

(1910) 06 CAL CK 0045
In the Calcutta High Court
In Re: Parasea Collieries Ltd.

Date of Decision : 02-06-1910

Acts Referred:

Stamp Act, 1899 — Section 57(1)

Citation : (1910) ILR (Cal) 629

Hon'ble Judges : Lawrence H. Jenkins, C.J.;Doss, J;Chatterjee, J

Bench : Full Bench

Judgement

Lawrence H. Jenkins, C.J.—This reference u/s 57(1) of the Indian Stamp Act of 1899 has been placed before us by the learned Advocate-General, who has said all that could be legitimately urged on behalf of the view asserted by the Board of Revenue; but he has failed to convince us. The facts are simple. The document which has been placed before us for adjudication is a lease for 999 years, which recites at length the previous title and a succession of agreements in relation to the properties comprised in it. The leased properties were at one time vested in the Raneegunge Coal Association, Ltd., but to secure a debenture loan they were assured to trustees, of whom C.C. Kilburn alone is now alive. Though the debenture loan has been discharged, there has been no reconveyance. The Company went into liquidation in 1899, but merely for the purpose of reconstruction, and on this reconstruction an agreement was made for the transfer to another Company, bearing the same name, and in the reference called the Association. Then there was an agreement by the Association to transfer the coal mining rights in and under the properties to Messrs. Shaw, Wallace & Co. for the price of Rs. 5,04,702 for the period and subject to the payment of the rent and royalties expressed in the lease now under consideration. Finally, Messrs. Shaw, Wallace & Co. agreed with the Parasea Collieries, Ltd., to transfer to it all these mining and other rights subject to the same conditions for the sum of rupees five lacs and fifty thousand. To carry this last agreement into effect, it was thought desirable to have the concurrence in the lease (i) of Mr. C.C. Kilburn, the surviving trustee of the debenture loan in whom the property is still vested, (ii) of the old Company and its liquidators, (iii) of the Association, and (iv) of Messrs. Shaw, Wallace & Company; but this did

not alter the character of the lease or the nature of the transaction. The view of the Board would appear to be that "The document is a multifarious document within the meaning and application of Section 5 of the Stamp Act." Now, that section provides that "any instrument comprising or relating to several distinct matters shall be chargeable 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." But here there is only one lease, and that is so, though the concurrence of several parties may in the circumstances have been proper; and (in my opinion) there is no justification for treating the instrument as a double lease, and this is so whether regard be paid to the ordinary principles of conveyancing or the terms of the Act.

2. This is expressly recognised in relation to a sub-purchase in Section 28(3). But it is said that this section does not apply, because here we are concerned with a lease and not with the conveyance. The Article that applies to the lease is the 35th and so far as the payment of a fine or premium is concerned, it provides that the lease shall bear the same duty as a conveyance for a consideration equal to the amount or value of such fine or premium. But the fine or premium for which this lease is granted is the sum of Rs. 50,500 payable by the Parases Collieries, Ltd., and that, alone, therefore, is the premium or which stamp-duty is payable. I therefore hold that the claim made by the Board of Revenue for the stamp-duty on this instrument as a lease between the Association and Messrs. Shaw, Wallace and Company cannot be sustained, and I would so answer the reference. I have not considered or dealt with any matter beyond that referred.

Doss and Chatterjee, JJ.

3. concurred.