
(1960) 03 AP CK 0013
In the Andhra Pradesh High Court
Case No : Case Referred No. 22 of 1957

Hidayat Mohiuddin

APPELLANT

Vs

Karamullah

RESPONDENT

Date of Decision : 16-03-1960

Acts Referred:

Hyderabad Stamp Act, 1331 — Article 24
Stamp Act, 1899 — Article 35
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1961 AP 1

Hon'ble Judges : P. Chandra Reddy, C.J.; Srinivasa Chari, J.; Sanjeeva Row Nayudu, J

Bench : Full Bench

Advocate : Advocate General, for the Appellant;

Judgement

P. Chandra Reddy C.J.

1. This is a reference by the Chief Judge, Court of Small Causes, Hyderabad, u/s 58 of the Hyderabad Stamp Act, (IV of 1331 Fasli) corresponding to Section 60 of the Indian Stamp Act.

2. The circumstances under which the reference is made may be briefly set out. A suit was filed in the Court of Small Causes, Hyderabad, by the landlord of a house situated at old Pheelkhana, for recovery of arrears of rent amounting to Rs. 385/- due by his tenant. The parties entered into a rental agreement by and under which a monthly rental of Rs. 40/- (O. S.) was payable by the defendant on the first of every month. The tenancy could be determined with fifteen days notice on either side ending with the end of the month. It was alleged that the defendant vacated the house without paying rent for nine months.

3. The defendant remained ex parte.

4. The instrument of lease was filed into Court. The office thought that it was to be stamped under Article 24(a) (viii) of the Schedule to the Hyderabad Stamp

Act corresponding to Article 35(a)(iv) of the Indian Stamp Act, and that as it bore an insufficient stamp it was to be impounded and a penalty amounting to Rs. 412-8-0 was levied. The plaintiff disputed the correctness of this levy and so the document was sent for realisation of the dues to the Inspector General of Registration and Stamps.

5. This was returned with the following endorsement :

"Document under consideration is a lease for a period of one year and for a yearly consideration of O. S. Rs. 480/- and is chargeable under Article 24(2) of the schedule, to the Hyderabad Stamp Act, with a stamp duty of Rs. 6/4/0 whereas it has been executed on stamp paper of O. S. Rs. 7/8/0 which is more than sufficient. Hence no penalty can be levied".

As the correctness of this ruling was doubted by the Chief Judge, he made this reference.

6. The question that calls for decision in this reference is whether the instrument falls under Article 24(a)(ii) of the Schedule to the Hyderabad Stamp Act or under Clause (viii) of that sub-section. This depends upon the interpretation to be placed on the two relevant clauses. It is convenient here to read both the clauses of that Article.

"Article-24: Lease, including an under lease or sub-lease and any agreement to let or sub-let:

(a) Where by such lease, the rent is fixed and no premium (Nazarana) is paid or delivered -

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(a) Where by such lease, the rent is fixed and no premium (Nazarana) is paid or delivered -

(i)

"Where the lease purports to be for a term of less than one year.

The same duty as a bond (Art. 10) for the whole amount payable or deliverable under such lease.

(ii)

Where the lease pur-ports to be for a termof not less than one year but more(sic) than five years.

The same duty as a bond (Art 10) for the amount or value of the average annual rent reserved.

(iii)

Where the lease does not- purport to be for any definite period.

The same duty as a bond conveyance(sic) (Art. 15) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long."

7. We have now to decide as to which of these clauses governs the instrument in question. There can be little doubt that Clause (ii) is inapplicable to this case for the reason that this is not a lease "for a term of not less than one year but more than five years". The only other two Clauses are (i) and (viii).

8. We may pause here to look at Section 106 of the Transfer of Property Act, which has a bearing on this enquiry:

Section 106:

"In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice expiring with the end of a month of tenancy".

x x x x x

9. Since in the present case this is a lease of immovable property "for any other purpose", the document falls within the purview of the latter clause of the section. Does this make it a lease purporting to be for a term of less than one year? At the first blush, it may appear that a monthly lease attracts Article 24(a) (1). But on a careful consideration, we have come to the conclusion that the expression "for a term of less than one year" indicates that a document which does not fix the period of lease cannot come within the sweep of that clause. If no definite Term for lease is fixed and it is terminable by notice on either side, it is difficult to postulate that it is a lease for a term of less than one year.

It should be regarded as a lease for an indefinite period, having regard to the clause enabling, either party to determine the lease after giving fifteen days" notice. The lease is indefinite in the sense that under the instrument the tenancy could continue as long as both parties want it. Either the land-lord or the tenant could put an end to it at any time, provided that the term as to notice is complied with. If both of them so wish, it could be continued for any length of time. Therefore though the tenancy may be described as a monthly tenancy within the purview of Section 106 of the Transfer of Property Act, it does not follow that the document evidences a lease for any definite period. It is only in cases where a specified period is indicated and that period is less than a year, Clause (i) is applicable. But, if the lease does not purport to be for any definite term, Clause (viii) is attracted.

10. This view of ours is in consonance with Samuel Koilpillai Skinner Vs. Arunachalam Pandaram and Others, There, it was laid down that, where the terms of tenancy as embodied in a document were that the lessee agreed to pay a certain amount of rent per month on a particular day of each month and that in default of payment of any month's rent he. would pay the arrears and interest together with the next month's rent and in default of which the lessee would be liable to be evicted from the house at the pleasure of the lessor, the document was a lease for an indefinite term and not for a term of less than a year and was therefore liable to be stamped under Article 30(a)(viii) of Schedule I, A. of the Indian Stamp Act which corresponds to Article 24(a)(viii) of the Hyderabad Stamp Act.

11. To the same effect is the judgment of the Allahabad High Court in Mahant Mangal Puri Vs. Mahant Baldeo Puri, Likewise the Bombay High Court ruled in Collector and Supdt. of Stamps, Bombay v. Laxmibai ILR 194S Bom 342 : (AIR 1948 Bom 336) that a lease from month to month within the meaning of Section 106 of the Transfer of Property Act, 1882, was chargeable to duty under Article 35(a)(iv) of Schedule I to the Indian Stamp Act, since it was a lease for no definite period, To a like effect is the judgment of the Lahore High Court in Noor Ahmed v. Md. Ali ILR 1939 Lah 201 : (AIR 1939 Lah 531). It was held there that if a lease did not fix a term but stated that either party could terminate the tenancy on giving one month's notice, it was governed by Article 35(a)(viii) of the First Schedule to the Stamp Act.

12. The only dissenting voice is to be heard in Amolia v. Ibrahim Ishak ILR Cal 804 : AIR 1919 Cal 200. In similar circumstances, their Lordships, Saunderson C. J. and Wcodroffe J. decided that such an instrument falls under Article 35 Clause (a) Sub-clause (i) of the first schedule to the Indian Stamp Act; But that Is based on a concession made by the counsel appearing for the Government and there is no discussion at all on this subject.

13. Thus the preponderance of authority is in favour of the opinion we have expressed and we think that represents the correct view of the relative scope of the clauses.

14. Our answer to the reference is that the in strument is governed by Article 24 (a)(viii) of the sche dule to the Hyderabad Stamp Act.