

CIVIL REVISION

Present :

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 02.09.2010

C.O. No. 2360 of 2009

Lalbabu Ansari.

Versus

LMM International & ors.

Points:

Stamp Duty - Suit for specific performance of contract based on a receipt which creates or purports to create rights and liabilities of the parties with regard to the oral agreement whether requires duly stamped.- Indian Stamp Act, 1899- Sch. 23

Facts:

In a suit for specific performance on the basis of an oral contract of sale the plaintiff filed a money receipt for marking exhibit but the learned Trial Judge did not mark the same as exhibit on being objected to by the contesting defendants. The learned Trial Judge has issued show cause whether he is willing to pay deficit stamp duty equivalent to duty chargeable as per Article 23 of Schedule of the Indian Stamp Act, 1899 with penalty of 10 times on the agreed valued of the property.

Held:

The receipt clearly indicates a receipt of Rs.50,000/- as a part consideration of the total value of the land of Rs.5,50,000/-, as claimed in the plaint. The receipt clearly indicates rights and liabilities of the parties to the oral agreement. The plaintiff is not basing his claim on oral agreement only but he depends on the receipt dated September 26, 2003. Upon perusal of the

said receipt, it appears that this is not a simply recognition of payment but it creates or purports to create rights and liabilities of the parties with regard to the so-called oral agreement, as claimed by the plaintiff. Since, this document creates the rights and liabilities between the parties, it should not be simply considered as a receipt within the provisions of Entry No.53 under Schedule 1A of the West Bengal Amendment Act. Para 15

Admittedly, the receipt dated September 26, 2003 was not duly stamped but it creates the rights and liabilities between the parties. Under such circumstances, Court is of the view that the decision 1999 (2) CLJ 259 and (2002) 2 WBLR (Cal) 440 are very much applicable in the instant case.

Para 16

Cases cited:

Chilakuri Gangulappa Vs. Revenue Division Officer, Madanpalle & anr., (2001) WBLR (SC) 477; Krishna Trivedi Vs. Sudama Pradas Ojha, (2009) 1 WBLR (SC) 297; Dr. Jagdish Narayan Singh Vs. Shri Monohar Mishra (2002) 2 WBLR (Cal) 440; Dr. Swapnadib Lahiri Vs. Tridib Das Roy, 1999 (2) CLJ 259 ;

For the Petitioner: Mr. Bidyut Kumar Banerjee,

Mr. Mohendra Prasad Gupta,

Mr. Soujanya Bandopadhyay.

For opposite party No.3: Mr. Narayan Ch. Ghosh.

For substituted O.P No.4: Mr. Haradhan Banerjee,

Mr. Amitava Pain.

For opposite party no.2: Mr. Haradhan Banerjee,

Mr. P. P. Mukherjee.

For opposite party no.4: Mr. Samrat Mukherjee.

Prasenjit Mandal, J. : This application is at the instance of the plaintiff and is directed against the order dated January 29, 2009 passed by the learned Civil Judge (Senior Division), First Court, Howrah in Title Suit No.38 of 2004 thereby directing the plaintiff to file a show cause whether he is willing to pay deficit stamp duty equivalent to duty chargeable as per Article 23 of Schedule of the Indian Stamp Act, 1899 with penalty of 10 times by the date fixed on the agreed valued of the property.

2. The plaintiff filed the said title suit for specific performance of contract, declaration, permanent injunction and other reliefs contending, inter alia, that the defendants promised to sell the suit property in favour of the plaintiff at a consideration of Rs.5,50,000/- out of which an amount of Rs.50,000/- was paid by the plaintiff under the receipt dated September 26, 2003. Such an agreement was held orally but the receipt was granted in respect of the payment. That suit is contested by the opposite party nos.5 & 6 by filing separate written statements. The suit was at the stage of peremptory hearing and the plaintiff/petitioner filed an affidavit-in-chief accompanied several documents. The receipt dated September 26, 2003 was also tendered for marking exhibit as a money receipt but the learned Trial Judge did not mark the same as exhibit on being objected to by the contesting defendants. The learned Trial Judge has issued show cause as indicated above. Being aggrieved by the said order, this application has been preferred by the plaintiff/petitioner.

3. Mr. Bidyut Banerjee, learned Advocate appearing on behalf of the petitioner, contends that the agreement between the parties was held orally. The money receipt has been granted as a proof of payment of Rs.50,000/- only towards the consideration money for the sale of the immovable

property. So, this is nothing but a mere money receipt and it cannot be considered as an instrument at all. He submits that Section 2 sub-Section 23 of the Indian Stamp Act, 1899 defines what is receipt and according to this definition the receipt in question is nothing but a money receipt which requires revenue stamp of Re.1/- only as per Schedule 1A Item No.53 applicable in West Bengal. He also submits that instrument has been defined in Section 2 Sub-Section 14 as “instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. He has also submitted the definition of conveyance. As per Section 2(10) of the Indian Stamp Act as “conveyance includes a conveyance on sale and every instrument by which property whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1. In the instant case, the money receipt appearing at page 50 is nothing but a money receipt and so it does not require to be impounded as directed by the learned Trial Court. Therefore, he submits that the impugned order should be set aside.

4. On the other hand, Mr. Haradhan Banerjee, learned Advocate appearing on behalf of the substituted O. P. Nos.2 & 4, points out that the so-called receipt is not a simple money receipt at all. But it is recorded as receipt of money from the company as “interest free loan against our factory land”. Therefore, such receipt clearly comes within the definition of an instrument as in Section 2(14) of the Indian Stamp Act, 1899. So, the learned Trial Judge was justified in passing the impugned order directing impounding of the said document.

5. Mr. Ghosh, learned Advocate appearing for the Opposite Party No.3, adopting the submission of Mr. Haradhan Banerjee submits that as per terms of the receipt, it is to be decided if the said receipt can be considered as an

agreement for sale or a charge of the property of the company as security for the loan.

6. Therefore, the point for consideration is whether the impugned order can be sustained.

7. Upon hearing the learned Advocate for the parties and on perusal of the materials on record, I find that the receipt dated September 26, 2003 appearing at page 50 is the matter of consideration in this application. The petitioner has contended that the agreement for specific performance of contract was done orally. Oral agreement is quite valid and on the basis of an oral agreement for sale of an immovable property, a suit is quite maintainable in the form as made in the plaint. The receipt is simply a money receipt as defined in Section 2(23) of the Indian Stamp Act, 1899 and so the question of impounding the same document does not arise.

8. In the instant case, I find that the case is wholly based on an oral agreement but the receipt dated September 26, 2003 is forthcoming in support of the contention of the plaintiff. For proper clarification, the receipt is stated below in its present form:

“26th September, 2003. Received with thanks from M/s. Amber Motors Munshi Danga More, Bankra, Howrah, a sum of Rs.50,000/- (Rupees Fifth thousand only) as interest free loan against our factory land. For & on behalf of L.M.M. INTERNATIONAL 26.9.03 Partner”

9. It was executed on behalf of the said company in the letter head. Such a receipt was granted as interest free loan against factory land of the company clearly indicating that it creates any right or liability with regard to the parties mentioned therein.

10. Mr. Bidyut Banerjee has referred to the decision of Chilakuri Gangulappa Vs. Revenue Division Officer, Madanpalle & anr. reported in

(2001) WBLR (SC) 477 para 3 and thus he has submitted that the document was referred to the revenue divisional officer because it was an agreement and not a receipt. It relates to the procedure for payment of stamp duty. So, in the instant case, the question of impounding does not arise. In this regard, upon due consideration of the submission of Mr. Banerjee, I am of the view that this does not help the applicant much. This decision refers to sending a document to the revenue divisional officer if the appellant was unwilling to remit the amount and that the maximum penalty that could be imposed is the 10 times of the deficit value of the agreement.

11. He has next referred to the decision of Gopi Krishna Trivedi Vs. Sudama Pradas Ojha reported in (2009) 1 WBLR (SC) 297 and submits that when a document contains the terms and conditions for agreement for sale of immovable property, the document comes within the purview of an instrument. But, in the instant case, the receipt having not mentioned any terms and conditions for sale of the immovable property, it cannot, in any way, be termed as an instrument and so the question of impounding does not arise.

12. Mr. B. Banerjee has also referred to the decision of Dr. Jagdish Narayan Singh Vs. Shri Monohar Mishra reported in (2002) 2 WBLR (Cal) 440 and submits that money receipt with endorsement of booking advancement of flat is an instrument for sale and so stamp duty was required to be paid. But, in the instant case, the so called receipt does not lay down any particulars of the land to be sold or other terms and conditions. So, the receipt is not required impounding.

13. On the other hand, Mr. Haradhan Banerjee, learned Advocate appearing on behalf of the substituted O. P. Nos.2 & 4, has referred to the decision of Dr. Swapnadib Lahiri Vs. Tridib Das Roy reported in 1999 (2) CLJ 259

which according to him, clearly indicates that according to the serial no.5(d) of schedule 1A of the West Bengal Amendment Act, the expression agreement or memorandum of an agreement if relating to a sale or lease cum sale of immovable property, the duty would be payable as conveyance (No.23) for market value. The plaintiff having filed the suit for specific performance of contract, His claim that the oral agreement was held but the receipt lays down that the factory land had been made the subject matter of the specific performance of contract and it will appear from the said receipt appearing at page no.50. Therefore, according to this decision it requires impounding. He has specifically referred to paragraph no.14 of the said decision which is quoted below:-

“14. The explanation added to Item No.5 of Schedule 1A states in clear terms that the expression agreement or memorandum of an agreement, if relating to a sale, shall include an agreement to sell or any memorandum or acknowledgment in relation to transfer or delivery of possession of immovable property with intent to transfer right, interest or title to such property at any future date.”

14. Mr. Haradhan Banerjee has also referred to the decision of Gopi Krishna Trivedi Vs. Sudama Prasad Ojha reported in (2008) 9 SCC 401 and submitted that in that case a letter which contained the terms and conditions of sale though the specific contention was that an oral agreement was held, comes as an instrument within the definition of Section 2(14) of the Stamp Act creating or purporting to create rights and liabilities of the parties. The High Court, therefore, directed impounding of the said document. Thus, he submits that the learned Trial Judge was justified in passing the impugned order according to this decision which is very much applicable in the instant case.

15. Upon due consideration of the above noted decisions, I find that though the plaintiff has contended that the agreement for sale of immovable property was oral and it was a good contract according to the provisions of the Indian Contract Act, the receipt appearing at page 50 is not a mere money receipt. The decision of Gopi Krishna Trivedi (supra) clearly refers to a letter which contains the terms and conditions and that was described as an instrument and so order of impounding was passed. In the instant case, the receipt appearing at page 50 clearly indicates a receipt of Rs.50,000/- as a part consideration of the total value of the land of Rs.5,50,000/-, as claimed in the plaint. The receipt clearly indicates rights and liabilities of the parties to the oral agreement. The plaintiff is not basing his claim on oral agreement only but he depends on the receipt dated September 26, 2003. Upon perusal of the said receipt, it appears that this is not a simply recognition of payment but it creates or purports to create rights and liabilities of the parties with regard to the so-called oral agreement, as claimed by the plaintiff. Since, this document creates the rights and liabilities between the parties, it should not be simply considered as a receipt within the provisions of Entry No.53 under Schedule 1A of the West Bengal Amendment Act.

16. Admittedly, the receipt dated September 26, 2003 was not duly stamped but it creates the rights and liabilities between the parties. Under such circumstances, I am of the view that the decision 1999 (2) CLJ 259 and (2002) 2 WBLR (Cal) 440 are very much applicable in the instant case. Though Mr. Bidyut Banerjee has referred to this decision of (2002) 2 WBLR (Cal) 440 in support of his contention but ultimately the Hon'ble Single Judge has observed in the last part of the paragraph 8 and the paragraph 13

that the receipt can be termed as instrument and / or agreement for sale for the purpose of specific performance of contract.

17. The Schedule 1A to the Indian Stamp Act, 1899 has been made applicable in the West Bengal in order to charge stamp duty on the instruments relating to transfer of immovable properties with a view to combating the loss of stamp duty on the instrument resembling conveyance, agreement to sell where possession is delivered and other objects.

18. Under the above facts and circumstances, I am of the view that the learned Trial Judge was justified in passing the impugned order. He has not committed any errors of law in passing orders relating to impounding of the document. So, there is nothing to interfere with the impugned order. Time to file show cause by the plaintiff is extended for 2 weeks from date.

19. Accordingly, this application fails to succeed. It is dismissed.

20. Considering the circumstances, there will be no order as to costs.

21. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)