(1938) 02 AHC CK 0018

In the Allahabad High Court

Mahant Mangal Puri APPELLANT

Vs

Mahant Baldeo Puri RESPONDENT

Date of Decision : 02-02-1938

Acts Referred:
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1938 All 304

Hon'ble Judges : Collister, J

Bench : Division Bench

Judgement

Collister, J.—This is a reference by the District Judge of Jhansi, u/s 60(1), Stamp Act. A document was filed in Suit No. 26 of 1934 under which two houses were leased to certain persons and it was stipulated in the lease that if the owner wished to have the houses vacated, he was to give one month''s notice. The Inspector of Stamps is of opinion that the document falls under Article 35(a)(iv) of Schedule (1), Stamp Act, while the Civil Judge in whose Court the document was presented, is apparently of opinion that it falls under Article 35(a)(i). Article 35(a)(i) provides that where the lease purports to be for a term of less than one year, duty should be charged at a certain rate, and Article 35(a)(iv) provides that where the lease does not purport to be for any definite term, duty should be charged at a certain other rate. The view taken by the Civil Judge finds support from a decision of the Calcutta High Court in Amolia v. Ibrahim Ishak (1919) 6 AIR Cal. 200. In that case there was a document in which the lessee of a shop agreed to pay the rent each month, and the learned Judges held that, since there was a monthly tenancy, the document came under Article 35(a)(i) of Schedule 1, Stamp Act. The learned Chief Justice, observed:

In this case learned Counsel has conceded - and I think rightly - that the tenancy was a monthly tenancy and consequently it comes within Article 35, Clause (a), Sub-clause (1) of Schedule 1, Stamp Act; that is to say, the lease purports to be for a term of less than one year. Therefore, the proper stamp duty is the same duty as for a bond which is referred to in Article 15.

2. With the greatest respect we are unable to agree with this view. There is certainly, no doubt that this is a monthly tenancy within the meaning of Section 106, T.P. Act, but it does not follow from this that the document is a lease for less than one year. A lease for less than one year means a lease for some specified period which is less than 12 months. In the present case the lease is for an indefinite period : in other words, it "does not purport to be for any definite term". We have no doubt whatever that this document falls under Article 35(a)(iv), and therefore stamp duty is chargeable as provided for such a lease. In our opinion, the view taken by the Inspector of Stamps is correct. This is our answer to the reference. A copy of our order will be sent under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another copy will be sent to the learned Judge who has made the reference.

