(1954) 02 BOM CK 0018

In the Bombay High Court

Case No : Civil Reference No. 13 of 1953

In Re: The Indian Stamp Act, 1899

Date of Decision : 08-02-1954

Acts Referred:
Stamp Act, 1899 — Article 40, 6, 2(17)

Citation : AIR 1954 Bom 462 : (1954) 56 BOMLR 528 : (1954) ILR (Bom) 1074

Hon'ble Judges : Chagla, C.J;Shah, J;Dixit, J

Bench : Full Bench

Advocate : M.P. Amin, General and Little and Co. for referor, Murzban Mistree and Soloman and Co. for executant, for the Appellant;

Judgement

Chagla, C.J.—The question that arises on this reference is whether a document dated 23-8-1951, is a mortgage on which duty is leviable under Article 40 (b), Stamp Act, or is an agreement relating to the deposit of title deeds. The document mentions that the sum advanced is Rs. 75,000 and it is repayable on 23-8-1053.

Then Clause (2) contains various covenants by the mortgagor. Sub-clause (a) deals with the payment of interest. Sub-clause (b) deals with payment of costs, charges and expenses between attorney and client. Sub-clause (c) deals with the payment of compound interest. Sub-clause (d) deals with the obligation of the mortgagor to execute a first legal mortgage. Sub-clause (e) deals with the payment of insurance. Sub-clause (f) provides for giving of a notice by the mortgagor on his failure to pay the amount on the due date. Then Clause (3) deals with acceleration of the due date when any of the contingencies mentioned in that clause arise.

The question is whether looking to these various provisions in this document it can be considered to be an agreement for the deposit of title deeds.

2. Now, under the Indian Stamp Act "mortgage-deed" is defined in Section 2(17). That is an inclusive definition and it is to the following effect:

"mortgage-deed includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates to, or in favour of, another, a right over or in respect of specified property."

It'' is not disputed that this document falls in the definition of a "mortgage deed". It does create an interest in property. The Stamp Act makes no distinction between a legal and an equitable mortgage. But the Legislature has provided that although a document may be a mortgage deed, if it falls within the special class of documents referred to in Article 6, then it would be looked upon as an agreement relating to the deposit of title deeds and not a mortgage deed and the stamp duty payable will be under Article 6 and not under Article 40 (b).

3. Therefore, the whole question that we have to consider is whether this document, although it is a mortgage deed, is that peculiar kind of document with which the Legislature was dealing when it enacted Article 6. In other words, if the document merely contains the bargain between the parties with regard to the deposit of title deeds, then although it creates an interest in Immovable property and although it is a mortgage deed, still by reason of the provisions of Article 6 the duty payable is less than the duty which would have been payable if it had been a mortgage deed in the larger sense of the term.

It is clear that what was intended by Article 6 was a document which should merely contain the bargain between the parties with regard to the deposit of title deeds and, may be, conditions subsidiary or ancillary to the deposit of title deeds. But if we have a document which contains all the provisions which one would normally find in a mortgage deed, then the mere fact that the document also contains the bargain with regard to the deposit of title deeds would not make it an agreement for the deposit of title deeds.

Now, in this document we find many provisions which are never found in an agreement with regard to the deposit of title deeds. Take Clause (3) which contains an important provision with regard to the acceleration of the due date for the payment of the mortgage debt. This is a provision which has nothing whatever to do with the deposit of title deeds. The title deeds having been deposited and that fact having been recorded this is an obligation which is undertaken by the mortgagor to pay the mortgage debt earlier than on the due date if he does not carry out any one of the conditions mentioned in that clause.

4. Mr. Mistree relied on the Encyclopaedia of Forms and Precedents, Vol. X, p. 429, where the form of memorandum of deposit of title'' deeds is set out, and one term which is emphasised by Mr. Mistree is that that form contained an agreement to execute a legal mortgage, It is possible to take the view that when at the time of the deposit of title deeds the mortgagor agrees to execute a legal mortgage in the future, it is part and parcel of that agreement to deposit the title deeds. But in this very form or which Mr. Mistree relies there is no provision for acceleration of the due date of repayment, and what is more, in the footnote it is stated that "the Inland Revenue Authorities consider that the only simplest form

of equitable mortgage falls under the definition, and require instruments, even under hand only, by which the mortgagee acquires by contract the powers and conditions proper to legal mortgages, to be stamped in the same scale as the latter". In our opinion, it is clear that this is by no means a simple document, it is a most elaborate document, and by this document the mortgagee has acquired rights which are proper to a legal mortgage and not to a memorandum of deposit of title deeds. We, therefore, agree with the revenue authorities that the document falls under Article 40(b) and not under Article 6.

5. We, therefore, answer the first question in the affirmative. The second question does not arise. The third question also does not arise. Mr. Mistree''s client to pay the costs of this reference.

6. Reference answered.