

State Of Haryana & Ors vs Manoj Kumar on 9 March, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1779, 2010 (4) SCC 350, 2010 AIR SCW 1990, (2010) 2 RECCIVR 296, (2011) 1 UC 794, (2010) 2 LANDLR 310, (2010) 110 REVDEC 100, (2010) 4 CAL HN 246, (2010) 2 ALL WC 1670, (2010) 79 ALL LR 726, (2010) 3 MAD LJ 1412, (2010) 2 ICC 602, (2010) 3 MAD LW 583, (2010) 2 CIVILCOURTC 465, (2010) 28 ALLINDCAS 103 (SC)

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Bench: Mukundakam Sharma, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2226 OF 2010

[Arising out of Special Leave to Appeal (C) No.26684 of 2008]

State of Haryana & Ors.

... Appellants

Versus

Manoj Kumar

... Respondent

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment dated 4.2.2008 passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh in a Civil Writ Petition No. 12094 of 2007.

3. The appellants are aggrieved by the impugned judgment of the High Court by which the High Court has set aside the concurrent findings of courts below while exercising its extraordinary jurisdiction under Article 227 of the Constitution of India.

4. Brief facts which are necessary to dispose of this appeal are as under:-

5. On 10.11.1999, an agreement to sell a commercial plot measuring 788 sq.yards located on Delhi-Mathura Mewla Maharajpur, Faridabad was executed by Smt. Manjula Gulati in favour of respondent, Manoj Kumar. The entire sale consideration was paid and the actual possession was also given, but the sale deed was not executed till 9.2.2001.

6. According to the appellants, in order to evade substantial stamp duty, the respondent filed a suit, without impleading the appellants as parties to the suit, for specific performance of agreement to sell dated 10.11.1999 executed by Smt. Gulati for the sale of property measuring 788 sq.yards for a total consideration of Rs.1,95,000/-. The suit was promptly decreed in favour of the respondent by the Civil Judge (Junior Division), Faridabad. The suit as a matter of fact was filed on 14.9.2000 and decreed on 9.2.2001 and no further appeal was filed which clearly indicated that the suit was filed between the parties only with the purpose to evade the substantial stamp duty. The court directed its Reader to execute the decree and get the sale deed registered in favour of the respondent. The Reader of the court at the court's direction appeared before the Sub Registrar on 9.2.2001 and got the sale deed registered in favour of the respondent for the property for a sale consideration of Rs.2,00,000/-. According to the appellants, the court decree was obtained by concealing the material facts in order to evade the actual payable stamp duty.

7. According to the appellants, the Joint Sub Registrar, Faridabad made a report that the sale deed executed on 9.2.2001 by respondent Manoj Kumar and the owner Manjula Gulati was under-valued. According to him, no sale deed can be registered for an amount which is less than the amount fixed by the collector or the circle rate (Rs.4,200/- per Sq.Yard).

8. The total value of the land at the rate of Rs.4,200/- per Sq.Yard works out to be Rs.33,09,600/-. On that amount, the stamp duty registration charges of the sale deed payable would be Rs.5,13,050/-. In the instant case, the respondent has only paid Rs.31,000/- towards the stamp duty which was obviously under-valued.

9. The District Collector, Faridabad in his order directed the respondent to make payment of difference of the amount of stamp duty amounting to Rs.4,82,050/-.

10. The interpretation of amended section 47(A) of the Haryana Act has to be in consonance with the notified circle rates and any value fixed below that would be in direct conflict with the prevalent law of the land and, therefore, liable to be struck down by the authorities.

11. Section 47-A of the Haryana Amendment to Stamp Act, as applicable to the parties, reads as under:-

S.47-A. - Instruments under-valued, how to be dealt with. - (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he

may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district, in whose jurisdiction the property or any portion thereof, which is the subject-

matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

12. According to the District Collector, Faridabad the respondent did not truly set-forth the true value in the instrument, therefore, order under section 47-A was passed against him.

13. The respondent aggrieved by the said order of the District Collector filed an appeal before the Commissioner, Gurgaon Division, Gurgaon (Haryana) challenging the order dated 6.12.2005. The Commissioner by order dated 8.6.2007 dismissed the appeal by holding that the Collector rate or circle rate prescribed for sale of land in village Mewla Maharajpur of commercial nature was Rs.4,200/- per sq.yard and the respondent was directed to pay the balance amount of stamp duty.

14. The respondent aggrieved by the said order of the Commissioner preferred a Civil Writ Petition No.12094 of 2007 before the High Court of Punjab and Haryana.

15. The High Court while exercising its jurisdiction under Article 227 of the Constitution has set aside the concurrent findings of facts of the courts below and observed that "where the specific performance of contract in respect of immovable property has been granted, the ostensible sale price given in the transfer deed is to be accepted by the Registering Authority."

16. According to the High Court, this was done primarily on the two grounds, firstly, "because the court has accepted that price and has decreed the suit for specific performance"; secondly, "there cannot be any opportunity with the vendee to fabricate an agreement of sale for showing the incorrect sale price because litigating parties would not ordinarily reach such an agreement and sign

the fabricated document."

17. The High Court further observed that "the authenticity of the decree passed by the court cannot be questioned. Therefore, the genuineness of the sale price has to be presumed."

18. The appellants were not parties in the first place in the said suit and, therefore, either in law or on facts could not be bound by such a decree hence, such observation and finding on the fact of it is illegal and liable to set aside.

19. The High Court in the impugned judgment has set aside the concurrent findings of fact of the courts below. The appellants aggrieved by the impugned judgment of the High Court have preferred this appeal. The appellants are particularly aggrieved by the observations of the High Court that "the authenticity of the decree passed by the court cannot be questioned. Therefore, the genuineness of the sale price has to be presumed."

20. According to the appellants, the High Court failed to appreciate that the respondent had intentionally evaded payment of the true stamp duty. The circle rate or the collector rate for the sale of commercial plot of 788 sq.yards was Rs.5,13,050 whereas the respondent paid only Rs.31,000/-. Hence the respondent was under the bounden obligation to pay the balance amount of Rs.4,82,050/-.

21. The appellants also urged that when the respondent had paid the full amount of sale consideration on 10.11.1999, then why was the sale deed executed only on 9.2.2001? The respondent has given no explanation for non-registration of sale deed for such a long time.

22. The appellants urged that the jurisdiction of the High Court under Article 227 is very limited and the High Court, while exercising the jurisdiction under Article 227, has to ensure that the courts below work within the bounds of their authority.

23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus v. Mohd. Mustaqim & Others (1983) 4 SCC 566 . The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in *Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi* (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in *Rena Drego (Mrs.) v. Lalchand Soni & Others* (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. In *Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others* (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.

30. According to the appellants, the High Court was not justified in interfering with the findings of fact of the courts below. Consequently, the impugned judgment of the High Court is totally unsustainable.

31. Mr. Manoj Swarup, Advocate appearing on behalf of the respondent supported the impugned judgment. According to him, the enquiry under section 47-A is confined to whether value has not been truly set forth in the instrument. According to him, the Legislature has expressed its intention clearly by emphasizing the detail i.e. that value as set forth in the instrument. Or else, the Legislature would have used the terminology 'market value' or 'circle rates'.

32. Mr. Swarup placed reliance on State of Punjab & Others v. Mohabir Singh etc.etc. (1996) 1 SCC 609. This Court in this case held as under:

"5. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer or property has not been truly set forth or valued or consideration mentioned when it is presented for registration..... .."

6. It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the sub-Registrar is required to satisfy himself, before registering the document, whether true price is reflected in the instrument as it prevails in the locality....."

33. Mr. Swarup further submitted "that circle rates have been held to constitute only one of the factors to be taken into consideration. Circle rates cannot be regarded as the last word on the subject. This Court in the case of R. Sai Bharathi v. J. Jayalalitha & Others (2004) 2 SCC 9 held that:-

"22.....The authorities cannot regard the guideline valuation as the last word on the subject of market value....."

"24.....It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of if at all available in respect of an area in which the property transferred lies....."

34. In the light of the above it is submitted that circle rates could have been taken as one of the factors and not the last word on the subject. The other factors being:-

- i) the price agreed upon between the vendor and the vendee
- ii) whether it was a distress sale
- iii) whether the price in the local area had gone down/escalated - at the time of the sale
- iv) Other relevant factors

35. It is submitted that these other factors have not been considered, not even noticed by the Authority under the Act."

36. We have heard the learned counsel for the parties at length. We are clearly of the opinion that the High Court, in the impugned judgment, has erred in interfering with the concurrent findings of fact of the courts below under its limited jurisdiction under Article 227 of the Constitution. The High Court erroneously observed that the "the authenticity of the decree passed by the court cannot be questioned. Therefore, the genuineness of the sale price has to be presumed." This finding of the High Court cannot be sustained. It would have far reaching ramifications and consequences. If the genuineness of the sale price entered into by the buyer and the seller cannot be questioned, then in majority of the cases it is unlikely that the State would ever receive the stamp duty according to the circle rate or the collector rate. The approach of the High Court is totally unrealistic.

37. The High Court in the impugned judgment has also erroneously observed that "there cannot be any opportunity with the vendee to fabricate an agreement of sale for showing the incorrect sale price because the litigating parties would not ordinarily reach such an agreement and sign the fabricated document."

38. The High Court gravely erred in not properly comprehending the facts of this case in proper perspective and which has led to grave miscarriage of justice.

39. It is not disputed that the commercial plot of 788 sq.yards located at Delhi-Mathura Mewla Maharajpur, Faridabad was valued by the Circle rate at Rs.4,200 per sq. yard fixed by the Collector of Faridabad meaning thereby that after the notification, no sale deed can be registered for an amount lesser than Rs.4,200/- per sq.yard. It may be pertinent to mention that, in order to ensure that there is no evasion of stamp duty, circle rates are fixed from time to time and the notification is issued to that effect. The issuance of said notification has become imperative to arrest the tendency of evading the payment of actual stamp duty. It is a matter of common knowledge that usually the circle rate or the collector rate is lower than the prevalent actual market rate but to ensure registration of sale deeds at least at the circle rates or the collector rates such notifications are issued from time to time by the appellants.

40. In the impugned judgment, the High Court has not properly construed the observations of the District Collector, Faridabad in which he has clearly stated as under :-

"It appears that the suit has been filed in the Civil Court and decree passed with the intention to avoid tax and stamp duty to be paid to the Government, because when respondent had paid entire sale consideration to the vendor, then he should have got the sale deed also executed at that time, whereas the same has not been done. Therefore, keeping into consideration the above facts, I come to this conclusion that sale deed No.11200 dated 9.2.2001 has been executed in respect of land measuring 788 sq.yard situated in village Mewla Maharajpur, which abuts Delhi Mathur Road. This plot is commercial and this fact has been concealed by the respondent. The sale deed had been registered for less value. The market value of the land in dispute as per Collector rate is Rs.33,09,600/- on which a total stamp duty of Rs.5,13,050/- was payable whereas the respondent has affixed stamp duty of Rs.31,000/-. In this manner on the above deed, the stamp duty of Rs.4,82,050/- is payable, which is

ordered to be recovered from the respondent in accordance with law."

41. This order was upheld by the Commissioner. The High Court while exercising its jurisdiction under Article 227 has set aside the orders passed by the District Collector, Faridabad and upheld by the Commissioner, Gurgaon without any basis or rationale. Apart from the jurisdiction, even what is factually stated in the order of the District Collector, Faridabad as upheld by the Commissioner, Gurgaon is unexceptionable and any interference was totally unwarranted.

42. In the facts and circumstances of the case, the impugned judgment of the High Court cannot be sustained and is accordingly set aside and the order passed by the District Collector, Faridabad which was upheld by the Commissioner, Gurgaon is restored. The respondent is directed to pay the balance stamp duty within four weeks from the date of this judgment, otherwise the appellants would be at liberty to take appropriate steps in accordance with law.

43. The appeal is allowed and disposed of. The parties are directed to bear their respective costs.

.....J. (Dalveer Bhandari)J. (Dr. Mukundakam Sharma)
New Delhi;

March 9, 2010