

In The Court of Commissioner, Saran Division, Chapra

Stamp Appeal No. 44/2017

Shambhu Nath yadav

Vrs.

The State of Bihar & ors.

ORDER

The instant appeal application is directed against the impugned order passed Asstt. Inspector, General of Registration, Saran Division Chapra in Stamp case No. 120/2016 on 02.02.2017.

The brief facts of the case are that a proceeding under section 47(A) of Indian Stamp Act-1899 was initiated by Asstt. Inspector General Registration, Saran Division, Chapra with respect to a registered deed document No. 9601/2016 pursuant to a letter to his effect was sent by District Sub Registration, Gopalganj vide letter No. 1133 dt. 05.10.2016. The said case was initiated for undervaluation of the registered property than the market value. Further case is that the present appellant Shambhu Nath Yadav got a land registered in his name after purchase vide registered document No. 9601/2016 on 26.09.2016 and the said land was measuring 17.50 decimal, of khata No. 120 khesera No. 2854 situate in Mouza-Basdila of Gopalganj district for a valuation decided as Rs. Seventeen Lakh and fifty thousand only as the said land was stated to be a irrigated land. In course of inquiry it was realized that on the next day i.e. 27.09.2016, another piece of land of the same khata and khesera having same boundary in east and west side was registered by stating the said land to be of residential nature. As the same land in registered document No. 960/2016 was show to be irrigated land and in another registered document No. 9630, the land was show to be of residential type, the concerned authority felt that the same has been done only with intention to make loss to the state exchequer. Thereafter, the concerned authority held the land registered earlier vide registered deed No. 9601/2016 to be of residential nature and as such the valuation of the said land calculated to be twenty six lakh twenty five thousand on which stamp duty to be payable was fifty two thousand five hundred. Thereafter, notices were issued to the appellant to appears in the case and explain his cause. As the appellant failed to file his appearance after several reminders the case was finally disposed of with a direction to the appellant to deposit the differential amount of stamp amounting to rupees fifty two thousand five hundred and 10% as fine of the said amount of five thousand two hundred to be deposited within sixty days of the order failing which the same would be payable with interest of 5% per month.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the impugned order passed by the L.L.C. is not in consonance with the provisions of section 47 (A) sub clause 4 of Indian Stamp Act, 1899. Bihar amendment. For that the learned Court below has wrongly exercised its jurisdiction under law. He further submitted that no notice either legally or lawfully has been served upon the appellant who has been made sole o.p. in the concerned case and the case has been decided ex-parte against the o.p./appellant without affording him any opportunity to put forth his stand in the case. He also said that the proceeding is bad in eyes of law due to non joinder of necessary parties. The learned counsel further said that admittedly the registered deed of sale dated 26.09.2016 vide deed No. 9601 of 2016 has been duly executed by the vendors namely Raunak Ali & Mohammad Nuruddin sons of Late Meer Shamsuddin residents of village Basdila Tola Murgiya P.S. Gopalganj town, P.O. & Dist-

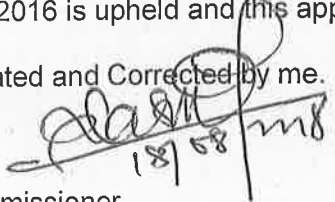
Gopalganj in favour of the o.p./appellant and one Prabhu Nath Rai son of Paras Rai resident of villate Brindavan P.S. Uchkagaon Distt. Gopalganj and as per the mandatory provision of section 47(A) sub section 2 of Indian Stamp Act, 1899 the vendors named above as well as the co-vendee Paras Nath Rai were the most necessary parties to the proceeding and due to non impleadment of the most necessary parties the proceeding so initiated was absolutely wrong & bad due to illegal, non-exercise of jurisdiction by the learned lower Court and on this ground alone the impugned order is fit to be set aside. He further said that the learned L.C. has neither afforded opportunity to the parties to represent case nor any enquiry in the true sense has been conducted by the authority rather only on the recommendation of the Sub-Registrar, Gopalganj, the impugned order has been passed which is untenable in the eye of law and the Ld. L.C. has imposed alleged penalty only on the basis of consideration of fact that sale deed standing in the name of appellant states the nature of the land as 'irrigated' land and the subsequent deed of the same plot executed on 27.09.2016 vide deed 9630 of 2016 depicted it as 'residential' in nature. As such the sale deed of the appellant was found to be in deficit of stamp duty to the tune of Rs. 52500/- (fifty two thousand and five hundred only) and 10 percent of it i.e. Rs. 5250/- (five thousand two hundred fifty only) totalling Rs. 57750/- on which the penalty has been imposed arbitrarily upon the appellant which is not commensurate with the provisions as well as settled principles of law. He also argued that the Ld. L.C. has overlooked the most important fact that the deed of appellant was for an area of 17.50 decimal equivalent to 4 katha 13 dhur whereas the subsequent deed No. 9630 dated 27.09.2016 was for an area of 3.75 decimal equivalent to 1 katha only. He said that as a matter of fact the land in question is a 'kharahi' land which contains low water logged land containing shrubs and is very less valuable land even not fit for agricultural purpose, as such it was properly valued in the sale deed of the appellant. He further submitted that the Ld. L.C. has perhaps overlooked the standing circular in this regard issued by the department of registration. According to which any transaction of any nature of land above the fixed area of 5 decimals will be valued according to the nature of the land and any area below than 5 decimals will be treated in the category of 'residential' land irrespective of its nature. As such the appellant deed is in confirmation of the actual nature as well as the area prescribed for determining its nature and valuation, by the circular and that the Ld. L.C. has wrongly held that the appellant was liable to pay the deficit stamp duty & exonerated the vendors from the liability without considering the fact that according to the oral agreement between the vendors and the vendees, it has been decided that the vendors will pay the entire stamp duty of registration and in pursuance of the said oral agreement the stamp was purchased by the vendor. As such any liability to pay the deficit stamp duty, if any, ought to have been imposed upon the vendors only who were even not made parties in the proceeding. For that appellant had no prior knowledge of stamp duty case No. 120 of 2016 or the impugned order passed in it. He lastly said that as the impugned order has been passed by the Ld. L.C. without application of judicial mind to the factual and legal aspects involved in the case as such the same is fit to be set aside.

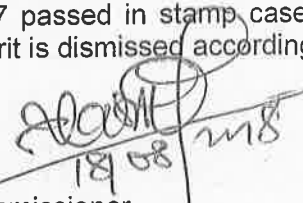
The learned Govt. pleader on the other hand submitted that as per record it was found that appellant got the said land registered from the same vendor on the next day of earlier registration of the land which was show to be irrigated land which clearly shows the intention of the appellant to play mischief thereby causing loss to the state revenue. He further said that the said action of the appellant caused huge loss of revenue to the state. He further submitted that the said land is residential one and it is just beside the road so the valuation given by the authorities is correct and order of payment of deficit stamp is proper. He lastly said that the instant appeal petition is meritless as such the same is fit to be dismissed.

Having heard the learned counsels for the parties and on perusal of the impugned order it is seen that the appellants have intentionally undervalued the vended land just to evade the stamp fee thereby making loss of Govt. revenue. I find that the learned Court below has passed a reasoned and proper order and their assessment of actual value of the vended land seems to be correct and proper as the said land is in close proximity to the main road and is of residential nature. The only defence of the learned counsel for the appellant is that the impugned order has been passed in his absence. This plea can not be taken into account as it is seen from the impugned order that despite valid notice sent to the appellant and subsequent reminders too the appellant failed to file his presence before the authority to defend his case. So far as the valuation of the said land is concerned the same has been done logically keeping in view the date of registration i.e. on 27.09.2016 and 26.09.16 and on both dates the nature of land have been shown to be of different category, which seems to be highly illogical and impractical. There is not denial of the fact that this has been done knowingly and intentionally to evade the stamp duty and registration charge thereby causing revenue loss to the state exchequer.

For the aforementioned reasons and discussion made therein the impugned order of AIG, Registration, Saran Division, Chapra dt. 02.02.2017 passed in stamp case No. 120/2016 is upheld and this appeal petition being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.