

ADDL.DISTT.SUB-REGISTRAR SILIGURI

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v.

PAWAN KUMAR VERMA AND OTHERS
(Civil Appeal No. 4167 of 2013)

MAY 1, 2013

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[G.S. SINGHVI AND KURIAN JOSEPH, JJ.]

STAMP ACT, 1899:

s.2(16B) read with s.47-A - 'Market value' - Registration on orders of court - Stamp duty - Held: The scheme for valuation for the purpose of registration would show that an instrument has to be valued in terms of market value at the time of execution of document -- Market value for the purpose of Stamp Act is not same as suit valuation for the purpose of jurisdiction and court fees - Where registering authority has any difference of opinion as to assessment on stamp duty of instrument presented for registration on orders of court, it will only be appropriate that Registrar makes a back reference to court concerned and court undertakes a fresh exercise after affording an opportunity of hearing to registering authority with regard to proper value of instrument for registration - Registering authority cannot be compelled to follow invariably the value fixed by court for the purpose of suit valuation - Orders of courts below are set aside - Trial court shall consider the matter afresh after affording an opportunity hearing to appellant and pass appropriate orders with regard to stamp duty for the purpose of registration of partition deed - Suits Valuation Act, 1887 - Registration Act, 1908 - West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001- r.3.

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In a partition suit, the trial court directed the appellant - Additional District Sub-Registrar, who was not a party before the court, to complete the registration on the basis

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A of the stamps duty as per the suit valuation. When the
 B decree was presented for registration, the appellant
 observed that there was no proper valuation for the
 purpose of registration. The plaintiff approached the trial
 court which held that once the value was fixed by the
 court, Registrar could not make an attempt to reassess
 the same. The appeal filed by the Registrar was dismissed
 by the High Court.

C In the instant appeal, the question for consideration
 before the Court was while registering an instrument of
 partition, whether the registering authority under the
 Registration Act, 1908 is bound by the assessment of
 stamp duty made by the court as per suit valuation.

D Allowing the appeal, the Court

E HELD: 1.1 The scheme for valuation for the purpose
 of registration would show that an instrument has to be
 valued in terms of the market value at the time of execution
 of the document. Market value for the purpose of Stamp
 Act, 1899 is not the same as suit valuation for the purpose
 of jurisdiction and court fee. The procedures are different
 for assessment of the stamp duty and for registration of
 an instrument. The reference to the expression 'on the
 basis of any court decision after hearing the State
 F Government' appearing in r. 3 of The West Bengal Stamp
 (Prevention of Undervaluation of Instruments) Rules,
 2001, would clearly show that the suit valuation cannot
 be automatically followed for the purpose of registration.
 [para 9 and 14] [171-E-F; 173-C-E]

G 1.2 Once the court has made the exercise to fix the
 market value of a property, the same can be reopened or
 altered only in a process known to law. That is not the
 situation in the instant case where a partition suit was

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filed in the year 1999, compromised in the year 2001, stamp value assessed on the basis of suit valuation and the decree presented for registration in the year 2007. The Sheristadar made a mechanical assessment of stamp duty on 1/4th share of the suit property as per the compromise and fixed the stamp duty accordingly. That does not meet the requirement under law. The trial court has, thus, clearly erred in directing the registration to be done on the basis of suit valuation. [para 13-14] [173-B-C, E-F]

Nitya Hari Kundu and Others vs. State of W.B. and Others AIR 2001 Calcutta 76 - Distinguished.

1.3 The Suits Valuation Act, 1887 and Stamp Act, 1899 operate in different fields. However, going by the scheme of the Act and Rules as amended by West Bengal, this Court is of the view that where the registering authority has any difference of opinion as to assessment on the stamp duty of the instrument presented for registration on the orders of the court, it will only be appropriate that Registrar makes a back reference to the court concerned and the court undertakes a fresh exercise after affording an opportunity of hearing to the registering authority with regard to the proper value of the instrument for registration. The registering authority cannot be compelled to follow invariably the value fixed by the court for the purpose of suit valuation. [para 15] [173-G-H; 174-A-B]

1.4 Accordingly, the impugned order dated 02.09.2010 of the High Court and the orders dated 30.03.2001 and 27.08.2007 passed by the Civil Judge (Senior Division), are set aside. The trial court shall consider afresh the matter after affording an opportunity hearing to the appellant and pass appropriate orders with regard to the stamp duty for the purpose of registration

A of the partition deed. [para 16] [174-B-D]

Case Law Reference:

AIR 2001 Calcutta 76 Distinguished para 4

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4167 of 2013.

From the Judgment & Order dated 02.09.2010 of the High Court of Calcutta in Co. No. 689 of 2008.

C Joydep Mazumar, Avijit Bhattacharjee for the Appellant.

V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

D **KURIAN, J. 1. Leave granted.**

2. While registering an instrument of partition, whether the registering authority under the Registration Act, 1908 is bound by the assessment of stamp duty made by the court as per suit valuation, is the question arising for consideration in this case.

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G 3. Petitioner is aggrieved by the order dated 02.09.2010 of the High Court of Calcutta passed on a petition filed by the petitioner challenging the order passed by the Civil Judge (Senior Division) at Siliguri on 22.08.2007. Respondents are parties to a partition suit filed by the 1st Respondent herein before the Civil Judge (Senior Division) at Siliguri in T.S. (Partition) No. 70 of 1999. The Trial Court had directed the petitioner, who was not a party before the court, to complete the registration on the basis of the stamp duty as per the suit valuation. The suit was valued at Rs.50 lakhs for the purpose of suit valuation. During the pendency of the suit, dispute was compromised and, accordingly, Annexure P3 - Order dated 30.03.2001 was passed ordering:

H "that the suit be and the same is decreed in final form on compromise in terms of the joint compromise petition

ADDL.DISTT.SUB-REGISTRAR SILIGURI v. PAWAN 167
KUMAR VERMA [KURIAN, J.]

dated 15.11.2000 which do form part of the decree. The parties do bear their respective costs. Parties are directed to file Stamp Papers as would be assessed by the Sheristadar for engrossing the Final Decree and for registration of the same. Sheristadar is directed to assess the amount of Stamp Paper over the valuation of the suit property at once.... " A
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(Emphasis supplied)

4. Subsequently, some clerical corrections were carried out in the order, on 12.02.2007. When the decree was presented for registration, the same was objected to by the petitioner observing that there is no proper valuation for the purpose of registration. Aggrieved, the plaintiff took up the matter before the Civil Judge (Senior Division) at Siliguri leading to Annexure P6- Order. The learned Civil Judge (Senior Division) took the view that once the value has been fixed by the court, Registrar cannot make an attempt to reassess the same. Aggrieved, the Additional District Sub-Registrar, Siliguri, approached the High Court. Placing reliance on its earlier decision on *Nitya Hari Kundu and Others vs. State of W.B. and Others*¹, the High Court dismissed the petition and, hence, the Special Leave Petition. C
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5. In order to analyse disputes in proper perspective, it is necessary to refer to the statutory provisions governing the issue. Indian Stamp Act, 1899, as amended by the West Bengal, has defined 'market value' at Section 2 (16B), which reads as follows: F

"(16B)"market value" means, in relation to any property which is the subject-matter of an instrument, the price which such property would have fetched or would fetch if sold in open market on the date of execution of such instrument as determined in such manner and by such authority as G

1. AIR 2001 Calcutta 76. H

A may be prescribed by rules made under this Act or the consideration stated in the instrument, whichever is higher;"

(Emphasis supplied)

B 6. Section 2(12) of Indian Stamp Act, 1899, as amended by the West Bengal, has also defined 'execution' with reference to an instrument to mean "signed" and "signature".

C 7. Section 47A of Indian Stamp Act, 1899, as amended by the West Bengal, provided for the procedure for dealing with undervaluation. To the extent relevant, the provision reads as follows: -

D **"47A. Instruments of conveyance, etc., undervalued, how to be dealt with.-** (1) Where the registering officer appointed under the Registration Act, 1908 (16 of 1908), has, while registering any instrument of-

(a) agreement or memorandum of any agreement relating to a sale or lease-cum-sale of immovable property,

E (b) conveyance,

(c) exchange of property,

(d) gift,

F (e) partition,

(f) power-of-attorney-

(i) when given for consideration to sell any immovable property, or

G (ii) in such other cases referred to in article 48 of Schedule IA,

where proper stamp duty is payable on the basis of market value,

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(g) settlement,

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(h) transfer of lease by way of assignment,

reason to believe that the market value of the property which is the subject-matter of any such instrument has not been truly set forth in the instrument presented for registration, he may, after receiving such instrument, ascertain the market value of the property which is the subject-matter of such instrument in the manner prescribed and compute the proper stamp duty chargeable on the market value so ascertained and thereafter he shall, notwithstanding anything to the contrary contained in the Registration Act, 1908, in so far as it relates to registration, keep registration of such instrument in abeyance till the condition referred to in sub-section (2) or sub-section (7), as the case may be, is fulfilled by the concerned person.

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(2) Where the market value of the property which is the subject-matter of an instrument has been ascertained and the proper duty chargeable thereon has been computed under sub-section (1), the registering officer shall, in the manner prescribed, send to the concerned person a notice calling upon him to make payment of the deficit amount of stamp duty within such time as may be prescribed, and if such person makes payment of such deficit amount of stamp duty in the prescribed manner, the registering officer shall register the instrument.

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(3) Where the concerned person does not make payment of the stamp duty as required under sub-section (2) within the time specified in the notice issued under that sub-section, the registering authority shall refer the matter to such authority and in such manner as may be prescribed for determination of the market value of the property which is the subject-matter of such instrument and the proper stamp duty payable thereon:

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A (4) to (7) xxx xxx xxx xxx xxx xxx xxx

B (8) (a) The authority referred to in sub-section (3) may, on receipt of any information or otherwise, suo motu within five years from the date of registration of any instrument, where such instrument was registered on the basis of the market value which was set forth in the instrument or which was ascertained by the registering officer referred to in sub-section (1), call for and examine any such instrument and any other document relating thereto for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject-matter of such instrument and which was set forth in the instrument or which was ascertained under sub-section (2) and the stamp duty payable thereon.

D (b) If, after such examination, the authority referred to in clause (a) has reasons to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument or correctly ascertained under sub-section (2), he may, after giving the parties concerned in the instrument a reasonable opportunity of being heard, determine the market value of the property which is the subject-matter of such instrument and the amount of stamp duty chargeable thereon in the manner referred to in sub-section (5), and the difference in the amount of stamp duty, if any, between the stamp duty so determined by him and the stamp duty already paid by the concerned person shall be required to be paid by him in the prescribed manner :"

(Emphasis supplied)

G 8. Rule 3 of The West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001 has provided for the procedure to be adopted when there is undervaluation. To the extent relevant, the procedure reads as follows:

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3. Manner of determination of market value and furnishing of particulars relating to any property.- (1)

The market value within the meaning of clause [16(B)] of section 2 in relation to any land or any land with building shall, after taking into consideration the particulars referred to in sub-rule (2), be determined on the basis of the highest price for which sale of any land or any land with building, of similar nature and area and in the same locality or in a comparable locality, has been negotiated and settled during the five consecutive years immediately proceeding the date of execution of any instrument setting forth such market value, or on the basis of any court decision after hearing the State Government, or on the basis of information, report or record that may be available from any court or any officer or authority of the Central Government or the State Government or any local authority or local body, or on the basis of consideration stated in such instrument for such land or land with building, whichever is greater."

(Emphasis supplied)

9. The scheme for valuation for the purpose of registration would show that an instrument has to be valued in terms of the market value at the time of execution of the document. In the instant case, it appears that there was no such valuation in the Civil Court. The learned Civil Judge, as per annexure P3-Order dated 30.03.2001, directed the Sheristadar to assess the amount of stamp paper for the valuation of the suit property. The suit was instituted in the year 1999. The same was compromised in the year 2001. The plaintiff filed stamp papers as per valuation of the Sheristadar in the suit on 03.08.2004 and the decree was presented for registration before the Additional Registrar on 23.05.2007. In view of the objection raised with regard to the assessment of market value for the purpose of registration, the plaintiff sought for clarification leading to annexure P6-Order.

A 10. The High Court has placed reliance on a single bench
decision in *Nitya Hari Kundu's* case (supra). It was a case
where the court permitted an item of a trust property to be sold
after fixing the market value. When the Registrar refused to
accept the valuation made by the court, a writ petition was filed
B in the High Court where it was conceded by the Registrar that:

C "14. ...it is correct to say that a Court decision permitting
a trust estate to sell a trust property for a particular
consideration, must necessarily be accepted as a
determination of the market value of the property in the
stamp rules."

11. However, the High Court also considered the matter
on merits and finally held in paragraph 13, which reads as
follows: -

D "13. Therefore, in interpreting the statutes if I make
harmonious construction of S. 47A read with the Rules
made thereunder, it will be read that valuation made by the
Court cannot be said to be done not truly set forth and there
E is any reason to disbelieve, otherwise. If any authority does
so it will tantamount to exceeding the jurisdiction made
under the law. The authority concerned cannot sit on appeal
over a Court decision unless appeal is preferred from such
order which is absent herein."

F 12. It appears that the learned Civil Judge and the High
Court only referred to the headnote in *Nitya Hari Kundu's* case
(supra), which reads as follows:

G "Stamp Act (2 of 1899), S.47-A-Valuation of duty under
S.47-A- Valuation made by Court and sale deed sent for
Registration S.47A is not applicable- After determination
of value by Court, it cannot be said that there is reason
for Registrar to believe that valuation is not correctly made
- Registrar is bound by that valuation and has to act upon
H it."

13. The court had, in fact, fixed the market value of the property in that case for permitting the Trust estate to put it to sale. However, without reference to the court, it appears that the Collector made an independent assessment and that was what was struck down by the court. Once the court had made the exercise to fix the market value of a property, the same can be reopened or altered only in a process known to law. That is not the situation in the instant case where a partition suit was filed in the year 1999, compromised in the year 2001, stamp value assessed on the basis of suit valuation and the decree presented for registration in the year 2007.

14. Market value for the purpose of Indian Stamp Act, 1899 is not the same as suit valuation for the purpose of jurisdiction and court fee. The procedures are different for assessment of the stamp duty and for registration of an instrument. The reference to the expression 'on the basis of any court decision after hearing the State Government' appearing in Rule 3 of The West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, would clearly show that the suit valuation cannot be automatically followed for the purpose of registration. The learned Civil Judge has, thus, clearly erred in directing the registration to be done on the basis of suit valuation. The Sheristadar made a mechanical assessment of stamp duty on 1/4th share of the suit property as per the compromise and fixed the stamp duty accordingly for Rs.12,50,000/-. That does not meet the requirement under law.

15. The Suits Valuation Act, 1887 and The Indian Stamp Act, 1899 operate in different fields. However, going by the scheme of the Act and Rules as amended by West Bengal, we are of the view that it will only be appropriate that in such situations where the registering authority has any difference of opinion as to assessment on the stamp duty of the instrument presented for registration on the orders of the court, it will only be appropriate that Registrar makes a back reference to the court concerned and the court undertakes a fresh exercise after

A affording an opportunity of hearing to the registering authority with regard to the proper value of the instrument for registration. The registering authority cannot be compelled to follow invariably the value fixed by the court for the purpose of suit valuation.

B 16. Accordingly, we set aside the impugned order dated 02.09.2010 of the High Court of Calcutta and order dated 30.03.2001 of the learned Civil Judge, Siliguri and order dated 27.08.2007 of Civil Judge (Senior Division), Siliguri. The court
C of the learned Civil Judge (Senior Division), Siliguri shall consider afresh the matter after affording an opportunity for hearing to the petitioner and pass appropriate orders with regard to the stamp duty for the purpose of registration of the partition deed. This exercise should be completed within a
D period of three months from the date of receipt of this order. Appeal is allowed.

17. There is no order as to costs.

R.P.

Appeal allowed.