wide enough to include such a decree. The Full Bench was also influenced with the other provisions of the Indian Stamps Act, 1899 including Section 29 thereof which did not contemplate a

consent decree as a mortgage deed. The Full Bench had no occasion to consider the consent decree like the present case where such a decree was to operate as a "conveyance". It was thus not an authority-for the proposition that where immovable property is in fact transferred under the consent decree, whether it amounts to "conveyance" within the meaning of the Act or not.

9.It may be stated that the definition of "conveyance" under Section 2(g) of the Act came to be amended by the Maharashtra Act No. 27 of 1985. This amendment was brought into force on December 10, 1985 and, therefore, the same is not relevant in this case since the consent decrees are of dates prior to December 10, 1985. The unamended definitions of the words "conveyance" and "instrument" under the Act are as under:

"2. (g) 'conveyance' includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1; 1 AIR 1935 Bom 256: 37 Bom LR 346: 156 IC 960

2.(1) 'instrument' includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt."

The consent decree recites thus:

"[A]nd the suit being this day called on for hearing and final disposal and the plaintiffs and the defendants appearing by their respective Advocates and at this stage the parties hereto through their Advocates consenting to the following order and decree, this Court by and with such consent doth order and decree that sale dated 18th day of October, 1982 being Exhibit 'B' to the plaint and do grant, sell, convey, assign, transfer, release and assure in favour of the plaintiffs, the immovable property comprising of the pieces or parcels of land.... And this Court by and with such consent doth record that on or before execution of the consent terms herein, the plaintiffs have paid to the defendants and the defendants have received from the plaintiffs the sum of Rs 9,55,000 (Rupees Nine Lakhs Fifty-five thousand) being the full amount of the agreed purchase price of the said property and the defendants do and each of them doth hereby admit and acknowledge receipt of the said agreed purchase price of the said property more particularly described in Exhibit 'A' to the plaint being the same property as described in the Schedule hereto and do hereby acquit, release and discharge the plaintiffs from payment thereof and this Court by and with such consent doth further record that the defendants do and each of them doth for themselves and for their respective heirs, executors and administrators declare that they have now no right, title, interest, claim or demand of any kind or nature whatsoever against the plaintiffs in respect of the said property more particularly described in the Schedule hereto or any part or portion thereof and in

respect of the purchase price of the said property or portion thereof and this Court by and with such consent both order and decree that this decree do operate as the conveyance from defendants in favour of the plaintiffs in respect of the said property more particularly described in Exhibit 'A' to the plaint. And this Court by and with such consent doth further record that prior to the execution of the consent terms herein the defendants have handed over to the plaintiffs complete vacant possession of the said immovable property more particularly described in Exhibit 'A' to the plaint."

10. From the above recital in the consent decree there can be no manner of doubt that the parties to the transaction and the suit agreed that the consent decree itself shall operate as conveyance from defendants in favour of the plaintiffs in respect of the suit property particularly described in Ex. 'A' to the plaint. Before the High Court it was not contested that the consent decree does not operate as "conveyance".

11. There is no particular pleasure in merely going by the label but what is decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an "instrument" under which title has been passed over to the appellants/plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs.

12. Thus the position becomes clear that the consent decree falls under the definitions of "conveyance" as well as "instrument".

13. Normally either the vendor or the vendee files a suit for specific performance of the agreement to sell. But the suit is really directing the opposite party to comply with the terms of the agreement. If the plaintiff succeeds in establishing the agreement and that he was already ready and willing to perform his part of the agreement the court will normally decree the suit for specific performance of the agreement. The decree itself will provide time for performance by way of execution of sale deed and if the defendant fails to execute the sale deed then the court gets it executed through its officer on behalf of the judgment-debtor in favour of the decree holder. In the present case all that had happened is that instead of first decree for specific performance of agreement to sell being passed and later on by execution the conveyance deed being executed in pursuance thereof, by the compromise decree both the stages have been gone through at the initial stage of suit itself whereby conveyance itself had been executed and the property was transferred after the filing of the suit for specific performance of the agreement to sell.

14. Mr Ganesh, learned counsel for the appellants, submitted that it is only by the amendment that with effect from December 10, 1985 the decree passed by the court has been for the first time introduced in the definition of "

conveyance" and the said amendment does not refer to be by way of clarification or declaration of that position. It was thus submitted that prior to amendment the consent decree was not included in the definitions of "conveyance"

and "instrument". The High Court proceeded on the footing that the 1985 Amendment was clarificatory and declaratory.

15.As we have noticed earlier the definitions of "conveyance" and "instrument" start with the expression "includes" which shows that the definitions are very wide. It appears to us that the amendment was made out of abundant caution and it does not mean that the consent decree was not otherwise covered by the definitions given in Section 2(g) or 2(1) of the Act. As stated earlier it depends on the terms thereof. Merely because an agreement is put in the shape of a consent decree it does not change the contents of the document. It remains an agreement and it is subject to all rights and liabilities which any agreement may suffer. Having a stamp of court affixed will not change the nature of the document. A compromise decree does not stand on a higher footing than the agreement which preceded it. A consent decree is a mere creature of the agreement on which it is founded and is liable to be set aside on any of the grounds which will invalidate the agreement.

16.We are thus in agreement with the reasonings and conclusion of the Division Bench in the impugned judgment. The appeals consequently fail and are dismissed with costs.