

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
PRAMOD KUMAR GUPTA

DATE OF JUDGMENT 17/12/1990

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 401 1990 SCR Supl. (3) 547
JT 1990 (4) 787 1990 SCALE (2)1272

ACT:

Delhi Municipal Corporation Act, 1957: Section 147--Levy of duty on transfer of immovable property--Expression 'instrument of sale of immovable property'--Scope of--Word 'instrument'--Whether has the same connotation as under the Indian Stamp Act, 1899.

Code of Civil Procedure, 1908: Order XXI, Rules 92-94--Auction sale--Certificate of sale issued by Civil Court--Whether instrument of sale--Whether chargeable to duty under section 147 of the Municipal Corporation Act, 1957 --Object of the sale certificate explained.

Indian Stamp Act, 1899: Section 2 Clause (10) and (14) 'Conveyance' and 'instrument'--Meaning of.

HEADNOTE:

The respondent purchased the property in question at an auction sale held in execution of a decree of the Civil Court. The sale was confirmed under Order XXI, Rule 92 of the Code of Civil Procedure, 1908 and the High Court directed issuing of a sale certificate under Rule 94. On the question of payment of duty the respondent contended that no duty was chargeable under section 147 of the Municipal Corporation Act, 1957. A single judge of the High Court accepted his plea and directed payment of only stamp duty (under the Stamp Act, 1899) without any surcharge under section 147 of the 1957 Act for issuance of the sale certificate. On appeal the judgment of the single judge was confirmed by a Division Bench of the High Court. Hence this appeal by Municipal Corporation.

Dismissing the appeal, this Court,

HELD: 1. The expression 'instrument of sale of immovable property' under section 147 of the Municipal Corporation Act, 1957 means a document effecting transfer. The title to the property in question has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest, A document merely stating as a fact that transfer has already taken place cannot be included within this expression. A paper which is recording a fact or is

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attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be

treated to be such an instrument. [550B-D]

2. The provisions of Order XXI of the Code of Civil Procedure, 1908 make it clear that the title to the property put on auction sale passes by force of law when the sale is held and the transfer becomes final when an order under Rule 92 confirming it is made. By the certificate issued under Rule 94, the Court is formally declaring the effect of the same and is not extinguishing or creating title. The object of issuance of such a Certificate is to avoid any controversy with respect to the identity of the property sold, and of the purchaser thereof as also of the date when the sale becomes absolute. The use of past tense in the rule stating that the sale "became" absolute, is consistent with this interpretation. The Certificate of sale, therefore, cannot be termed to be an instrument of sale so as to attract section 147 of the Delhi Municipal Corporation Act. [550E-H; 551A-D]

JUDGMENT:

