
(1957) 03 AHC CK 0031
In the Allahabad High Court
Case No : Misc. Ref. No. 342 of 1952

Board of Revenue

APPELLANT

Vs

Padum Bahadur Singh

RESPONDENT

Date of Decision : 25-03-1957

Acts Referred:

Stamp Act, 1899 — Article 15, 23, 40, 5, 2(10)

Citation : AIR 1957 All 391 : (1957) 27 AWR 331

Hon'ble Judges : Mootham, C.J;Srivastava, J;Mukherji, J

Bench : Full Bench

Advocate : S.S. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Judgement

Srivastava, J.—This is a reference by the Board of Revenue u/s 57(1)(a) of the Indian Stamp Act.

2. On the 1st of December, 1950, Kunwar Padum Bahadur Singh executed a document in favour of Ramesh Chandra. In this document Kunwar Padum Bahadur Singh was described as the seller, while Ramesh Chandra was described as the buyer. Clause I of this document is in these words:

"The seller in consideration of the payment by the buyer, as hereinafter provided, of the price of Rs. 50,000 (Rupees fifty thousands) sells to the buyer, subject to the conditions hereinafter appearing, all the trees excepting sal sain, shisham and Khair up to 15 inches girth measured at a height of 6 inches from the surface in Compartment Nos. 1, 2, 3, 4, 5, 8, 9 and 11 including the part commonly known as Majhara in part of Village Rynorpur Grant, Pargana Eastern Doon, District Dehradun, approximate area 886 acres."

Then comes Clause 2 which provides as follows:

The Buyer shall pay the said sum of Rs. 50,000 (Rs. fifty thousands) to the seller by the following instalments, namely:

1. Rs. 5,000 (Rs. five thousand) on or before 3-1-1951.
2. Rs. 15,000 (Rs. Fifteen thousand) on or before 15-4-1951.
3. Rs. 10,000 (Rs. Ten thousand) on or before 15-9-1951.
4. Rs. 10,000 (Rs. Ten thousand) on or before 3-1-1952.
5. Rs. 10,000 (Rs. Ten thousand) on or before 15-3-1952.

The other clauses lay down the conditions under which the trees sold were to be cut and removed. The seller was authorised in case the forest produce exported by the buyer equalled or exceeded the price paid by him to stop further export until the buyer had paid an additional amount and it was also provided that the amount of instalments provided by Clause 2 was to remain a charge on the produce sold.

3. The document was stamped with a stamp of Re. 1 only and was attested by two witnesses Shiam Singh and Brijesh besides being signed by the two parties to the transaction.

4. The document came to the notice of the Collector who was of the opinion that it was deficiently stamped. He thought that it was a deed of conveyance as defined in Section 2(10) of the Stamp Act and was as such chargeable with duty under Article 23 of the schedule of the Act. He, therefore, made a reference to the Board of Revenue, which is the Chief Controlling Revenue Authority within the meaning of the Stamp Act, for its opinion.

The Board, of Revenue felt doubtful as to whether the document was liable to duty as a conveyance under Article 23 or whether it was exempt from duty altogether under exemption (a) of Article 5 of the schedule. It has, therefore, referred the question to this Court for decision u/s 59 of the Act.

5. Though the Board has referred only to Articles 23 and 5 of the schedule, keeping in view Clauses (2) and (6) of the document it has also to be considered whether the document was to be stamped as a bond under Article 15 or as a mortgage under Article 40 of the Schedule.

6. Now Section 2(10) of the Act defines a conveyance as follows:

" "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by schedule I".

7. Article 5 is in these words:--

"Agreement of Memorandum of an Agreement-

(a)

if relating to the sale of a bill of exchange;

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Annas two.

(b)

if relating to the sale of a Government security or share in an incorporated company or other body corporate;

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Subject to a maximum of ten rupees, one anna, for every rupees 10,000. or part thereof of the value of the security or share.

(C)

if not otherwise provided for Exemptions.

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)

Annas eight

Exemptions.

Agreement or memorandum of agreement-

(a) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43;

(b) made in the form of tenders to the Central Government for or relating to any loan;"

8. A bond is defined in Clause (5) of Section 2. The clause has three sub-clauses. Sub-clauses, (a) and (c) are not relevant for our purposes. According to Clause (5), Sub-clause (b), a bond

"includes any instrument attested by a witness and not payable to order to bearer whereby a person obliges himself to pay money to another."

9. A "mortgage deed" is defined in Clause (17) of Section 2 as including

"every instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt or the performance of an engagement, one person transfers, or creates, to, or in favour of another, a right over or in respect of specified property."

10. The Collector took the view in respect of the document in question that it was a conveyance as by it the property in standing timber was transferred inter vivos.

11. The learned counsel who appeared for the opposite party urged against the view of the Collector that the document in question did not evidence a transaction of sale at all and was therefore not liable to be stamped as a conveyance. It only incorporated certain terms agreed between the parties and was, therefore, covered by Clause (c) of Article 5 of schedule 1 of the Stamp Act.

It has, therefore, been properly stamped as an agreement. He went one step further and contended that even if the document was considered to be one by which the standing timber was transferred it could not be required to be stamped as a conveyance or even as an agreement. It was really exempt from stamp duty altogether because it fell under exemption (a) of Article 5 of the schedule.

12. Another view which appears to be possible is that as by this document Ramesh Chandra obliged himself to pay Rs. 50,000 to Kunwar Padum Bahadur Singh and the document was attested by witnesses and was not payable to order or bearer it amounted to a bond. By this very document a charge had been created in respect of the amount which Ramesh Chandra had agreed to pay over the properties which had been sold to him. On that account the document could also be considered to be a mortgage deed.

13. It is difficult to accept the contention that the document before us does not evidence a transaction of sale at all. We have already quoted the first clause of the document which clearly shows that it was by this document that the transaction of sale was being effected. The two parties described themselves as buyer and seller, and the sum of Rs. 50,000 was described as the price.

14. Clause 6 of the document is in these words :

"The ownership of the produce hereby sold shall vest in the Buyer but any amount of the instalments provided for under Article 2 of this Indenture, remaining due against the Buyer shall remain a charge on the said produce."

This shows that the document was intended to transfer ownership of the property which was being sold and the property in the timber sold vested immediately in the buyer as a result of the sale.

15. Clause 7 of the document reiterates the same position. It is in these words :

"The forest produce sold to the Buyer under this indenture will remain at the Buyer's risk from the date hereof, and the seller will not be responsible for any loss or damage which may occur thereto from any cause whatsoever."

Thus the terms of the document make it perfectly plain that it is a document by which the property was sold by one person to another.

16. That alone will, however, not necessarily make the document a "conveyance". In spite of being a document by which a sale was being effected it will fall

outside the definition of conveyance if it is one which is otherwise specifically provided for in Schedule I. This follows from the last few words of the definition of the conveyance itself. It is urged that such a specific provision is to be found in Article 5 of the schedule.

17. The Article which provides for agreements or memorandum of agreements has three clauses. Clauses (a) and (b) of the Article mention two particular kinds of agreement, but Clause (c) is a residuary clause which covers agreements or memoranda of agreement which do not fall under Clauses (a) & (b) and are, therefore, not otherwise provided for. If the document in question is an agreement or memorandum of agreement it will fall under Clause (c).

The word agreement in this connection must be taken in the sense in which it has been defined in Section 2 of the Contract Act. There, an agreement is equivalent to promise and a promise tantamounts to a proposal or offer which has been accepted. An agreement must therefore be held to be a proposal accepted by the person to whom it is made. The document in dispute which is a bilateral document was obviously intended to be a record of the mutual promises which the parties had made to each other as a result of negotiations or proposals made and accepted.

It cannot, therefore, be seriously questioned that the document so far as it is a record of terms agreed upon is an agreement. As it does not fall within Clauses (a) & (b) of Article 5 it must naturally fall within clause (c) of it.

18. Article 5 is, however, not the only Article of Schedule I, Stamp Act under which the document can fall. By this instrument, Ramesh Chandra agreed to be liable to pay and obliged himself to pay Rs. 50,000/- to Padum Bahadur Singh. The instrument was not made payable to order or bearer. It was duly signed by Ramesh Chandra and has been attested by two witnesses. It, therefore, falls within the definition of the word "bond" as given in Sub-clause (b) of Clause (5) of Section 2 of the Act, and has been provided for in Article 15 of the First Schedule of the Act.

19. By Clause 6 of the document a charge was created in respect of the amount of unpaid instalments over the forest produce which was being sold by the vendor to Ramesh Chandra. The price was not being paid in cash. Ramesh Chandra was undertaking to pay it in future. It, therefore, became a debt for which he was undertaking, liability. The parties considered it necessary that the debt should be secured.

A charge was therefore created in respect of it in favour of the vendee. The charge was created over the property which was being sold and which was specified in the deed. From this point of view the document in question must be held, to be a "mortgage deed" as defined in Clause (17) of Section 2 of the Act.

20. As a bond, the document will fall under item No. 15 of the schedule and as a mortgage deed it will fall under item No. 40 of the schedule.

21. There are thus at least three items in the first schedule under which the document can-fall. It obviously cannot be held to be a document "not otherwise specifically provided for by schedule 1" and must on that account be held excluded from the purview of the definition of "conveyance" as given in Section 2(10) of the Act. The Collector was, therefore, not justified in his view that the document was chargeable to duty as a conveyance under Article 23 of the schedule.

22. Though the document in question falls under Clause (c) of Article 5 because it is an agreement it does not appear to be necessary to go into the further question whether it falls under exemption (a) of Article 5 because it relates to the sale of goods or merchandise. As it falls under the definition of a bond also it cannot be exempt from duty altogether and has to be stamped as a bond.

In the case of L.H. Sugar Factory Vs. Moti, , it was pointed out by Iqbal Ahmad, Acting C. J., that if an agreement for the sale of goods or merchandise contained in an undertaking and happened to be attested it would become a bond and would not remain a mere agreement for the sale of goods or merchandise. The document in that case had three aspects. By it the executants sold some sugarcane to a mill.

They also agree to pay back the amount they were taking or were to receive in a specified manner. They at the same time hypothecated the sugarcane crop for the advance which they had obtained. The agreement was duly attested. It was therefore, held that it was not altogether exempt from stamp duty as an agreement for the sale of goods or merchandise, but was liable to be stamped as a bond. Iqbal Ahmad, Acting C. J., observed in this connection :

"Agreements for the sale of goods or merchandise contemplated by Article 5 Schedule 1 do not require attestation and therefore such agreements, if unattested, would remain mere agreements even though there is a covenant as to the delivery of the goods agreed to be sold. But the moment such, an agreement is attested it becomes a bond.

This view is in accord with the Full Bench decision of the Madras High Court in reference u/s 46, Stamp Act, ILR 8 Mad 87 (B). It was held in that case that a promissory note not payable to bearer or order, if attested, becomes a bond. To the same effect is the Full Bench decision of the Bombay High Court in Re. Ralli Bros. 8 Bom LR 234 (C). It was laid down in that case that an agreement for sale of cotton between two merchants, when attested by a witness, becomes a bond within the meaning of the Stamp Act, 1899."

23. The view that on account of being attested the document which contained an undertaking to pay money became a bond was shared by the other learned Judges also who were constituting the Full Bench.

24. The document before us also fulfils all the conditions of a bond as defined in Sub-clause (b) of Clause (5) of Section 2 and is duly attested. On that account it

cannot be held to be a mere agreement for or relating to sale of goods, and becomes chargeable under Article 15 of Schedule 1. It cannot, therefore, be held to be entirely exempt from liability for stamp duty.

25. The document certainly creates a charge in respect of the amount payable on specified property and it can therefore be said that it is liable to be stamped as a mortgage deed too. But these two aspects of the document do not appear to be such as can make it a document comprising or relating to two distinct matters as contemplated by Section 5 of the Stamp Act so as to make it chargeable with the aggregate amount of duties payable on a "bond" and a "mortgage deed".

The charge that has been created was meant to secure the very amount which the vendor was undertaking to pay--the undertaking on account of which the document is being held to be a bond. The document could therefore, be stamped either as a bond or as mortgage deed and not as both.

26. Section 6 of the Stamp Act which provides that instrument so framed as to come within two or more of the descriptions in Schedule 1, shall, where the duty is chargeable thereunder are different, be chargeable only with the highest of such duties cannot affect the document in question as the duty payable on it as a mortgage deed appears to be the same as that payable on it as a bond. In the present case therefore there is no difference between the duties chargeable in respect of document whether it falls under one description or the other.

27. The proper duty which should, therefore, have been paid in respect of it was not the duty of one rupee which has been paid but a duty of Rs. 205.

28. Our answer to the reference, therefore, is that the document in question is not chargeable as a conveyance under Article 23 of the schedule of the Stamp Act nor is it exempt from stamp duty altogether under the exemption (a) to Article 5 of the schedule. The proper duty payable in respect of it is a duty on a bond under Article 15 read with Article 40 of the schedule. We answer the reference accordingly.