(1891) 04 MAD CK 0015

In the Madras High Court

Kyd and Another APPELLANT

Vs

Mahomed RESPONDENT

Date of Decision : 16-04-1891

Acts Referred:

Citation : (1892) ILR (Mad) 150

Hon'ble Judges : Parker, J;Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. We are of opinion that the agreements A and B fall within the exemption. It is urged that the stipulations relating to the payment of godown rent and fire insurance as also those relating to reference to arbitration are extraneous to the contract of sale, but we are of opinion that they are only collateral and subsidiary incidents relating to the sale of the goods, which is the transaction evidenced by the documents.

2. The test which should be applied is to see whether the document evidences only a transaction of sale or a sale and some other independent transaction, and if the former the number of subsidiary stipulations it may contain cannot alter the nature of the transaction. The material words of the exemption are "an agreement for or relating to the sale of goods or merchandize exclusively," and the intention was to exempt bona fide sales and purchases of merchandize from stamp duty. If the contention were to prevail fair effect could not be given to that intention.

3. We answer the question referred to us in the affirmative. The plaintiffs are entitled to the costs of this reference.