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MP-5756-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 13th OF AUGUST, 2025

MISC. PETITION No. 5756 of 2024

DINESH KUSHWAH AND OTHERS

Versus

*G.C. DAIRY INDIA LIMITED THROUGH DIRECTOR RAJENDRA
SINGH S/O SHRI JWALA SINGH AND OTHERS*

&

MISC. PETITION NO. 3776 OF 2024

DINESH KUSHWAH AND OTHERS

Verus

*GC DAIRY INDIA LIMITED THROUGH DIRECTOR RAJENDRA SINGH AND
OTHERS*

.....
Appearance:

Shri Prakash Chandra Chandil - Advocate for the petitioners.

Shri Dileep Awasthi- Government Advocate for respondents-State.

Shri Anil Sharma- Advocate for respondent No.1
.....

ORDER

This petition and M.P. 3776/2024 are being decided together, as both are interrelated to each other.

2. Both the petitions were filed by petitioners/plaintiffs under Article 227 of the Constitution of India against the impugned orders dated 22/05/2024 and 05/07/2024 passed by the 15 District Judge, Gwalior in civil suit No 400001A/2015 (RCSA).



3. Brief facts of the case is that petitioners/plaintiffs filed a civil suit for specific performance of agreement to sale dated 30/05/2014 against respondents/defendants with pleading that on 30/05/2014, respondent No.1 entered into agreement to sale with petitioners for sale of his land which is in question for consideration of Rs. 3,15,000/- per Bigha, as the land in question is agricultural land, therefore, respondent No.2/State Government was arrayed proforma defendant in the suit. Copy of plaint is Annexure P-2 and agreement to sale is Annexure P-3. Respondent No.1 filed the written statement. Thereafter, Trial Court framed the issues and fixed the matter for evidence of plaintiffs on 22/05/2024. During chief examination of petitioners/plaintiffs, defendant No.1 raised the objection that document agreement to sale is not properly stamped, therefore, the same can not be exhibited in evidence. But Trial Court without taking any decision on the objection raised by respondent No.1/defendant passed the order to call the report from the Collector of Stamp about the stamp duty payable on the agreement to sale. Thereafter, on 05/07/2024 Trial Court after receiving the report from Stamp Collector, directed petitioners/plaintiffs to pay deficit stamp duty Rs. 9,97,850/- with ten times penalty and get impound the document from the Collector of Stamp.

4. Being aggrieved by the impugned orders of the Trial Court dated 22/05/2024 and 05/07/2024, petitioners/ plaintiffs filed these petitions on the ground that impugned orders passed by the Trial Court is illegal, arbitrary and without jurisdiction, therefore, the same deserve to be set-aside. It is submitted that from perusal of impugned orders, it reveal that during chief



examination of petitioner No.1/plaintiff, objection raised by defendant No.1/respondent No.1 about admissibility of document agreement to sale on the ground of deficit stamp duty but Trial Court without deciding the objection and without giving any finding of deficit of stamp duty has directed to call the report from the Collector of Stamp about the stamp duty payable. It is further submitted that according to Section 33 of the Indian Stamp Act, it is a duty of Trial Court to take opinion that instrument is not duly stamped impound and thereafter, Trial Court should follow Sections 38 and 40 of the Indian Stamp Act but Trial Court did not follow the aforesaid provisions. Therefore, it is prayed that impugned orders be set-aside.

5. On the other hand, learned counsel for respondents-defendants supported the impugned orders and submitted that when Trial Court found that sale deed was not properly stamped, therefore, he called the report from Stamp Collector and thereafter, petitioners/plaintiffs were directed to pay the deficit court fee. Therefore no interference is warranted in the impugned orders and impugned orders are liable to be set-aside.

6. Heard learned counsel for parties and perused the documents attached with this petition.

7. It is found that at the stage of petitioners/plaintiffs' chief examination, respondents/defendants raised objection about the admissibility of documents and agreement to sale on the ground of deficit court fee. Thereafter, Trial Court directed to call the report from Stamp Collector.

8, Section 33 of the Indian Stamp Act is reproduced as under :-

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 public 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;

[Provided that :-

nothing contained in this sub-section shall be deemed to authorise the Collector to impound any instrument which has not been executed but is brought to him under Section 31 for determining the duty with which the instrument is chargeable or any instrument which he is authorised to endorse under Section 32.]

(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 (5 of 1898)] [Now see the Code of Criminal Procedure, 1973 (2 of 1974).];

(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

9. It appears that when documents produced before the Court then it is a duty of Court to reach on conclusion that documents are with sufficient stamps. If Court reaches on the conclusion that document is not with sufficient stamp then according to Section 35 of the Indian Stamp Act, it was not admissible in evidence.

10. Section 35 is reproduced as under :-

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, registered or authenticated on payment of the duty with which same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of two percent of the deficient portion of stamp duty for every month or part thereof, from the date of execution of the instrument, but in no case the amount of penalty so calculated shall exceed the principal amount of deficit stamp duty to be recovered.

[Clause (a) Applicable in Chhattisgarh Only

(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 an 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 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 IX or Part D of Chapter X of the Code of Criminal Procedure, 1973 (No.2 of 1974)

[clause (d) Applicable in Chhattisgarh Only

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceedings in a Criminal Court other than proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (5 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.

[Clause (f) applicable in Chhattisgarh only

(f) any such instrument not being a bill of exchange or promissory



note shall, subject to all just exceptions, be registered or authenticated on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty.]

11. Section 38 of the Indian Stamp Act is reproduced as under :-

Instruments impounded, how dealt with.

(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector

12. According to Section 38(1) of the Indian Stamp Act, if Court impounding the instrument under Section 33 of the Indian Stamp Act as by law or consent of parties and then after the depositing the payment of penalty, as provided Section 35 of the Act, he will send the documents to the Collector for authentication.

13. If deficit court stamp was not paid by the concerned person then it is the duty of the Trial Court to send the documents for impounding in its original to the Collector.

14. According to Section 40 is reproduced as under :-

Collectors power to stamp instruments impounded.

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him sub section 2 of section 38, not being a receipt or a bill of exchange or promissory note, he shall adopt the following procedure :-

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be:



(b)if, after holding any enquiry, he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of two percent of the deficient portion of stamp duty for every month or part thereof from the date of execution of the instrument and shall certify the endorsement thereon that it is duly stamped. The amount shall be payable by the person liable to pay the duty:

Provided that in no case the amount of penalty so calculated shall exceed the principal amount of deficit stamp duty to be recovered. Provided further that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section

(c) for the purpose of enquiry under this chapter, the Collector shall have the power to summon and enforce the attendance of witnesses, including the parties to the instrument or any of them and to compel the production of documents by the same means and so far as may be in the same manner as is provided in the case of Civil Court under Code of Civil Procedure, 1908 (5 of 1908);

(d) any person aggrieved by an order of the Collector under Sub Section (1) may, in the prescribed manner, appeal against such order to the Officer notified by the State Government in this regard :

Provided that no appeal shall be admitted unless such person has deposited at least 25 percent of the amount of deficit stamp duty as ordered by the Collector. Such amount shall be adjustable against the amount payable as per final order of the appellate authority, or refundable together with an interest of one percent for every month or part thereof from the date of deposit;

(e) any person aggrieved by an order passed in appeal under clause (d) may appeal against such order to the Chief Controlling Revenue Authority in the prescribed manner;

(f) every first and second shall be filed within thirty days from the date of communication of the order against which the appeal is filed, along with a certified copy of the order to which the objection is made and shall be presented and verified in such manner as may be prescribed:

Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed against shall be excluded;

(g) the appellate authority, in deciding the appeal, shall follow such procedure as may be prescribed:

Provided that no order shall be passed without affording opportunity of being heard to the appellant;

(h) subject to orders passed in first or second appeal, as the case may be, the order passed by the Collector under sub-section(1) shall be final and shall not be called into question in any Civil Court or before any other authority whatsoever.

(2) Every certificate under clause (a) and (b) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the



matters stated therein.

(3) Where an instrument has been sent to the Collector under sub-section (2) of Section 38, the Collector shall, when he has dealt with it as provided by this Section, return it to the impounding offence.

15. According to Section 40 of the Indian Stamp Act, Collector after receiving instrument impounds the document as procedure laid in Section 40 of the Indian Stamp Act.

16. From perusal of impugned order dated 22/05/2024 which is reproduced as under :-

वादी द्वारा श्री आर.एस. राजपूत अधिवक्ता।

प्रतिवादी क्रमांक 1 द्वारा श्री एस.के. शर्मा अधिवक्ता।

प्रस्तावित पक्षकार न्यू शिक्षा प्रसार समिति की ओर से श्री अनिल मंगल अधिवक्ता।

प्रतिवादी क्रमांक 2 लगायत 9 एवं शेष प्रस्तावित पक्षकार पूर्व से एकपक्षीय।

प्रकरण वादी साक्ष्य/ प्रतिवादी द्वारा विधि बताये जाने हेतु नियत है।

वादी साक्षी दिनेश कुमार कुशवाह उपस्थित।

उपस्थित साक्षी दिनेश कुमार कुशवाह वा0 सा0-1 के मुख्य परीक्षण के दौरान लिखितम विक्रय अनुबंध पत्र अपर्याप्त रूप से स्टाम्प लिखे जाने की आपत्ति की गई है जो कि साक्ष्य में ग्राह्य नहीं है तब इस संबंध में कलेक्टर ऑफ स्टाम्प से इस आशय का प्रतिवेदन मंगाया जाना न्यायोचित प्रतीत होता है कि तथाकथित विक्रय अनुबंध पत्र दिनांक 30.05.2014 पर्याप्त रूप से स्टाम्पित है या नहीं या उस पर उक्त दिनांक को लिखितम विक्रय अनुबंध पत्र के विक्रय मूल्य एवं वादग्रस्त सम्पत्ति के संबंध में कलेक्टर गाईड के अनुसार कितने रुपये के स्टाम्प शुल्क लगाये जाने पर उसे साक्ष्य में ग्राह्य किया जा सकता है। यदि उक्त उक्त दस्तावेज की इम्पाउण्ड किया जाना है तो उस पर इम्पाउण्ड के पश्चात कितनी राशि देय होगी, इस आशय का भी प्रतिवेदन मंगाया जावे। इस कारण साक्षी की साक्ष्य स्थगित की जाती है।

प्रकरण में संलग्न सत्रवाद प्रकरण क्रमांक 193/19 थाना बिजौली वि0 कमलेश कुमार आदि का मूल प्रकरण न्यायालय पंचम जिला एवं अतिरिक्त सत्र न्यायाधीश ग्वालियर को वापस भेजा जावे।

17. From perusal of above impugned order, it is found that Trial Court has not followed the procedure of Section 33 of the Indian Stamp Act and without impounding the disputed documents sent it to the Stamp Collector for assessing deficiency of the stamp. So, it is clear that Trial Court has



committed error in not following procedure under Section 33, 35 and 38 of the Indian Stamp Act

18. In view of above discussion, this Court is of the considered opinion that the impugned orders of the Trial Court are not correct in the eye of law and impugned orders dated 22/05/2024 and 05/07/2024 are set-aside and Trial Court is directed to follow the procedure given in Sections 33, 35 and 38 of the Indian Stamp Act and impound the disputed documents in accordance with law.

19. Accordingly, petition stands disposed of.

20. Copy of this order passed today be kept in M.P. No. 3776/2024

Certified copies as per rules.

(HIRDESH)
JUDGE

Prachi