

(1895) 12 CAL CK 0004
In the Calcutta High Court

In Re: A Reference from the Board of Revenue under Section 46 of the Stamp Act, 1879.

Date of Decision : 12-12-1895

Acts Referred:

Stamp Act, 1899 — Article 21

Citation : (1896) ILR (Cal) 283

Hon'ble Judges : W. Comer Petheram, C.J.;Prinsep, J;Pigot, J

Bench : Full Bench

Judgement

W. Comer Petheram, C.J., Prinsep and Pigot, JJ.—Our answer to the question referred to us is, that the instrument proposed to be executed by Messrs. Robert Watson & Co. is a conveyance of freehold lands and good-will and a transfer of interests secured by leases, and that it will be properly stamped under Article 21 of Schedule I of the Stamp Act with stamps of the value of Rs. 1,485, that being the ad valorem duty on the conveyance of the freehold property, good-will, buildings and erections, and under Article 60 of the schedule with stamps of the value of Rs. 45, being a duty of Rs. 5 on the transfer of each of the interests secured by the leases.

2. If we look at the substance of the transaction as disclosed by the deed, it is a conveyance of the freehold property of the vendors together with the good-will and buildings for a certain sum, and a transfer of the leasehold estates for another sum, and as that is what the deed is, it will be properly stamped u/s 7 of the Stamp Act, with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act.

3. By Section 3, Sub-section 9 of the Act, a conveyance is defined to be an instrument by which property, whether moveable or immoveable, is transferred on sale, and as the moveables (machinery, &c.) had been as the deed recites already delivered to the vendors, they were certainly not transferred to them by the deed, and we do not think the vendors can be called on to, increase the stamp so as to include the value of those things.

4. We have been referred to several cases on the subject, one being the unreported case of the Mohargnng Tea Estate. See, as to this, letter No. 501-B. from the Secretary to the Board of Revenue to the Commissioner of the Presidency Division, dated September 5th, 1883, in which he says:

I am directed to acknowledge the receipt of your letter No. 131-R.S., dated 23rd August 1883, submitting, for the decision of the Board, a reference made by the Collector of Stamp Revenue, Calcutta, u/s 45 of the Indian Stamp Act (I of 1879) regarding the stamp duty chargeable on a conveyance executed on the 2nd July 1883 by one Mr. J. H. Doyle, of Darjeeling, in respect of the Bloomfield Tea Estate, and in reply to state as follows:

" From the paper submitted by you, it appears that Mr. Doyle, by the conveyance above referred to, transfers his right in one piece of freehold land valued at 3,000, and three pieces of leasehold land, the three together valued at 6,000. It seems clear to the Board that Section 7 of the Act applies, and that the stamp duty should be levied on this document as comprising distinct matters. On the freehold property the stamp duty should be Rs. 300 under Article 21 of Schedule I of the Stamp Act; but, in regard to the leasehold lands, the question arises, whether under Article 60 (b) 2, the duty should be Rs. 5 on the three properties together, or Rs. 15, i. e., Rs. 5 on each of the three properties. It seems to the Board that the three leasehold properties are distinct. The dates of the leases are: (1) 2nd February 1878 from Government : (2) 20th January 1882 from Government: (3) 20th March 1883 from the Maharajah of Burdwan for different lands in each case and for different periods.

" The Board, therefore, think that the whole stamp duty to be charged should be Rs. 315.

5. In this view this Court agreed, and this, as pointed out by the Advocate-General, was a stronger case than the present, inasmuch as in that case the purchase-money was not divided but was one lump sum. Another is the case of the Menglas Tea Estate ILR Cal. 383. In that case this Court said that where the transaction is in substance the sale of a share in a partnership, and the transfer of a share in the lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, then the transaction should be regarded, not as a transfer of a lease, but as a sale of a share in a partnership, and the proper stamp is an ad valorem duty on the whole of the purchase-money.

6. Of these two cases the one which most nearly resembles the present-is the unreported one, as having regard to the value of the property as compared to the value of the good-will of the business. The transaction was in substance a sale of the various properties, and not a mere transfer of them as parts of the assets of a business, which was in itself the main consideration for the price paid.