
(1967) 04 MAD CK 0034
In the Madras High Court

Board of Revenue

APPELLANT

Vs

Annamalai and Co., (P.) Ltd. and Another

RESPONDENT

Date of Decision : 27-04-1967

Acts Referred:

Stamp Act, 1899 — Section 57

Citation : (1968) ILR (Mad) 1 : (1967) 80 LW 474 : (1967) 2 MLJ 515

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—This is a reference u/s 57 of the Indian Stamp Act of 1899. The following question has been referred to us for

decision:

Whether the document, dated 13th August, 1957, is an instrument given for consideration and authorising the attorney to sell any immovable

property falling under Article 48(f) of Schedule 1-A 9now Article 48(e) of Schedule 1) or a mere power of attorney falling under Article 48(d) of

Schedule 1-A (now Article 48(c) of Schedule 1 of the Indian Stamp Act as an amended),

2. Annamalai & Co. (Private) Limited, the respondent herein, borrowed several sums of money from Reliance Bank of India Limited, and

hypothecated with the bank immovable properties as security for the loan. Thereafter, on 13th August 1957, Annamalai & Co. executed a

document described as an irrevocable power of attorney, which is the subject-matter of the present reference. The gist of the document is this.

3. Annamalai & Co. to be described as the borrowers, agreed with the Board of Directors of the bank on 8th August, 1957, to give to the bank

an irrevocable power of attorney in their favour to sell at the discretion of the bank the scheduled properties and credit the sale proceeds therefrom

to the account of the borrowers in the bank and also to collect the rents from the properties, lease them out and to credit the income therefrom to

the said account less taxes that may be paid thereon, till the dates of sales of the said properties. In pursuance of the above agreement the

borrowers executed on 13th August, 1957, the document under consideration, as an irrevocable power of attorney in favour of the bank with

authority to sell the properties mentioned in the schedule and to collect the rents therefrom and pay the taxes thereon till sales. Thereafter, the

document catalogues the details of the Dower granted by the borrowers to the bank in pursuance of the power of attorney, under four headings.

They include the power to collect rents, the power to lease, the power to sell the properties, the power to prosecute or defend legal proceedings

touching any of the matters aforesaid. The document concludes with the statement that the power shall be irrevocable till the scheduled properties

were sold or till all the accounts were closed, whichever happened earlier.

4. According to the Board of Revenue, the referring authority, this document has to be stamped under Article 48(e) of Schedule I of the Stamp

Act, which is in the following terms:

Power of Attorney when given for consideration and authorising the attorney to sell any immovale property:

The same duty as a conveyance for the amount of the consideration.

On the other hand, the claim of the respondent, the borrower and executant of the document about the proper Article of the Stamp Act to be

applied, was Article 48(C) which refers to a power of attorney authorising not more than five persons to act jointly and severally in more than one

transaction or generally, for which document the stamp duty payable is Rs. 11.25.

5. Before dealing with the question above mentioned, a brief reference to the history of Article 48(e) will not be out of place. This Article was

formerly Article 48(f) of Schedule 1-A of the Stamp Act introduced therein by an amendment. A commentator (K.J. Aiyar) on the Indian Stamp

Act has observed that the addition of Section 48(f) to Schedule 1-A was made probably in consequence of an unreported decision of a Bench of

this Court is Referred Case No. 14 of 1891. We sent for and perused this

judgment. In that judgment it was observed that where a document on the face of it, was a power of-attorney authorising the sale of certain immovable property in consideration of a certain sum of money borrowed by the executant under a promissory note and of the deposit of the title deeds of the property, the document was held not to be a mortgage but only a power of attorney requiring one rupee stamp on the ground that no right to retain the sale proceeds could be necessarily inferred. The same commentator observed that after the amendment of the Stamp Act incorporating Article 48(f) the same document would fall under Article 48(f) (now 48(e)).

6. However the above prior history is now being referred to only incidentally, and the Question at issue has to be answered after consideration of a

few general principles It is represented by the learned Government Pleader appearing for The Government that the principles set out in Article

48(e) are derived from the notion of irrevocable agency in the law of contracts, where the authority granted by the principal to the power agent is

coupled with an interest held by the agent, Well-known commentaries have explained this principle thus:

1. If a borrower, in consideration of a loan, authorises the lender to receive the rents of Blackacre by way of security, the authority remains

irrevocable until repayment of the loan in full has been effected... This doctrine applies only where the authority is created in order to protect the

interest of the agent; it does not extend to a case where the authority has been given for some other reason and the interest of the agent arises

later." (Cheshire on the Law of Contract- 6th Edition-page 431).

2. Where the authority of an agent is given by deed, or for valuable consideration, for the purpose of effectuating any security, or of protecting or

securing any interest of the agent, it is irrevocable during the subsistence of such security or interest." (Bowstead on Agency, 12th Edition, page

301).

3. Adopting the classical statement of the rule given by Wilde, C.J., in *Smart v. Sandars*, Powell (1848) 5 C.B. 895 Bowstead on the law of

Agency, Second Edition, at page 392 states:

In such cases the authority is given for valuable consideration as a security, or as part of a security, in respect of a liability of the principal to the

agent. The agent has, as it were, bought his authority in order to ensure the payment of a debt due from the principal.

The principles thus set out above have been embodied in Section 202 of the Indian Contract Act, and in particular Illustration (a) therefor, which is

in the following terms:

A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor

can it be terminated by his insanity or death.

7. There can be no doubt that in the present case, the authority given by the power of attorney of Annamalai and Company to the Reliance Bank

of India was to enable Reliance Bank to sell the scheduled properties, and out of the proceeds thereof, obtain repayment of the loan which they

had already advanced to Annamalai and Company. The power of attorney is clearly irrevocable and also purports to be so irrevocable till the loan

is repaid or the properties are sold. But the further question on which the parties are at variance is whether the document can be brought squarely

under the definition in Article 48(e) of the Indian Stamp Act, which requires the following ingredients:

(1) There must be grant of a power to sell immovable property;

(2) There must be consideration for the grant of the power. Such consideration must necessarily move from the agent to the principal;

(3) In view of the method of valuation for stamp duty set down in the Article itself, namely, the stamp duty to be calculated as for a conveyance for

the same amount of the consideration, it is clear that the consideration must be one which can be ascertained precisely in terms of money.

8. There is no doubt that requirement (1) is satisfied in this case. According to the respondent, the document lacks the element of money

consideration and this is an essential requirement. It might be possible, that during the subsistence of the power of attorney the bank could be

restrained from proceeding to enforce the security already offered for the loan, but such forbearance will not Suffice for the purpose of money

consideration. A forbearance on the part of a creditor to sue can operate as a sufficient consideration for a promise (vide *The Alliance Bank v.*

Broom Law Jourdal Reports-Vol. 24-Chancery and Bankruptcy p. 256 but it is stressed by the learned Counsel Sri R. Viswanathan, appearing

for the respondent, that such forbearance cannot be valued in terms of money.

9. It appears to us that this line of argument overlooks an important aspect of the Law of Contracts. When the bank advanced the loan (on

accounts) to the respondent, it was against a promise by the respondent to discharge the loan, if necessary on the security of certain immovable

properties offered for the purpose. But as long as the loan remained undischarged and the properties offered as security remained unsold, the

promise of the respondent remained executory in character as against the executed promise of the bank in having advanced the loan. When the

respondent subsequently executed the suit document as an irrevocable power of attorney to the bank, it must be considered as a step towards the

discharge of the executory promise by empowering the bank to sell the properties in the schedule to the document, for the purpose of realising the

loan. It will be perfectly legitimate to treat the consideration for the grant of this irrevocable power by the respondent to the bank, as traceable to

the loan which the bank had granted earlier to the respondent, or at least that part of one loan which remained undischarged at the time when the

power of attorney was granted. It is not correct to hold, as the learned Counsel for the respondent seeks to do, that as against the advance of the

loan by the bank, the counter obligation of the respondent had also become a completed or executed promise, when the respondent's properties

were hypothecated to the bank. Such hypothecation must be viewed only as a stage in the fulfilment of the promise to repay the loan, and the

promise of the respondent remained executory in character as against the executed promise namely the grant of the loan by the bank. This aspect

of the matter has come for attention before the Supreme Court in a decision reported in *Union of India (UOI) Vs. Chaman Lal Loona*, , where at

page 655, the Supreme Court observed:

If the contract has been fully and completely performed on both sides, no question of any further rights and liabilities under the contract is likely to

arise. If, however, the contract is one in which the consideration is executed on one side, there will be a right on one side and an outstanding

liability on the other. If the consideration is executory on both sides, there will be outstanding rights and liabilities on both sides.

These observations are based upon the principles set out in Sections 2(d), (e)

and (f) of the Indian Contract Act, dealing with reciprocal promises forming the consideration for each other in an agreement constituting a contract. As mentioned already, in the present case, on the part of the bank three is an executed promise in the form of a loan advanced. But the reciprocal consideration proceeding from the respondent for this promise was executory. As long as that reciprocal promise remained executory, the respondent can take successive steps towards discharging the liability thereunder, and for each successive step so taken, the loan advanced earlier by the bank or such part of it as remains undischarged or may be realisable under the power can operate as consideration. The execution of the present irrevocable power of attorney constitutes such a step in the discharge of the obligation. It appears to us that it will be perfectly legal to construe that the consideration therefore was relatable to the loan advanced earlier by the bank (whether it be the entire loan or the part remaining undischarged) and that consequently the power of attorney was executable for valuable consideration. We, therefore, answer the question referred to us for decision, by deciding that the document in question falls under Article 48(e) of the First Schedule of the Indian Stamp Act. We have not been asked to decide what will be the amount of consideration, on which the duty has to be calculated. That will be for the consideration of the appropriate authorities of the Revenue, in accordance with law, and in the light of the principles we have indicated earlier in this judgment.