(1959) 03 AP CK 0026

In the Andhra Pradesh High Court

Case No : Case Referred No. 24 of 1954

Midde Varaprasada Rao APPELLANT

Vs

Collector of Krishna RESPONDENT

Date of Decision : 16-03-1959

Acts Referred:
Stamp Act, 1899 — Section 2(17)

Citation : AIR 1959 AP 650 : (1959) 2 AnWR 102

Hon'ble Judges : P. Chandra Reddy, C.J;Srinivasachari, J;Sanjeeva Row Nayudu, J

Bench : Full Bench

Advocate : M. Veraprasada Rao, K. Venkata Narasimha Rao, S. Raghaviah and T. Kumaraswami, for the Appellant; M.S. Ramachandra Rao, 2nd Govt. Pleader, for the Respondent

Judgement

Chandra Reddy, C.J.—This is a reference made by the Chief Controlling Revenue Authority, namely, the Board of Revenue, Andhra Pradesh, u/s 57 of the Indian Stamp Act.

2. The reference arises in the following circumstances. A document was executed on 28-2-1950, styled as an agreement between one Midde Varaprasada Rao on the one hand and Kanukolanu Venkatasubrahmaniam, Kanukolanu Venkata Narasimha Rao, Subbineni Raghavayya and Thummala Kumaraswam; on the other. The purpose of the document was the completion of the construction of an unfinished cinema hall and the subsequent management of the said cinema hall after its completion by the aforesaid four persons. It was recited in that document that the said cinema hall which was, partially constructed, together with the site should be put in possession of these four individuals and that they should spend Rs. 40,000/- for completing the construction of the cinema hall and for providing the furniture and equipment necessary for running the cinema.

It was also stipulated that in the event of more money being required for completing it the persons referred to above should also advance such amount after giving notice to Midde Varaprasada Rao and that they should manage the cinema. Clause (6) provided that the said K. V. Narasimha Rao etc., should have mortgage rights over the properties described in ''A'' and ''A-1'' schedules and ''B'' schedule together with the machinery fitiings etc., and that the title deeds relating to the said property were handed over by Midde Varaprasada Rao to the four persons referred to above. The document provided for the execution of necessary documents subject to certain conditions prescribed in the document.

3. This document was engrossed on a stamp paper of Rs. 1-8-0 and presented for registration before the Sub-Registrar, Masulipatnarn. The Sub-Registrar felt a doubt as to the sufficiency of the stamp duty and referred the mailer to the Revenue Divisional Officer, Masulipatnam. The Revenue Divisional Officer construed the document as a mere agreement and opined that the stamp duty paid was sufficient. Not being satisfied with this opinion, the Sub-Registrar referred the matter to the Collector of Krishna District who interpreted the document as a usufructuary mortgage and impounded it, holding that a stamp duty of Rs. 4,800/-was payable. A revision petition to the Board of Revenue by one of the parties proved unsuccessful.

4. Thereupon, the revision petitioner requested the Board of Revenue to refer the following question for decision to this Court:

"Whether the document dated 28-2-1950 is a usufructuary mortgage chargeable to duty under Article 33(a) of Schedule I-A of the Indian Stamp Act or a mere agreement chargeable to duty under Art. 4(c) of Schedule I-A of the Indian Stamp Act."

5. As the question has to be answered with reference to Section 2 Clause (17) of the Indian Stamp Act, which defines a mortgage, it is useful to read that Section here:

"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 agree ment, one person transfers or creates to or in favour of another, a right over or in respect of specified. property."

It is manifest that in deciding whether a particular document answers the definition of this clause, the crucial question is whether there has been a transfer or creation of rights over or in respect of specified property in favour of another. We have already noticed the relevant clauses of the deed, one of which provides that the four persons named above should have mortgage rights over the properties, That document also indicates that these persons were already put in possession of the properties for completing the construction and for allied purpose and for management of the cinema. It is thus clear that all the essential elements that constitute a mortgage are present in this case. It is not the name that is given to a document that matters or the fact that the Parties contemplated execution of further documents. If really a document operates to create rights of the nature contemplated by Section 2 Clause (17) of the Indian

Stamp Act in favour of persons who advance money, clearly the document is a mortgage. In this case, it is a usufructuary mortgage.

6. The answer to the question referred to us is that the document dated 28-2-1950 is a usufructuary mortgage which is chargeable to the higher duty and not an agreement that could be stamped under Article 4(c) of Schedule I-A of the Indian Stamp Act.