(1965) 12 MAD CK 0002

In the Madras High Court

Case No : Civil Revision Petition No. 258 of 1964

Gopalsami Naidu APPELLANT

Vs

Perumal Naidu RESPONDENT

Date of Decision : 10-12-1965

Acts Referred:

Stamp Act, 1899 — Article 5

Citation : AIR 1967 Mad 190 : (1967) ILR (Mad) 218 : (1966) 79 LW 130

Hon'ble Judges : Natesan, J

Bench : Single Bench

Judgement

(1) This revision arises on order made by the learned District Munsif of Ariyalur on a check slip with reference to a document, which the defendant

had filed along with his written statement. It purports to be the counterpart of an agreement, and the learned District Munsiff has taken the view

that it would not come under Exemption (a) to Art. 5 of Indian Stamp Act. A reading do the agreement shows that it relates to a purchase of

mango trees as felled timber, and the executant, who has already paid a sum of Rs. 425 as advance, agrees to pay the balance of Rs. 375 within

the time stipulated and cut and remove the trees. The short question for consideration is whether the agreement could be considered to be one ""for

or relating to the sale of goods or merchandise exclusively"", in which case it will come under the exemption. The matter is covered by direct

authority. The Allahabad High Court has In Re: Mahant Raj Balamgir, , while considering a similar agreement., held that it would come under the

exemption. The only part of the agreement now under consideration, which can give rise to some doubt, is that portion of the agreement where a

stipulation is found that the purchaser shall cut and remove the trees and take back the receipt. But the test for the application of the exemption is

thus propounded by the Allahabad High Court in the case above referred to:

The primary object of the deed was to evidence the transaction of the sale of goods and the agreement or memorandum of agreement

undoubtedly related to such sales. The mere fact that provision was made for the payment of price or the removal of the goods within a certain

time could not make it an agreement to memorandum of agreement other than one relating to sale of goods or merchandise within the leaning of the

''exemptions''"".

(2) On the question whether it could be considered to be immovable property, the court observed thus:

But here there was no idea of conferring a right on the purchaser to retain possession of timber which would remain attached or fastened to the

earth. It is therefore quite clear that the standing timber, which had to be cut down and removed, was moveable property and not immovable

property"".

(3) It is clear from a reference to the document now in question that what is purchased is only the timber, and the agreement only refers to the

purchase of timber. The purchaser has no right to keep the trees on the land or allow them to draw sustenance from the ground. No doubt, the

trees will have to be cut and carried away by the purchaser. But as what is purchased is timber, as they stood at the time of the agreement, it

cannot be stated that there the sale of immovable property and that the sale is not of goods or merchandise. As pointed out by the Allahabad High

Court in another case, In Re: Reference by Junior Secretary Board of Revenue,

As to whether the agreement is one for or relating to the sale of goods or merchandise exclusively, we think that the instrument embodies only one

agreement with several subsidiary covenants which do not detract from its exclusively character"".

(4) The Allahabad High Court followed the observations of this court in Kyd v. Mohamed, ILR (1891) Mad 150, where the test is thus stated:

The test which should be applied is, to see whether the document evidences only a transaction of sale, or a sale and some other independent

transaction and if the former the number of subsidiary stipulations it may contain cannot alter the nature of the transaction"".

(5) It is clear in this case that the document as it is, related only to the sale of the timber and the cutting is only ancillary to the agreement of sale.

The pleadings in the case which the court below refers to have no bearing when considering the question whether stamp duty is chargeable on any

particular instrument. It is the instrument that is chargeable and not the transaction and the instrument as it stands, will come under Exemption (a) to

Art. 5 of the Stamp Act. The order of the lower court directing the petitioner(defendant) to pay stamp duty on the instrument is hereby set aside

and the revision is allowed. No costs.

