IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-519-2018 (O&M)
Pronounced on:- 03.04.2024

Sucha Singh Sidhu @ Amit Sidhu

… Petitioner

Versus

Chamkaur Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present :- Mr. Rajiv Joshi, Advocate
for the petitioner.

Mr. G.S. Brar, Advocate
for the respondent.

RITU TAGORE, J.

1. Challenge in present petition is to the order dated 16.01.2018 passed by learned Additional Civil Judge (Senior Division), Phillaur, in Civil Suit No.2048 of 2013 titled 'Sucha Singh Sidhu @ Amit Sidhu Vs. Chamkaur Singh' whereby an application (Annexure P-6) moved by petitioner (plaintiff before the trial Court) under the Indian Stamp Act, 1899 (hereinafter referred to as ‘the Act’) for impounding the original Power of Attorney dated 20.08.2009 Ex.PZ and payment of stamp duty and penalty thereof, was dismissed.

2. Shorn of unnecessary details, Sucha Singh-petitioner instituted a civil suit through his duly appointed Power of Attorney Smt. Harjinder Kaur, his mother against the respondent (defendant before the trial Court), for possession and permanent injunction as owner of the suit property

measuring 2 kanals marked as 'ABCD' in the site plan and fully described in head note of the plaint, *inter alia* pleading that Jarnail Singh, predecessor-in interest of the petitioner was in settled possession of a suit property a'*taur*' as shown in site plan attached with the plaint, who had purchased from Punjab Government and had become owner of the same. It is pleaded that Jarnail Singh executed a Will dated 05.03.2007 in favour of the petitioner and as such he became owner in possession of the disputed property. It is further alleged by the petitioner that in his absence when he was in a foreign country, the respondent forcibly entered on the part of the suit property and made illegal construction of a house and rooms as detailed in the site plan. He requested the respondent to hand over the possession of the suit property but he did not accede to his request which necessitated him to file the present suit.

3. Respondent-defendant filed written statement and resisted the suit of the petitioner stating that Jarnail Singh, father of the petitioner sold the suit property to him vide agreement dated 05.11.2003 after receiving full sale consideration and also executed Will dated 30.03.2005 and General Power of Attorney dated 31.03.2005 in his favour with his free will and consent, and thereafter, respondent entered into an agreement for construction of a house with Jaswinder Singh, the contractor and Jarnail Singh also attested the said agreement and participated in his home warming ceremony. The respondent therefore pleaded that Jarnail Singh had left with no right, title in the suit property. The execution of Will dated 05.03.2007 by Jarnail Singh in favour of the petitioner is forged and fictitious document, having no effect on his right and interest in the suit property. Besides above,

respondent also pleaded that suit of the plaintiff is time barred, and is also hit by the principle of constructive *res judicata.* Further, the power of attorney in favour of Harjinder Kaur is not legal and valid as it is not duly attested and properly stamped as required under the Act and is inadmissible in the evidence.

4. As evident from the paper book, the learned trial Court framed the issues from the rival pleadings of the parties and asked them to lead evidence on framed issues. During course of the evidence, the power of attorney holder Harjinder Kaur, PW-1 tendered copy of the power of attorney as P-1 and the counsel for the petitioner in his statement dated 13.07.2016 tendered the original power of attorney as Annexure PZ. The respondent objected the admissibility of the original power of attorney on the ground of mode of proof and further no opportunity was given to the defendant to cross-examine the witness concerning the power of attorney Ex.PZ. Thereafter, as apparent from the paper-book, the petitioner moved an application Annexure P-6 for impounding the original power of attorney dated 20.08.2009 Ex. PZ as per the provisions of Indian Stamp Act and sought the permission to make good the deficiency in the stamp duty if found insufficiently stamped and payment of penalty thereof, if required, as per law.

5. Respondent filed reply (Annexure P-7), opposing the application on the ground of its maintainability, having filed beyond three months of its execution by taking recourse to the provisions of Section 18 of the Act.

6. The learned trial Court vide the impugned order dated 16.01.2018 dismissed the application by observing that Section 18 of the Act provides three months time for stamping the document and application has been filed after the gap of seven years despite the objections raised by the defendant with respect to it being improperly stamped.

7. Learned counsel for the petitioner contended that learned trial Court erred in dismissing the application and contended that in a case where unstamped document (other than bill of exchange) is produced as evidence, within three months of execution, stamp duty can be collected without impounding and without penalty. If the document is sought to be used as evidence beyond three months the above said bar of three months shall not apply and the document can be impounded under Section 33 of the Act and stamp duty and penalty are levelled even after expiry of three months.

8. Learned counsel also stated that Section 35 of the Act empowers Court to direct party who wants document insufficiently stamped to be acted upon, to pay stamp duty or deficient portion together with penalty, for enabling document to be admitted in evidence.

9. Learned counsel submitted that the petitioner is ready to pay the requisite stamp duty and penalty, if any, and it is the petitioner, who had moved an application (Annexure P-6) in this regard, however the learned trial Court erred in dismissing the application simply taking the ground of delay. Learned counsel however submitted that it is settled position of law that there is no question of limitation as far as provisions of Indian Stamp Act are concerned. Moreover, the stamp duty can be made good at any time

and at any stage of the suit. Further, no party should be deprived of the justice on the ground of technicalities and more so, when the law provides a remedy to ameliorate the same. Learned counsel thus contended that impugned order be set aside and application be allowed. In support of his arguments, learned counsel has referred to judgments of Hon'ble the Supreme Court of India in ***Peteti Subba Rao Vs. Anumala S. Narendra, 2002 (10) SCC 427 and Malaysian Airlines Systems BHD vs. Stic Travels (P) Ltd., (2001) 1 SCC 451***and Co-ordinate Bench of this Court in ***Bhim Singh Vs. Smt. Urmila Rani, 2007 (10) R.C.R. (Civil) 440.***

10. Contra learned counsel for the respondent supported the impugned order stating that learned trial Court has rightly dismissed the application having filed beyond the three months against the mandate of Section 18 of the Indian Stamps Act, 1899. A prayer is thus made that the revision is devoid of merits and should be dismissed.

11. I have heard learned counsel for the parties and gone through the paper book.

12. The present matter relates to a question of impounding a power of attorney (Ex.PZ) executed outside India and presented in India for use in the proceedings of a civil suit pending before the learned trial Court as detailed above. By way of application (Annexure P-6), the petitioner pleaded for impounding the original power of attorney deed dated 20.08.2009 (Ex. PZ) executed by him in U.K and prayed for making good the deficiency in the stamp duty on the power of attorney and payment of penalty thereof, if found to be insufficiently stamped.

13. At this stage, it would be relevant to go through some of the provisions of Indian Stamp Act, 1899. Sections 3, 18, 33 and 35 of the Act deals with the instruments which are chargeable with duty which are extracted below:-

> *"**3. Instruments chargeable with duty**. —Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say—*
>
> *(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in [India] on or after the first day of July, 1899;*
>
> *(b) every bill of exchange [payable otherwise than on demand] or promissory note drawn or made out of [India] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in [India]; and*
>
> *(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of [India] on or after that day relates to any property situate, or to any matter or thing done or to be done, in [India] and is received in [India]:*
>
> *Provided that no duty shall be chargeable in respect of—*
>
> *(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;*

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel, registered under the Merchant Shipping Act 1894, or under Act XIX of 1938 or the Indian Registration of Ships Act, 1841, (X of 1841) as amended by subsequent Acts.

(3) Any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

***18. Instruments other than bills and notes executed out of India**.—(1) Every instrument chargeable with duty executed only out of [India], and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in [India].*

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the [State Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

***33. Examination and impounding of instruments**. — (1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a pubic office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain

whether it is stamped with a stamp of the value and description required by the law in force in [India] when such instrument was executed or first executed:

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1998);

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, —

(a) [the [State Government]] may determine what offices shall be deemed to be public offices; and

(b) [the [State Government]] may determine who shall be deemed to be persons in charge of public offices.

***35. Instruments not duly stamped inadmissible in evidence, etc.**- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :*

Provided that—

(a) any such instrument [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

14. Section 35 of the Act empowers the trial Court to direct the party who wants the documents to be acted upon, to pay stamp duty or the deficient portion together with penalty as detailed therein. This is for the purpose of enabling the document to be admitted in evidence. In such a situation the document would be admitted only on the payment of aforesaid amount.

15. In ***Malaysian Airlines Systems BHD (supra)*** a question had cropped up whether a document in sufficiently stamped, is sought to be used in evidence, can be allowed to be levied the stamp duty and penalty even after expiry of three months. Hon'ble the Supreme Court observed as under:-

> *"5. In my view, the point raised in the I.A. is not tenable. In a case where the unstamped document (other than bill of exchange) is produced as evidence, within three months of execution, the stamp duty can be collected without impounding and without penalty. If the document is sought to be used as evidence beyond three months, the above said bar of three months shall not apply, and the document can be impounded under Section 33 and stamp duty and penalty are levied, even after expiry of three months.*
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> *6. According to the decision of the Full Bench of the High Court of Allahabad in **Mohammad Amir Ahmad Khan v. Deputy Commissioner and others AIR 1956 Allahabad 453**, as affirmed by this Court in **Government of Uttar Pradesh and others v. Raja Mohammad Amir Ahmad Khan, AIR 1961 Supreme Court 787** and also according to the decision of the Delhi High Court in **J.S. Bhalla v. G.J. Bhawanani, 1983(1) RCR (Rent) 327 (Delhi) : 1983 (Vol. 23) DLT 125**, the procedure permitting submission of a document within 3 months of its execution as in Section 18 is for collection of the stamp duty payable on the document. If it is produced as evidence within three months of execution, the stamp duty can be collected under Section 18, read with Section 32, without impounding the document under Section 33. But in case where 3 months have already expired from the date of execution of the document and later on the document is produced before the Court as evidence, it is permissible*

for the Court to impound document and collect the stamp duty and penalty and in such a situation, the time-limit of 3 months provided in Section 18 and the clause (b) of Section 32 are not attracted. Therefore, the point raised by the respondent in the above said I.A. cannot be accepted."

16. In view of the provisions and the observation made by Hon'ble the Supreme Court in ***Malaysian Airlines Systems BHD (supra)***, it is clear that a document which is sought to be used as evidence beyond three months can be impounded under Section 33 and Stamp duty and penalty is levied even after the expiry of three months as provided under section 35 of the Act. In such a case the time limit of three months provided under Section 18 and clause (b) of Section 32 is not attracted.

17. In view of the above, learned trial Court thus erred in law in dismissing the application moved by the petitioner. Accordingly the impugned order dated 16.01.2018 is set aside. The petitioner is permitted to pay the stamp duty and penalty, if any, required as assessed by the trial Court, on the document (Ex.PZ) as requested by him as per law.

18. Accordingly, revision petition is allowed in above terms.

19. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

03.04.2024
Rimpal

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No