

REVISIONAL CIVIL

Before A. D. Koshal, J.

H. L. JAIN—Petitioner.

versus

THE STATE OF HARYANA,—Respondent.

C.R. No. 445 of 1973.

September 5, 1973.

Punjab Re-organisation Act (XXXI of 1966)—Sections 59 and 92—Suit by Punjab State on the basis of contract of sale of property situate at a place forming part of Haryana State on the appointed date, pending—Punjab State withdrawing the suit with the permission of the Court to file another suit on the same cause of action—Haryana State—Whether can file such suit—Punjab Court fee Stamp Rules (1934)—Rule 4—Certificate given by the Stamp vendor on the court fee purchased not conforming to the provisions of the rule—Purchaser—Whether can use such court fee stamp—Purchase of court fee from one sub-treasury for filing suit at another place in the same State—Whether barred.

Held, that under the provisions of sub-section (1) of section 59 of the Punjab Re-organisation Act, 1966, where a contract of sale of property situate at a place which on the appointed day became a part of the territory of the State of Haryana was made by the 'existing State of Punjab' for the purposes of the State, then on and from that day such contract is deemed to have been made by the State of Haryana and all rights and liabilities under the contract devolved on the State of Haryana as the successor State. Where a suit by Punjab State in respect of rights and liabilities arising out of such a contract is pending on the appointed day, then by virtue of the provisions of Section 92 of the Act the successor State, that is, the State of Haryana, has to be deemed to have been substituted on that day for the 'existing State of Punjab' and the proceedings have to be deemed to have continued thereafter as if such substitution had actually taken place in spite of the fact that the State of Haryana was not added as a party to it. If the State of Punjab withdraws the suit with the permission of the Court to file another suit on the same cause of action, the application for withdrawal of the suit is deemed to have been made by the State of Haryana and the permission granted to file a fresh suit on the same cause of action must be construed as permission to the State of Haryana and this State can file a fresh suit on the same cause of action.

Held, that the Punjab Court Fees Stamp Rules, 1934 are merely in the nature of administrative instructions to the Stamp-vendors for regulating the kind and number of stamps to be used for denoting fees chargeable under the Court-fees Act, and have nothing to

H. L. Jain v. The State of Haryana (Koshal, J.)

do with the validity of the transactions of sale of stamps. The object behind the rules is to ensure that the minimum possible number of stamps are used for denoting fees so that the cost of providing stamps to the vendors is not unnecessarily increased. In order to ensure that this is done, the vendors are directed to give a certificate of the type mentioned in rule 4 whenever a single stamp of the required value is not available. The object of the rule is not to penalise the purchaser if he is provided with stamps of lower denomination when a single stamp of the required value is available with the stamp-vendor. The purchaser would naturally not have any knowledge of the denomination of various stamps available with the stamp-vendor; nor can he compel the stamp-vendor to give a single stamp of the required denomination. If the stamp-vendor fails to perform his duties properly and sells stamps in contravention of the rules, it would be preposterous to hold that the purchaser cannot use the same for the purpose intended even though he may be ignorant of any such contravention. Hence where the endorsement made by the stamp-vendor on the Court-fees stamps purchased does not conform to the provisions of rule 4 of the Rules, the purchaser can use the stamps as proper court fee in respect of his suit.

Held, that there is no legal bar to the purchase of Court fee stamps from any Sub-Treasury for the suit to be filed at another place in the same State.

Petitioner under Section 115 of Civil Procedure Code for revision of the order of Shri P. L. Sanghi, Senior Sub-Judge, Karnal, dated 24th March, 1973, holding that the plaint was properly stamped.

S. K. Jain, Advocate, for the petitioners.

S. C. Kapur, Advocate, for Advocate-General (Haryana), for the respondent.

JUDGMENT

Koshal, J.—The facts giving rise to this petition by the defendant for revision of the order dated the 24th of March, 1973, of the Senior Subordinate Judge, Karnal, are not in dispute and may be shortly stated. Through a registered sale deed dated the 30th of May, 1953, the defendant purchased a button factory situated at Panipat. Part of the price was paid as earnest money and the balance was payable in instalments. On the 30th of September, 1965, the then Punjab State filed a suit against the defendant for the recovery of Rs. 2,73,733, being the unpaid balance of the price as well as interest thereon. On the 25th of January, 1967, however, an application was made by the plaintiff State to the Senior Subordinate Judge, Rohtak, who was

seized of the suit, for permission to withdraw there from and to file a fresh suit on the same cause of action in pursuance of the provisions of rule 1 of Order XXIII of the Code of Civil Procedure. The application was granted on the same day because the learned Senior Subordinate Judge was of the opinion that the suit must fail by reason of a formal defect.

(2) On the 1st of November, 1966, the Punjab Reorganisation Act (Act No. 31 of 1966 and hereinafter referred to as the Act) came into force with the result that the State of Haryana was created. On the 1st of August, 1968, the State of Haryana instituted against the defendant the suit out of which this petition has arisen, for recovery of Rs. 3,07,548/- on the same cause of action on which the Punjab State had brought the earlier suit. The court-fee paid was of the value of Rs. 5,370/- and was denoted by 15 impressed stamps and 3 adhesive stamps, out of which 8 impressed stamps of the value of Rs. 500/- each, 3 impressed stamps of the value of Rs. 400/- each, 1 impressed stamp of the value of Rs. 70/- and 2 adhesive stamps of the value of Re. 1/- each (total value Rs. 5,272/-) were purchased in one transaction from Panipat on the 22nd of March, 1968, while an impressed stamp of the value of Rs. 40/-, another of the value of Rs. 30 and still another of the value of Rs. 25/- as well as an adhesive stamp of the value of Rs. 3 were purchased in another transaction on the 19th of July, 1968. One of the impressed stamps of the value of Rs. 500/- bore the following endorsement under the signature of the Sub-Treasury Officer, Panipat :

“At No. 83, 12 pages 500 + 500 + 500 + 500 +
500 + 500 + 500 + 500 + 400 + 400 + 400
+ 70 + 1 + 1 = Total 5,272, being court-fee for suit (for
the recovery of), 2,96,277, against Harbans Lal Jain, sold
to District Industries Officer, Panipat, through Shri Mauji
Ram, Clerk.

(Sd.)...

S.T. Panipat.
22-3-68.

“Note.—There being no (single) court-fee paper of 5,272/-,
given in combined form.

(Sd.)...

S.T. Panipat.
22-3-68.

H. L. Jain v. The State of Haryana (Koshal, J.)

(3) The defendant contested the suit and pleaded, *inter alia*, that proper court-fee on the plaint had not been paid and that the Haryana State had no right to institute the suit because the permission to file a fresh suit had been granted not to it, but to the Punjab State which had not chosen to file the fresh suit.

(4) The trial Court framed four issues out of which only issues Nos. 1 and 4, detailed below, are material for the disposal of this petition :

(1) whether the State of Haryana has got no *locus standi* to bring the suit for the reasons stated in para 1, clauses (a) to (f) of the preliminary objections of the written statement ?

(2) whether the plaint is not properly stamped ?

(5) These two issues were decided by the trial Court against the defendant through the impugned order. While deciding issue No. 1, the Court held that the right of suit devolved on the State of Haryana by reason of the provisions of section 92 of the Act and that, therefore, that State was entitled to institute the fresh suit. Under issue No. 4, the defendant raised two objections :

(i) that the court-fee stamps had been purchased from the Sub-Treasury at Panipat while the suit was instituted at Karnal which could not be done, and

(ii) that court-fee stamps of smaller denomination were purchased to make up the court-fee which should have consisted of impressed stamps of higher denomination.

(6) Reference was made to the Punjab Court-fee Stamp Rules, 1934, and it was argued on behalf of the defendant that the endorsement appearing on one of the impressed stamps of the value of Rs. 500/- and extracted above, was defective and could not be taken into account.

(7) Both the objections were over-ruled in the impugned order by the learned Subordinate Judge. In holding that the court-fee stamps could have been purchased from Panipat, he remarked that the button factory was situated at Panipat where the suit would have been instituted but for the circumstance that the State of

Haryana was a party to it, which circumstance necessitated the institution of the suit at the district headquarters (Karnal) in accordance with the relevant rules. He also held the endorsement above-mentioned to be in substantial compliance with the rules and found nothing wrong in the court-fee consisting of stamps of smaller denomination.

(8) The first contention of the learned counsel for the petitioner is that the present suit is incompetent for the reason that the State of Haryana was never a party to the earlier suit nor was permission to file a fresh suit on the same cause of action granted to it. The contention has no force in view of the provisions of sections 59 and 92 of the Act. The relevant portion of section 59 and the whole of section 92, are reproduced below :

“59. (1) Where before the appointed day existing State of Punjab has made any contract in the exercise of its executive power for any purposes of the State, that contract shall be deemed to have been made in the exercise of the executive power—

- (a) if the purposes of the contract are, on and from the appointed day, exclusively purposes of any one of the successor States,—of that State; and
- (b) if the purposes of the contract are, on and from that day, not exclusively purposes of any one of the successor States,—of the State of Punjab,

and all rights and liabilities which have accrued, or may accrue, under any such contract shall, to the extent to which they would have been rights or liabilities of the existing State of Punjab, be rights or liabilities of the successor State or, as the case may be, the State of Punjab specified above :

— — — — —
 — — — — —

“92. Where, immediately before the appointed day, the existing State of Punjab is a party to any legal proceedings with respect to any property, rights or liabilities subject to apportionment under this Act, the successor State which succeeds to, or acquires a share

H. L. Jain v. The State of Haryana (Koshal, J.)

in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the existing State of Punjab or added as a party to those proceedings, and the proceedings may continue accordingly."

(9) As already stated, the property sold to the defendant was situated at Panipat, which, on the appointed day (the 1st November, 1966), became a part of the territory of the State of Haryana. On and from that day, therefore, the purposes of the contract of sale of the button factory became exclusively the purposes of the State of Haryana, and under the provisions of sub-section (1) of section 59 (which is contained in Part VI of the Act, headed : "Apportionment of Assets and Liabilities"), all rights and liabilities under the contract devolved on that State as the successor State. The earlier suit in respect of those rights or liabilities was pending on the appointed day and the "existing State of Punjab" was a party to it. Therefore, by virtue of the provisions of section 92, the successor State, **that is, the State of Haryana**, must be deemed to have been substituted on that day for the "existing State of Punjab", and the proceedings must be deemed to have continued thereafter as if such substitution had actually taken place in spite of the fact that the State of Haryana was not added as a party to it. It follows that the application for withdrawal from the suit must be deemed to have been made by the State of Haryana, although it was actually made by the new State of Punjab, and the permission granted to the latter to file a fresh suit on the same cause of action must be construed as permission to the State of Haryana.

(10) Learned counsel for the petitioner has urged that the State of Haryana could not take advantage of the provisions of section 92, unless it had actually been added as a party to the earlier suit. This argument is based on a misreading of that section and has no force. The words, "shall be deemed to be substituted for the existing State of Punjab, or added as a party to those proceedings", occurring in the section have to be read and construed in the light of an earlier part of the section, namely, "which succeeds to, or acquires a share in, that property or those rights or liabilities." What the section clearly means is that if the successor State "succeeds to" the right in question, it has to be deemed to be substituted as a party in the relevant proceedings, but that if it does not "succeed to" those rights, and

merely acquires a share therein, then it has to be added as a party to the proceedings. In the present case, as already pointed out by me, the Haryana State succeeded to the rights of the vendor under the contract of sale in their entirety and not merely to a share therein so that even though it was not actually added as a party to the earlier suit, it must be given the advantage of the deeming provision occurring in the section. There is thus no force in the contention that the State of Haryana had no *locus standi* to bring the fresh suit because it was not added as a party to the earlier suit.

(11) Learned counsel for the petitioner has then reiterated the objection that no proper court-fee has been paid by the respondent because the court-fee stamps were purchased from the Sub-Treasury at Panipat, and not from a stamp-vendor at Karnal. But he has not been able to point to any provision of the Court-fees Act, or of the rules made thereunder, in support of the objection which, therefore, cannot be countenanced. There being no legal bar to the purchase of court-fee stamps from the Sub-Treasury at Panipat, even though the suit was to be filed at Karnal, it cannot be said that the court-fee was not denoted by stamps properly purchased.

(12) The last contention raised on behalf of the petitioner is that the endorsement appearing on one of the impressed stamps of the value of Rs. 500/- and extracted above was defective for the reason that it did not comply with rule 4 of the Punjab Court-fee Stamps Rules, 1934 (hereinafter referred to as the Rules). That rule runs thus :

“4. Certificate given by a stamp vendor when a single stamp is not available—

Where a stamp of the required value is not available, the purchaser shall obtain a certificate from the vendor to that effect in the form below. This certificate shall be affixed to the document and filed with it:—

(Form of Certificate)

Certified that a single stamp of the value of Rs. _____ required for this document is not available, but in lieu thereof, I have furnished a stamp of the next lower value available and made

H. L. Jain v. The State of Haryana (Koshal, J.)

up the deficiency by the use of one or more *adhesive* _____ stamps of the
impressed
 next lower values available required to make up the exact amount of
 the fee.

Date _____

Signature of the
 Stamp vendor.”

(13) It is true that the endorsement is not precisely in the same terms as the prescribed certificate, but then, read as a whole, it substantially complies with what the rule lays down.

(14) It further appears to me that the rules are merely in the nature of administrative instructions to the stamp-vendors for regulating the kind and number of stamps to be used for denoting fees chargeable under the Court-fees Act, and have nothing to do with the validity of the transactions of sale of stamps. The object behind the rules is to ensure that the minimum possible number of stamps are used for denoting fees so that the cost of providing stamps to the vendors is not unnecessarily increased. In order to ensure that this is done, the vendors are directed to give a certificate of the type mentioned in rule 4 whenever a single stamp of the required value is not available. The object of the rule is not to penalise the purchaser if he is provided with stamps of lower denomination when a single stamp of the required value is available with the stamp-vendor. The purchaser would naturally not have any knowledge of the denomination of various stamps available with the stamp-vendor; nor can he compel the stamp-vendor to give a single stamp of the required denomination. If the stamp-vendor fails to perform his duties properly and sells stamps in contravention of the rules, it would be preposterous to hold that the purchaser cannot use the same for the purpose intended even though he may be ignorant of any such contravention. In this view of the matter, I am of the opinion that even if the endorsement extracted above be held not to conform to the provisions of rule 4, it cannot be said that no proper court-fee has been paid in respect of the suit.

(15) For the reasons stated, the petition is dismissed, but the parties are left to bear their own costs.

B.S.G.