

plot in dispute had been allotted and possession thereof given to him, the Society had no right or authority whatsoever to re-allot or sell the said plot to any one else, that the petitioner has filed the present suit seeking a declaration of his ownership qua the subject plot.

3. With a view to disclose as to how the cause of action to file the suit has arisen, the petitioner/plaintiff has averred that he inquired and came to know that the subject plot had been again allotted by the Society in favour of one Manoj Kumar who had further sold the same through his General Power of Attorney.

4. From the plain reading of the plaint, it stands crystalised that if the petitioner is able to prove that he is a Member of the respondent No. 1 Society; he was allotted Plot No. 88-D measuring 250 sq. yards by the Society and he got possession thereof in a valid manner, in that event, the petitioner is likely to succeed in getting the desired declaration of his ownership qua the subject plot. The subsequent sale deed(s), if any, executed by the Society or the alleged second allottee are of no consequence and can not stall the declaration sought by the petitioner. In other words, the relief to set aside or ignore such sale deeds, is merely consequential and not substantive in nature. Thus, the petitioner can not be asked to pay *advalerum* court fee on the amount of sale-consideration mentioned in these sale deeds.

5. For the reasons afore-stated, this petition is allowed and the impugned order dated 10.1.2006 is set aside.

6. It is, however, made clear that the observations made here-in-above are for the purpose of deciding the instant revision only and shall have no bearing on the merits of the main case.

Disposed of.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: M.M. Kumar & T.P.S. MANN, JJ.

Civil Writ Petition No. 14122 of 2007

Decided on 29.01.2008

Vikas

Petitioner

Versus

State of Haryana and others

Respondents

For the Petitioner: Mr. S.C. Kapoor, Senior Advocate, with Mr. Harminderjeet Singh, Advocate.

For the Respondents: Ms. Pallika Monga, AAG, Haryana,

Indian Stamp Act, 1899 (2 of 1899), Section 47-A (3) – Registration of document – Deficient stamp fees – Collector either on its own or on a receipt of reference from the Registrar of a district in whose jurisdiction the property is situated, shall within three years from the date of registration of any document, call for and examine the instrument to satisfy himself as to the correctness of its value or consideration – A show cause notice was issued after more than 4½ years after the

registration of Relinquishment Deed to ascertain as to whether the stamp duty affixed on the deed was sufficient – Audit objections raised within three years but not communicated to the petitioner – No proceedings could be undertaken against the petitioner in respect of Relinquishment deed.

(Para 3,4)

Cases referred:

1. Bachhitar Singh v. State of Punjab, AIR 1963 SC 395.
2. Laxminarayan R. Bhattad v. State of Maharashtra, 2003(5) SCC 413.

JUDGMENT

M.M. KUMAR. J. -- The short issue raised in this petition filed under Article 226 of the Constitution is whether the authorities could question a registered transfer deed by exercising power under Section 47A of the Indian Stamps Act, 1899 (for brevity, 'the Act'), after the expiry of period of three years. The petitioner has claimed that order dated 29.9.2006 (P-3), passed by the Collector, Rohtak-respondent No. 3, be set aside as it questions a Relinquish Deed bearing No. 1031/1, registered on 10.5.2001, under Section 31 of the Act. The petitioner has also challenged order dated 23.5.2007 (P-4), passed by the Commissioner, Rohtak Division, Rohtak-respondent No. 2, on an appeal wherein the order dated 29.9.2006, has been upheld.

2. Brief facts of the case are that mother of the petitioner, namely, Smt. Darshna Devi, owned a house and consequent upon her death the same was vested in the petitioner, his brother Vivek and sisters. On 10.5.2001, all the three sisters executed a registered Relinquishment Deed in favour of the petitioner and his brother Vivek in equal share of the shares inherited by them. On 7.12.2005, respondent No. 3 issued a notice to the petitioner to show cause as the stamp duty affixed on the Relinquishment Deed was found to be insufficient (P-1). The petitioner submitted his reply denying the allegation (P-2). On 29.9.2006, respondent No. 3 rejected the defence of the petitioner and called upon him to deposit stamp duty amounting to Rs. 60,249/- by assessing the value of the property at Rs. 3,88,800/- as per Collector's rate, within 30 days (P-3). Feeling aggrieved, the petitioner preferred an appeal before respondent No. 2, which has been dismissed vide order dated 23.5.2007 (P-4), upholding the order dated 29.9.2006, passed by respondent No. 3, which is subject matter of challenge in the instant petition.

3. After hearing learned counsel for the parties we are of the considered view that this petition deserves to be allowed. It would be apposite to read Section 47A of the Act, which is as under:-

"47-A. Instruments under-valued how to be dealt with.

- (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property has reason to believe that the value of the property or the 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 or consideration, as the case may be, and the proper duty payable

thereon.

- (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made 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 motu*, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

- (4) Any person aggrieved by an order of the Collector under sub-section 92) or sub-section 93) may, within thirty days from the date of the order, prefer an appeal before the Commissioner of the Division and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

A perusal of sub-section (3) of Section 47A of the Act postulate that the Collector either on its own or on a receipt of reference from the Registrar of a district in whose jurisdiction the property is situated, shall within three years from the date of registration of any document, call for and examine the instrument to satisfy himself as to the correctness of its value or consideration. It is conceded position that the Relinquishment Deed was registered on 10.5.2001 by all the three sisters in favour of the petitioner, who is their brother. A show cause notice was issued on 7.12.2005 to ascertain as to whether the stamp duty affixed on the deed was sufficient. The petitioner had filed his reply to the show cause notice and vide order dated 29.9.2006, he was directed to deposit stamp duty for an amount of Rs. 60,249/- by assessing the value at Rs. 3,88,800/-. The appeal filed by the petitioner also met the same fate and the order dated 29.9.2006, passed by the Collector was upheld by the Commissioner, vide order dated 23.5.2007 (P-4). It is, thus, obvious that show

cause notice has been issued on 7.12.2005, which is more than 4½ years after the registration of Relinquishment Deed, much beyond the period of three years stipulated by sub-section (3) of Section 47A of the Act.

4. The only argument raised by the respondents is that an audit objection was raised vide Audit Note dated 12.6.2002 and on the basis of the audit objection it was sought to be contended that within the period of three years objections have been taken (R-1). Therefore, the period of three years would not come in the way of the respondents as audit objection was raised on 12.6.2002. We find that the argument is totally absurd because there was no communication of the audit objection to the petitioner so as to constitute a basis for argument that the action was taken within period of three years. The real action was initiated only on the issuance of show cause notice, which admittedly was issued on 7.12.2005. It is well settled that the communication of the order alone confer on a paper the status of an order as has been postulated by Article 166 of the Constitution. The aforementioned provision was interpreted by a Constitution Bench of Hon'ble the Supreme Court in the case of **Bachhitar Singh v. State of Punjab, AIR 1963 SC 395**. In that case the Constitution Bench had held that till an order is communicated it would not assume the character of executive action. A similar view has been taken by Hon'ble the Supreme Court in the case of **Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413**. Therefore, we have no hesitation to reject the argument.

5. For the reasons aforementioned, this petition succeeds. Orders dated 29.9.2006 and 23.5.2007 (P-3 & P-4) are set aside. It is held that no proceedings could be undertaken against the petitioner in respect of Relinquishment Deed, dated 10.5.2001.

6. The writ petition stands disposed of in the above terms.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Surya Kant, J.

Civil Revision 2054 of 2007

Decided on 28.01.2008

Jaswir Singh Jawanda and Another

Petitioners

Versus

Suraj Parkash

Respondent

For the Petitioner: Mr. R.K. Jindal, Advocate.

For the Respondent: Mr. Rajesh Gupta, Advocate.

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13 – Code of Civil Procedure, 1908 (V of 1908), Order 6 Rule 17 – Ejectment petition – Amendment in – When the case was fixed for arguments, landlord by way of amendment want to incorporate the plea that they have not got vacated any premises in local area -- Amendment sought by the landlord is at belated stage and was within his knowledge, however amendment sought does not appear to have caused any prejudice to the