In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3520 of 2013 (O&M)

Date of Decision: 02.05.2016

Balwinder Singh and Another

... Appellant(s)

Versus

Punjab State and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1.	Whether reporters of local newspapers may be allowed to see judgment?	**Yes**
2	To be referred to reporters or not?	
3	Whether the judgment should be reported in the Digest?	**Yes**

Present: Mr. K.S.Rekhi, Advocate
for the appellant(s).

Mr. B.S.Sra, Additional Advocate General,
Punjab, for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts having been recorded by both the Courts below whereby the Court of first instance dismissed the suit of plaintiffs for declaration that demand of ₹ 2,20,000/- raised by the defendants on account of deficiency of stamp duty was illegal, null and void. The first Appellate Court dismissed the appeal.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts for the purpose of decision of the present appeal that plaintiffs being joint owners in possession of land measuring 39 kanals 5 marlas situated at village Thatha, Tehsil & District Tarn Taran and they had mortgaged the land in favour of Canara Bank, Amritsar vide mortgage deed dated 10.2.2003 and the same was duly registered with Sub Registrar vide document No. 2227 dated 10.2.2003. As per plaintiffs, all the requirements of registration were duly complied with as required under the Indian Stamp Act, 1899 (hereinafter referred to as "the 1899 Act") and the Registration Act, 1908 (hereinafter referred to as "the 1908 Act") and no objection was raised by the Registration Authority at that time. Subsequently, on 31.10.2007, plaintiffs received a notice to make payment of ₹ 2,20,000/- on account of alleged deficiency of stamp duty which they were required to pay at the time of registration of mortgage deed dated 10.2.2003, failing which the amount was to be recovered as land revenue. As per plaintiffs, the said notice is illegal, ultra-vires, unjust, ineffective, inoperative and is liable to be set aside. As per plaintiffs, no opportunity of hearing was given by defendant No.2 at the time of raising of demand.

Defendants contested the suit *inter alia* taking the plea that mortgage deed was duly registered on 10.2.2003. However, plaintiffs failed to make the payment of stamp duty as required under the law at the time of registration of mortgage deed. During the audit, it was pointed out by the Audit Officer that stamp duty of ₹ 2,20,000/- was not paid to the Government as required under the 1899 Act. As such, notice was issued to the plaintiffs as well as to the Canara Bank but the payment was not made. But the plaintiffs did not appear before defendant No.3 for payment of ₹ 2,20,000/- nor they appeared before the Collector. More so, no appeal was preferred against the order of Collector and as such suit is liable to be dismissed.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. The Court of first instance, after hearing the parties and appreciating the evidence, returned the findings that suit of the plaintiff was without any merit and the same was dismissed. Plaintiffs preferred appeal and the first Appellate Court dismissed the same and as such present regular second appeal before this Court.

On 18.8.2015, following substantial questions of law were framed by this Court:-

"(i) Whether the Courts below were justified in holding that the remedy was only by way of appeal under the Punjab Land Revenue Act to challenge the correctness of the order passed by the Collector, when the dispute was the incompetency of the Collector to levy the stamp duty through a notice issued on 31.10.2007 in a simple mortgage which was registered on 10.02.2003?

(ii) Whether the Civil Court was not competent to decide on the jurisdiction of the Collector to issue the order for collection of revenue based merely on some audit objection without joining the correctness of the

assessment of stamp duty payable that could be resorted only under the provisions of the Stamp Act itself?"

Learned counsel for the appellants submitted that undisputedly mortgage deed was registered on 10.2.2003 and at that time no objection was raised by the defendants and they were not justified in raising demand of ₹ 2,20,000/- at the subsequent stage and as such suit of the plaintiffs deserves acceptance.

Learned counsel for the appellants also submitted that even no notice was issued by the Collector at the time of passing of the order on 31.10.2007 thereby raising demand of ₹ 2,20,000/- is liable to be set aside. On this point, reliance was placed upon the judgment rendered by this Court in ***Abhinav Kumar v. State of Haryana and Others 2001(1) RCR (Civil) 91***.

Learned State counsel, while arguing on this point, submitted that admittedly, mortgage deed was registered on 10.2.2003 and at that time no objection was raised. However, on the basis of audit report, the Collector had issued notice to the appellants, which is as per law.

Having considered the submissions made by learned counsel for the parties, perusal of the record, matter in controversy and the substantial questions of law, this Court is of the considered view that the Collector had issued notice to the appellants during pendency of the proceedings on the basis of reference having been made on the receipt of audit report. Appellants failed to appear before the Collector and thereafter registered notice was issued and as the registered notice was unserved, appellants were served by way of substituted service. Hence, it is not a case where no notice was issued to the appellants, rather they were issued notice by the Collector and they themselves decided to remain away from the proceedings.

As regard to the fact whether the Collector could take cognizance of deficiency of stamp duty at the time of registration of document only or even at subsequent stage, the relevant provisions are incorporated under Section 47A of the Act and the same are being reproduced as under:

> ***"47-A.Instruments undervalued how to be dealt with**.-*
>
> *(1) If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or 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 of the property or the consideration, as the case may be, and the proper duty payable thereon.*
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> *(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable*

opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules 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 moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such

examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, would be payable by the person liable to pay duty; and

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

From the above referred provisions, it is ample clear that the Collector can take note of the deficiency of the stamp duty on the basis of report of audit by the Comptroller and Auditor General of India within a period of three years from the date of registration of the instrument. In the present case, taking notice of that, Collector passed the order. The Collector was legally authorized to take note of the deficiency of stamp duty on the basis of audit report within a period of three years and the same has been done and there is no illegality in the order under challenge. In view of above, the facts of the present case are distinguishable from the facts of judgment rendered by this Court in ***Abhinav Kumar's case*** *(supra)*.

The Courts below have rightly recorded the findings that as per provisions of Section 48 of the 1899 Act, recovery of any sum, which is to be recovered as per the order of Collector, the same can be recovered by sale of immovable property as arrears of land revenue. As the amount in question was required to be recovered as arrears of land revenue, the same is to be recovered as per the provisions of Punjab Land Revenue Act, 1887 and jurisdiction of Civil Court is barred. Both the Courts below have already taken the correct view and there is no ground to set aside the said findings.

In view of above said discussion, the substantial questions of law are decided against the appellants and resultantly, present appeal is dismissed.

(Shekher Dhawan)
Judge

May 02, 2016
"DK"