(1931) 04 AHC CK 0034

In the Allahabad High Court

In Re: Mahant Raj Balamgir

Date of Decision : 08-04-1931

Acts Referred:

Citation : AIR 1931 All 392

Hon'ble Judges : Sulaiman, Acting C.J.;Mukerji, J;Boys, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Sulaiman, Ag, C.J.—This is a reference u/s 57, Stamp Act. One Mahant Raj Balamgir agreed to purchase standing timber in a certain jungle in the District of Basti for Rs. 36,000 and executed a document which he called a kabuliyat (counterpart of a lease) under which he promised to pay the price in a lump sum on a certain date and in case of default he agreed that the owner of the timber would have the right to realize the amount from him. He further promised to have the wood of the said jungle cut and removed within a year. He affixed a stamp of one anna on this document.

2. The question arose whether the document was a lease of immovable property or whether it was an agreement. Members of the Board of Revenue were inclined to the view that standing timber should be considered as moveable property and the document in question was a mere agreement chargeable under Art). 5 (c), Schedule 1, Stamp Act, and was not a. lease within the meaning of Section 2 (16) of the said Act. They have referred the question to the High Court because of some difference of opinion which has prevailed in the Board. The, object of the transaction was obviously to enable the purchaser of the timber '' to cut down the trees and remove them from the jungle and not to maintain in them as-forest or to enjoy the benefit of the standing trees. Had the idea been that the purchaser would have a right to maintain the trees on the land for a sufficiently long period in order to derive benefit from the growth of those trees the case might have been different. But here the primary object was the cutting down of the timber and its removal from the forest.

3. Section 3, T.P. Act, expressly provides that "immovable property" does not

include standing timber, growing crops or grass.

4. It has been contended before us by the Government Advocate that standing timber is immovable property within the meaning of Section 3 (25), General Clauses Act (Act 10 of 1897), which in that Act includes things attached to the earth, or permanently fastend to anything attached to the earth. 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. The agreement in question therefore cannot be the counterpart of a lease of immovable property within the meaning of Section 2- (16), Stamp Act.

5. The agreement signed by the executant was attested by witnesses and contained a promise to pay Rs. 26,000 within a certain time. An "agreement" is a wider expression than a "bond." Section 2 (5) defines what a bond includes. The definition is not exhaustive. If a document comes within the definition of a bond, the general Article 5, relating to agreement not otherwise provided for would not be applicable. But even assuming that the promise by which the executant obliged himself to pay money to the owner of the timber would come within the definition of bond it is clear that it amounted to an agreement or memorandum of agreement for or relating to the sale of goods or merchandise, referred to under the head " exemptions" in Article 5, Schedule 1. 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 sale. The mere fact that provision was made for the payment of price or the removal of the goods within a certain time would not make it an agreement or memorandum of agreement other than one relating to sale of goods or merchandise within the mean-of the "Exemptions." I am therefore of opinion that this deed was exempt from stamp duty so far as it related to the transaction of the sale of moveable property.

6. But the agreement also contained a stipulation that:

if Raja Sahib of Bansi raises any objection in cutting the jungle or removing the wood or gives any other sort of trouble, the responsibility of that would lie on the abovenamed Babu Sahib.

7. This was an additional undertaking which was not necessarily a condition of the sale transaction of goods. These terms amounted to an agreement which would not be covered by the " Exemptions" and they would be an agreement not otherwise provided for, for which a duty was payable under Article 5.

Mukerji, J.

8. This is a reference by the Board of Revenue u/s 57, Stamp Act. The question is what would be the proper stamp duty to be paid for the document of 20th March 1925, a copy of which has been furnished to us.

9. By this document a certain person, Balamgir, purchased the standing timber in

a certain area for a sum of Rs. 26,000. The terms of the purchase were that Balamgir would remove the timber in the course of one year and would pay the price in a lump sum on a particular date ,'' In my opinion the transaction was one of sale of goods or merchandise, and was therefore exempted from the stamp duty under Schedule 1, Article 5, Stamp Act of 1899.

10. Beyond the stipulation as to the sale of goods there was however an agreement that in case a rival proprietor Raja Sahib of Bansi, raised any objection to the cutting of the timber and removal of the same, the vendor was to have the responsibility. This was a matter which was independent of the transaction of sale of goods or merchandise and therefore brought the transaction within the purview of "an agreement."

11. My opinion therefore is that the document would be sufficiently stamped if it be stamped under Article 5, Schedule 1, Stamp Act, as "an agreement not otherwise provided for."

Boys, J.

12. I agree with the order pro-posed.

