

**(1953) 01 MAD CK 0024**

**In the Madras High Court**

**Case No :** Criminal Revision Case No. 614 of 1952 and Cri. Revision Petition No. 510 of 1952

**In Re: Venkataswami Aiya**

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**Date of Decision :** 19-01-1953

**Acts Referred:**

Stamp Act, 1899 — Article 58, 27, 35, 64, 70

**Citation :** AIR 1953 Mad 941 : (1953) 66 LW 390 : (1953) 1 MLJ 658

**Hon'ble Judges :** Ramaswami, J

**Bench :** Single Bench

**Advocate :** K.V. Ramaseshan, for the Appellant; Public Prosecutor, for the Respondent

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## Judgement

Ramaswami, J.—This criminal revision case is preferred against the conviction and sentence in C. C. No. 10 of 1951 on the file of the Additional First Class Magistrate, Kollegal, from which C. A. No. 1 of 1952 was filed before the Sessions Judge, Colmbatore, wherein the conviction was confirmed and the sentence was modified.

2. The facts are: One Chinna Malappa executed a settlement deed Ex. p. 10 on 29-7-1950. It was written by Venkataswami Aiyah, karnam of Ikkadahali village, Kollegal taluk. The document was registered as No. 3937 of 3950 of Book 1 of the Sub-Registrar of Kollegal. The value of the property as set forth in the document is Rs. 2000. The District Registrar initiated the prosecution of both these persons u/s 27 read with Section 64, Stamp Act on the foot that the property had been grossly under-valued. The executant died on 2-8-1950. The case against him abated. The enquiry proceeded against this scribe only. Both the Courts below found that this accused was guilty as charged and sentenced him to pay a fine. The Additional First Class Magistrate fined him Rs. 100 and the Sessions Judge reduced it to Rs. 50.

3. This conviction is challenged in this criminal revision case on the following grounds, viz., (a) that there has been no valid sanction for the institution of the complaint, and (b) that the circumstances alleged against this scribe do not

make out the offence contemplated by Section 27 and Section 64, Stamp Act.

4. Point (a): There is no substance in this point because though it is quite true that originally under the Standing Orders 101 and 102, embodied in the Madras Stamp Manual containing the Indian Stamp Act and the Court-fees Act, with the Notifications issued thereunder and the Board's Standing Orders connected therewith (4th Edn.1933) only Collectors and Revenue Divisional Officers are found to have been authorised u/s 70, Stamp Act to sanction prosecutions in respect of offences punishable under the Stamp Act. Subsequently the District Registrars have also been so authorised. Ex. P-12 is the copy of G. O. Ms. No. 3306, Revenue dated 28-12-1949 in which the Local Government accepted the recommendation of the Board of Revenue to authorise the District Magistrate u/s 70, Stamp Act to sanction prosecution. Exhibit P-13 is copy of the proceedings of the Board of Revenue Ref. No, 3129-50 dated 17-5-1950 empowering District Magistrate to sanction prosecution. Therefore, there is no substance in the contention about the want of proper sanction for the complaint being launched by the District Registrar.

5. Point (b): I shall now briefly consider the scope of Sections 27 and 64 and Article 58, stamp Act to find out whether the facts of the instant case make out the offence for which the revision petitioner has been convicted.

6. Section 27, Stamp Act requires that the consideration, and other facts and circumstances which affect the stamp duty payable must be stated in the instrument. In the case of a settlement deed, the Article applicable is 58. The duty has to be paid on the amount or value of the property settled as set forth in such settlement. It is unnecessary to trace the chequered interpretations of this phrase "as set forth in such settlement" because we have the authoritative Full Bench decision of this Court in -- The Joint Secretary, Board of Revenue Vs. K.R. Venkatarama Ayyar, ; wherein the previous decisions in -- "Reference under Stamp Act, Section 46", 7 Mad 350 (B); -- "Reference under stamp Act, Section 46", 8 Mad 453 (FB) (C); -- "Reference under Stamp Act, Section 46", 20 Mad 27 (D) of this High Court and the decisions of the other High Courts have been referred to. This Pull Bench decision affirmed the view that stamp duty should be calculated on the value shown in the document itself. But at the same time it was held in that case that although the Registrar before whom a document is presented for registration cannot embark on the independent enquiry regarding the value of the property, yet he has power u/s 35, Stamp Act, to refuse registration if the document is not duly stamped; from which it would seem to follow that he can require the person seeking registration to furnish the particulars required for the calculation of the duty payable. For instance, he can refuse to accept the settlor's evasive statement in the document, "value for purposes of stamp and registration Rs. 3,000" when the true value of the property was rupees two lakhs.

In this case it was also held that the word "value" in Article 58 means the market value of the property at the time of the execution of the document and not its

value to the executant when he acquired it, that is, purchase or a nominal or fractional value. It was also pointed out that if persons who conveyed property could value it as they pleased, the Act would be purposeless, for little or no revenue would be collected. Notwithstanding the above, the stamp duty is only to be calculated on the value as set forth in the settlement.

The principles underlying the provisions of the Stamp Act with regard to valuation and estimation of the duty payable are that the value of the property should be taken from the face of the document and that the revenue or the Government is protected by requiring the parties to make a true and full disclosure of all facts and circumstances having any bearing on the duty payable failing which they must suffer the consequences of their false & defective statements. The learned Judges observed:

"No machinery is set up in the Stamp Act for ascertaining the true value of the property or consideration, as the case may be, in every case that comes before the Registrar; and it would clearly be impracticable to cast the burden on the Registrar in each case to ascertain what the true market value is. If the stamp duty were payable only on a market value to be ascertained, then it would have to be definitely stated in the Act who was to ascertain the market value and what rights, if any, an aggrieved party had by way of appeal, revision or the like."

7. In other words, as the law stands two courses are open when a document is sought to be registered on an under-valuation. First of all if the Registrar either from his own information or otherwise suspects that the valuation given is an under-valuation with intent to cheat the Government of the legitimate duty, he can ask for particulars from the party and if satisfied with its under-valuation, can refuse to register the document unless proper duty was paid. Secondly in case where the document gets registered and the information is subsequently received that the valuation shown is an under-valuation and that the legitimate stamp duty has been intentionally evaded to defraud the State, it will be open to the Registrar to initiate a prosecution u/s 27 read with Section 64, Stamp Act.

8. In the instant case what happened was this. P. W. 4 and D. Ws. 1 and 2 are brothers, being the sons of the deceased Chinna Mallappa. Chinna Mallappa executed Ex. F-10, the document in question. P. W. 4 felt aggrieved at the execution of Ex. P-10 because under that document his brothers D. Ws. 1 and 2 got the properties mentioned therein. Therefore, he preferred a complaint to the Inspector General of Registration stating that the properties in Ex. P-10 were deliberately under-valued to avoid stamp duty. P. W. 2 the District Registrar at Erode investigated the complaint and sanctioned the prosecution of the executant Chinna Malappa and the scribe, the petitioner before us.

9. But whatever may be the circumstances under which the prosecution is launched, the burden of proof is upon the prosecution to show affirmatively and satisfactorily that the terms of Section 27 have not been complied with. In all criminal cases the onus of proving everything essential to establish the charge

against the accused lies on the prosecution. The difficulty of proving a fact may affect the quantum of evidence demanded in the first instance but does not change the dominant presumption of innocence. It is not also necessary in all these cases for the accused to produce independent evidence. He is entitled to rely upon evidence that has been produced on behalf of the prosecution to urge that such evidence does not establish the guilt: See --"Woolmington v. Director of Public Prosecutions", (1935) AC 462 (E) (House of Lords) followed in -- "Manclni v. Director of Public Prosecutions", 1942 MW N 140 (F). See also -- "Mahadeo v. King", AIR 1936 PC 242 (G).

10. Section 64, Stamp Act requires proof of intention to defraud. Thus, a person Belling property ostensibly for Rs. 1,000 while the real consideration was Rs. 1.000 in cash and Rs. 19,000 as deposit with the vendee to be drawn by the vendor, is guilty u/s 64(c), Stamp Act: -- "Emperor v. Rameshar Das", 32 All 171 (H). Mere nonpayment of a proper stamp duty does not make a person liable for prosecution u/s 64 or the Act unless it is proved that he had an intention of defrauding the Government of its stamp revenue: -- "Brojendra Nath Bakshi v. Emperor", AIR 1918 Cal 113 (D. In order to maintain a conviction u/s 64, it is necessary to prove intention to defraud. This intent can only be Inferred from the circumstances: -- "Ramchand v. Emperor", AIR 1940 Lab 274 (J); -- "Krishnaswami Iyer v. Emperor", 1937 M W N 367 (K). The ingredients of the offence u/s 64(a), Stamp Act are that the consideration quoted in the document is not the real consideration and the Intention or effect was to defraud the Government of stamp revenue: -- "Narasimha Iyer v. Tahsildar of Watlajah, North Arcot", 1937 M W N 1071 (L). In fact the Boards Standing Order 103 runs as follows:

"In dealing with cases care is necessary to discriminate between cases in which an intention to defraud is required to be shown and those in which it is not."

Thus, in prosecution u/s 64 or 68 or for device to evade duty on receipt u/s 65, the fraudulent intention must be established; in other cases such an intention is not a necessary element of the offence.

11. Clause (b) of Section 64, Stamp Act applies to a person who is employed or concerned in or about the preparation of a deed without complying with the requirements of Section 27. The clause is not restricted to the scribe of the instrument but is wide enough to reach and punish the person who is in truth the author of the deed and is responsible for it, though he writes the deed through the hand of another person: -- "Chimandas v. Emperor", AIR 1944 Sind 222 (M). A person who is the moving spirit in the matter of sale and who is the real purchaser though the deed is nominally taken in the name of another and who engineers the whole thing and arranges for the wording of the sale deed, is a person concerned in or about the preparation of the instrument: -- "In re Sengoda Goundan", 1 Weir 905 (N); and -- AIR 1937 57 (Nagpur) . It is not correct to say that a vendee of a sale deed will never be liable u/s 64(a) or 64(b) and that the executant of the document alone would be liable. If the vendee was concerned with the preparation of the conveyance and if the consideration was

stated therein to be Rs. 300 instead of Rs. 2000, which was the real value of the properties, and if there was no good faith, the vendee also will be liable u/s 64(b). Hence the scribe who scribes the deed without any knowledge of the fraud, does not commit an offence under this clause: -- Panchanan Roy and Another Vs. Emperor, . The prosecution must therefore affirmatively and adequately establish that the scribe scribed the deed with intent to defraud or with knowledge of the fraud.

12. There has always been a general reluctance amongst lawyers to attempt to define fraud, and this is not unnatural when we consider the number of different kinds of conduct to which the word is applied in connection with different branches of law, and especially in connection with the equitable branch of it. "I shall not attempt", said the late Sir J. P. Stephen, to construct a definition which will meet every case which might be suggested, but there is little danger in saying that whenever the words "fraud", or "intent to defraud" or "fraudulently" occur in the definition of a crime two elements at least are essential to the commission of the crime, namely, first, deceit, or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy." This intent is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. The injurious deception is usually intended only as a means to an end, though it does not prevent it from being intentional. Therefore, it is only when there is an intention to deceive and by means of deceit to obtain an advantage, there is fraud.

13. In the instant case the element of intent to defraud has not been satisfactorily proved. First of all, it has not been shown what is the real market value of the land as contra-distinguished from the under-valuation charged. This must be affirmatively and satisfactorily proved by the prosecution. On the other hand, the burden of it has been thrown upon the scribe, the petitioner before us. The trial Court has stated: "It is in evidence that the accused who is the karnam of the village knows the value of the land in question. Exs. P-24 and P-25 are useful in this respect. (How. no information is vouchsafed). The accused cannot be heard to say that the kamam he is, is ignorant of the value of lands in the village and hence that his intention was not to defraud the Government when he wrote the document in question." This is merely begging the question. Secondly, the accused as a matter of fact taken upon himself the burden of showing that there was no undervaluation and examined D. W. 8, a village official, and who is his own brother. The trial Court dismissed his evidence in the following unsatisfactory manner: "For example D. W. 8 Balachandra Iyer is the brother of the accused who also is a village official. His evidence is interested. His records also are not clear." On the other hand, there is a volume of respectable evidence on the side of the karnam that there was no such gross under-valuation as would by itself be proof of intent to defraud: Thirdly, it has not been shown that the karnam derived any advantage from this under-valuation, even assuming that

there was\_ an under-valuation which has not been affirmatively proved. It is quite true that the deriving of this advantage cannot be proved by direct evidence. But sufficient circumstances should be established to enable us to draw that only inference. There is no such evidence here.

14. In these circumstances, the prosecution not having affirmatively and satisfactorily established that the scribe scribed the deed with intent to defraud or with knowledge of the fraud, the conviction and sentence are set aside and the accused is acquitted. The fine amount, if collected, will be refunded.