

C.J. PAUL AND ORS.

A

v.

DISTRICT COLLECTOR AND ORS.

(Civil Appeal No. 4968 of 2009)

JULY 31, 2009

B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

*Indian Stamp Act, 1899 – ss.47A and 19B – Proceedings under – Limitation period – Interpretation and/or application of the provisions, as amended by the State of Tamil Nadu – Discussed.*

C

*Interpretation of Statute – Strict construction – Penal statute – Held: A statute of limitation conferring jurisdiction upon statutory authorities to impose penalty must be construed strictly – A penal statute, unless expressly provided, cannot be given retrospective effect.*

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**In 1990, the appellants purchased some properties situated in the State of Tamil Nadu by registered deeds of sale. The Sub-Registrar came to know of the execution of the said sale deeds in 1996 and thereafter in 1998 initiated proceedings under Sections 47A(1) and 19B of the Indian Stamp Act, 1899 for collection of deficit stamp duty in respect of the said deeds.**

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**Interpretation and/or application of the provisions of the Act as amended by the State of Tamil Nadu was in question in the present appeal.**

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**It was contended by the appellant that proceedings under Section 47A could be initiated only within a period of two years from the date of registration and since the same was initiated after more than eight years, the same was barred by limitation. It was furthermore contended**

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- A that amendments to the Act subsequent to execution of the sale deeds in question were not attracted to the facts of the present case.

Allowing the appeal, the Court

- B HELD: 1.1. Section 47A of the Indian Stamp Act, 1899 was inserted in the State of Tamil Nadu by Act 24 of 1967. The period of limitation was two years for initiation of proceedings thereunder. Section 47A underwent an amendment by Tamil Nadu Act 1 of 2000 which came into  
C force with effect from 6-3-2000 whereby and whereunder the period of limitation was extended to five years. The contention raised that the subsequent amendment carried out by Act 1 of 2000 was only clarificatory in nature, cannot be accepted. [Paras 11 and 17] [241-A-C;  
D 242-E]

- 1.2. Section 19B of the Act was inserted by Tamil Nadu Act 43 of 1992. The proviso appended to Section 19B(4) underwent an amendment insofar as instead and  
E place of "from the date of registration of such instrument", the words "from the date of receipt of the copy of such instrument in the State of Tamil Nadu under the Registration Act, 1908" were inserted. The said amendment came into force with effect from 22-2-2000 in  
F terms of Tamil Nadu Act 39 of 1999. The limitation period of four years was thus provided for in terms of the proviso appended to Section 19B(4) but the statute, which was applicable at the relevant point of time, provided that the period of limitation was four years from the date of registration. The State advisedly used the  
G words "four years" from the date of registration. Only at a later stage, wisdom dawned on them that they may not be able to find out the evasion of stamp duty within the aforementioned period, amended the said provision so  
H that the period of limitation may start from the date of knowledge and not from the date of registration. The said

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amendment is also not retrospective in nature. [Paras A  
9,10,14 and 17] [239-E; 241-A, B, F, G; 242-F]

1.3. Sections 47A and 19B provide for penalty. A  
statute of limitation conferring jurisdiction upon the  
statutory authorities to impose penalty must be B  
construed strictly. A penal statute unless expressly  
provided, cannot be given a retrospective effect. [Para 15]  
[241-H; 242-A-B]

1.4. The amendments carried out by the State of Tamil  
Nadu in the Act must be held to have a prospective C  
operation only. Ordinarily in a case of this nature, the date  
of knowledge would be the starting point for computing  
the period of limitation. The authorities of the State of  
Tamil Nadu came to know of the execution of the deeds D  
of sale dated 1-2-1990 only on 30-3-1996. They could  
have initiated a proceeding, if any, within a period of two  
years from the said date as provided for in Section 47A.  
However, in terms of Section 19B, the period of limitation  
provided was four years from the date of registration and  
not from the date of knowledge. [Para 16] [242-B-D] E

1.5. It is now well-settled that the Court cannot  
supply casus omissus. [Para 18] [242-G-H]

*Ritesh Agarwal and Another v. Securities and Exchange  
Board of India (2008) 8 SCC 205 and Southern F  
Petrochemical Industries Co. Ltd. v. Electricity Inspector &  
ETIO and Others (2007) 5 SCC 447, relied on.*

**Case Law Reference:**

(2008) 8 SCC 205      relied on      Para 15      G

(2007) 5 SCC 447      relied on      Para 17

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A From the Judgment & Order dated 21.11.2006 of the High Court of Judicature at Madras in W.A. Nos. 2922, 2923 2924 and 2925 of 2001.

K. Rajeev for the Appellant.

B R. Sundaravaradan, R. Nedumaran for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

C 2. Interpretation and/ or application of the provisions of the Indian Stamp Act, 1899 (for short "the Act") as amended by the State of Tamil Nadu is in question herein.

It arises out of the following factual matrix:

D Appellants herein purchased some properties situate in Devala Village, Gudalur Taluk, Nilgiris in the State of Tamil Nadu by a registered deed of sale dated 1.02.1990. Some lands are situated in the State of Kerala also. The details of the lands purchased by them in the State of Tamil Nadu are as under:

E	Sl. No.	Name of the purchaser	Survey No.	Extent	Doc. No. and date
F	1.	C.J. Paul, Malapuram	146, 147/2,2,3	44.00 Acres	382/90 – 2.2.90
	2.	C.P. Jose, Malapuram	-do- 2.2.90	44.01 Acres	381/90 –
G	3.	V.M. Mary, Malapuram	-do- 2.2.90	44.00 Acres	383/90 –
	4.	C.J. Mathews, Malapuram	-do-	44.00 Acres	384/90 – 2.2.90

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3. The Sub – Registrar, Gudalur came to know of the execution of the said deeds of sale on or about 30.03.1996. It initiated a proceeding purported to be under Section 47A (1) of the Act and Section 19B thereof. The proceedings were initiated for collection of deficit stamp duty on or about 5.05.1998 by issuing a letter to the then Collector under the Act. However, notice in Form I was sent on 7.06.1998.

4. Appellants filed a writ petition questioning the legality of said notice. The said writ petition was dismissed by a learned Single Judge, stating:

“12. From the facts and circumstances of the case, it is clear that all the transactions appear to be not bonafide and many questions in reference to the nature and purport of these transactions remain unanswered like for instance. Why when the family members get a sale deed in respect of about 176 acres in Tamil Nadu they should go to Kerala to combine with a sale of 16 cents, as to why the vendor father Thomas assignee of these lands should purchase 16 cents on 04.09.1990 so as to sell the lands in Tamil Nadu. After lands having vested as per Section 3 of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act (XXIV of 1969) Jenmis are entitled only ryotwari patta if they had been cultivating on the appointed day i.e. on 01.06.1969, and for the tenants under Jenmis if they had been personally cultivating. In this case one Mathew Kutty is said to have purchased in the year 1967 and in turn sold to Father Thomas. All these prima facie appears are made with ulterior purpose.

13. Learned counsel for the petitioners referred to the judgment in *M. Ponnusamy & Others Vs. District Collector* (1992) 2 Law Weekly 231, wherein a learned Judge of this Court has taken the view that reference under Section 47-A(1) of the Act should be immediately after completion of the registration or sooner the registration is completed and at any rate, within three weeks from the

A date of completion of registration of the document. The said decision is of no assistance to the petitioner. In this case, the petitioners were called upon to pay the difference of duty immediately after receipt of document in their office and a reference notice was issued to the petitioners which are impugned in these writ petitions in the year 1998 itself and after enquiry, the Deputy Collector has passed an order determining the market value in November, 2000. Hence, no question of limitation arises in these matters."

C 5. Writ appeals were preferred thereagainst and a Division Bench of the High court, by reason of the impugned order, dismissed the said appeals, stating:

D "5. It is not in dispute that the properties covered under the documents lie within the State of Tamil Nadu. But the documents were registered at Kalpetta, Kerala State. As per Section 19-B(1) of the Act, unless such instrument is received in the State of Tamil Nadu, no action can be taken for undervaluation. The learned Single Judge, by relying on the said provision and after noting that those documents registered in February, 1990, were received by the Office of the Sub Registrar, Gudalur only on 30.03.1996 and the proceedings were initiated under Section 19-B of the Act and further proceedings for reference were made on 05.05.1998, has arrived at a conclusion that the action taken by the authority is not barred by limitation. On going through the relevant provision, particularly, Section 19-B(1) of the Act and of the factual information that those documents were registered at Kerala in February 1990, were received by the Office of the Sub Registrar, Gudalur only on 30.03.1996, we are in entire agreement with the conclusion arrived at by the learned single judge. Accordingly, finding no merits, we dismiss all the writ appeals. No costs."

H 6. Mr. K. Rajeev, learned counsel appearing on behalf of the appellants would contend that a proceeding under Section

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47A of the Act could be initiated only within a period of two years from the date of registration and as the same has been initiated after more than eight years, the same was barred by limitation. A

7. It was furthermore contended that the High Court committed a serious error insofar as it failed to take into consideration that the amendments to the Act subsequent to the execution of the deeds of sale are not attracted to the facts of the present case. B

8. Mr. R. Sundaravaradan, learned senior counsel appearing on behalf of the respondents, on the other hand, would contend that Section 19B of the Act being a special provision, the period of limitation would start from the date of knowledge of the authorities under the Act and not from the date of registration of the documents. In any event, the proviso appended to Section 19B(4) of the Act having provided for four years' limitation, the impugned judgment cannot be faulted. C D

9. The Act was enacted to consolidate and amend the law relating to stamps. Stamp duty is payable on different types of instruments as prescribed by the State. E

Section 19B of the Act was inserted by Tamil Nadu Act 43 of 1992. It reads as under:

"19B. Payment of duty on copies, counter parts or duplicates when that duty has not been paid on the principal or original instrument F

(1) Where any instrument is registered in any part of India other than the State of Tamil Nadu and such instrument relates, wholly or partly to any property situate in the State of Tamil Nadu, the copy of such instrument shall, when received in the State of Tamil Nadu under the Registration Act, 1908 (Central Act XVI of 1908), be liable to be charged with the difference of duty as on the original G

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A instrument.

(2) The difference of duty shall be calculated having regard to--

B (a) the extent of property situate in the State of Tamil Nadu; and

(b) the proportionate consideration or value or market value of such extent of property.

C (3) The party liable to pay duty on the original instrument shall upon the receipt of notice from the registering officer, pay the difference in duty within the time allowed by such registering officer.

D (4) Where deficiency in duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any court or any registering officer, require the production of the original instrument before him within the period specified by him for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector, shall be deemed to have been produced or come before him in the performance of his functions and the provisions of section 47-A shall mutatis mutandis apply :

F Provided that no action under this sub-section shall be taken after a period of four years from the date of receipt of the copy of such instrument in the State of Tamil Nadu under the Registration Act, 1908 (Central Act XVI of 1908).

G (5) In case the original instrument is not produced within the period specified by the Collector, he may require the payment of deficit duty, if any, together with penalty under section 40, on the copy of the instrument, within such time as may be prescribed."

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10. We may notice that the proviso appended to Section 19B(4) underwent an amendment insofar as in stead and place of "from the date of registration of such instrument", the words "from the date of receipt of the copy of such instrument in the State of Tamil Nadu under the Registration Act, 1908" were inserted. The said amendment came into force with effect from 22.02.2000 in terms of Tamil Nadu Act 39 of 1999.

11. Section 47A of the Act was inserted in the State of Tamil Nadu by Act 24 of 1967. Indisputably, the period of limitation was two years for initiation of a proceedings thereunder. However, Section 47A of the Act also underwent an amendment by Tamil Nadu Act 1 of 2000 which came into force with effect from 6.03.2000 whereby and whereunder the period of limitation was extended to five years.

12. The liability to pay stamp duty arises on presentation of a document. Indisputably, the registration office of the State of Kerala had the requisite jurisdiction to register the document in terms of the provisions of the Registration Act.

13. The registration authorities of the State of Tamil Nadu came to know of the registration of the said documents on 30.03.1996 when they were filed before some authorities. In terms of the provisions of the Act, the Collector alone would initiate a proceeding for recovery of deficit stamp duty. The proceeding was initiated on 5.05.1998 but the notices were issued only on 7.06.1998.

14. The period of limitation so far as Section 47A of the Act is concerned is two years. The limitation of period of four years was provided for in terms of the proviso appended to Section 19B(4) of the Act but the statute which was applicable at the relevant point of time provided for invoking the period of limitation was four years from the date of registration.

15. Sections 47A and 19B of the Act provide for penalty. A statute of limitation conferring jurisdiction upon the statutory

A authorities to impose penalty must, therefore, be construed strictly. A penal statute, as is well-known, unless expressly provided, cannot be given a retrospective effect. [See *Ritesh Agarwal and Another v. Securities and Exchange Board of India* (2008) 8 SCC 205]

B 16. The amendments carried out by the State of Tamil Nadu in the Act must, therefore, be held to have a prospective operation only. There cannot be any doubt whatsoever that ordinarily in a case of this nature, the date of knowledge would be the starting point for computing the period of limitation. The  
C authorities of the State of Tamil Nadu came to know of the execution of the deeds of sale dated 1.02.1990 only on 30.03.1996. They could have initiated a proceeding, if any, within a period of two years from the said date as provided for in Section 47A of the Act. However, in terms of Section 19B  
D of the Act, the period of limitation provided was four years from the date of registration and not from the date of knowledge.

17. Submission of Mr. Sundaravaradan that the subsequent amendment carried out by Act 1 of 2000 was only  
E clarificatory in nature cannot be accepted. The State advisedly used the words "four years" from the date of registration. Only at a later stage, wisdom dawned on them that they may not be able to find out the evasion of stamp duty within the  
F aforementioned period, amended the said provision so that the period of limitation may start from the date of knowledge and not from the date of registration. The said amendment is, thus, also not retrospective in nature.

It is now well-settled that the Court cannot supply casus omissus. [See *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO and Others* (2007) 5 SCC 447]  
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18. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.

B.B.B.

Appeal allowed.

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