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**(1975) 03 AHC CK 0018**

**In the Allahabad High Court**

**Case No : Stamp Act Reference No. 161 of 1972**

Nar Singh Das and Brothers

APPELLANT

Vs

The State of U.P.

RESPONDENT

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**Date of Decision :** 31-03-1975

**Acts Referred:**

Stamp Act, 1899 — Article 23, 24

**Citation :** AIR 1975 All 332 : (1975) AWC 341

**Hon'ble Judges :** K.B. Asthana, C.J;Saxena, J;Gopinath, J

**Bench :** Full Bench

**Advocate :** S.M. Agarwal, for the Appellant; R.M. Sahai, for the Respondent

**Final Decision :** Disposed Of

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## **Judgement**

Asthana, C.J.—This is a reference u/s 57 of the Indian Stamp Act by the Chief Controlling Revenue Authority, viz., the Board of Revenue, Uttar Pradesh.

2. Admittedly, the vendor was indebted to the extent of Rs. 61,600 to the vendee on the date when the sale-deed in question, dated 25-1-1968, was executed transferring a house for Rupees 15,500. It appears from the recital in the sale-deed, that the vendee had been demanding the payment of his money due on the supplies of cloth to the vendor, who was carrying on business in cloth in Kanpur market; that the vendor had suffered losses and much of his money was retained by his customers and he found himself in difficulty, that the vendor and the vendee then entered into an arrangement and executed the sale-deed dated 25-1-1968. The sale-deed shows that on the sale of the house for Rs. 15,500 the total debt of Rs. 61,600 stood discharged. It may further be stated that the title deed of the house, sold, had earlier been deposited with the vendee as security. When the sale-deed was presented before the Sub-Registrar he impounded it as he found that the stamp duty on the value of Rs. 15,500 had only been paid and not on Rs. 61,600, the amount of the debt which was wiped out by the sale of the house. The Additional Collector of Agra upheld the view of the Sub-Registrar and called upon the vendee to pay a stamp duty on the sum of Rs. 61,600 plus

Rs. 15,500 with penalty u/s 24 of the Stamp Act. The vendee, being aggrieved, filed a revision before the Board of Revenue and then also made an application that the matter be referred u/s 57 of the Stamp Act to the High Court. The Board of Revenue has submitted a statement of the case with its opinion and has formulated two points of law; viz..

(1) Whether the instrument under consideration is chargeable as an instrument of conveyance with ad valorem duty on the amount of total debt of Rs. 61,600, for which the property was encumbered, under Article 23, Schedule I-B of the U. P. Stamp (Amendment) Act, 1962 read with Section 24 thereof? and

(2) If the answer to the above question is in the affirmative, whether additional stamp duty @ 2% would be payable on the total debt of Rs. 61,600 in accordance with the provision of Section 62 of the Avas Avam Vikas Parishad Adiniyam, 1965 as amended by Section 12 of the U. P. Local Self-Government Laws (Amendment) Act, 1966 (Act XXIX of 1966) read with Government Notification No. O-324 H/XXXVII-8(HB) 65 dated 29-3-1966 published in the U. P. Gazette dated 29-3-66 (Niwas Vibhag)?

3. We may say here that in our judgment question No. 2 does not arise on the statement of the case. Neither the order of the Collector nor the opinion of the Board of Revenue deals with the charging of Additional Stamp Duty of two per cent. Moreover the question, framed, involves an enquiry into the fact whether Section 62 of the Avas Avam Vikas Parishad Adhiniyam, 1965 as amended by Section 12 of the U. P. Local Self-Government Laws (Amendment) Act, 1966 (Act No. XXIX of 1966), was applicable to the house sold. We need not, therefore, answer the second question.

4. As regards the first question we may point out that the words "for which the property was encumbered" occurring in the question seem to have been inadvertently or under some misconception introduced by the Board of Revenue. It was not the case of any party before the Collector that the house sold was subject to mortgage for the debt of Rs. 61,600 which had accrued upto the date of the execution of the sale-deed. What we understand by the question is whether under Article 23, Schedule I-B of the U. P. Stamp Act XXV of 1962 the stamp duty paid on the amount of Rs. 15,500, the value of the house transferred, was in accordance with law and the Sub-Registrar was in error in impounding the sale-deed when presented for registration or the stamp duty was payable on the amount of Rs. 61,600, the total debt in consideration of which the house was sold u/s 24 of the Stamp Act.

5. We have heard learned counsel for the vendee and the learned counsel for the Revenue. In our judgment the provisions of Section 24 of the Stamp Act were attracted to the facts and circumstances of the case. Section 24 of the Stamp Act lays down the rule of law as to how transfer, in consideration of debt, is to be charged to stamp duty. The material recital of the sale-deed clearly shows that the vendor was compelled to transfer the house for Rs. 15,500 to the vendee, in

the discharge of the total liability of Rs. 61,600. The document itself evidences the fact that on the transfer of the house the debt of Rs. 61,600 was discharged, that is to say, that instead of accepting Rs. 61,600 in full payment of the debt the vendee, as the creditor, accepted Rs. 15,500 in lieu thereof. There cannot, therefore, be any escape from the conclusion that the transfer of the house was in full payment of the debt by the vendor. Section 24 of the Stamp Act says that where any property is transferred to any person in consideration wholly or in part, of any debt due to him..... such debt..... is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty. In the instant case the debt discharged amounted to Rs. 61,600 and this was the amount owed by the vendor to the vendee. The transfer of the house was in consideration of the whole of the debt i.e. Rs. 61,600. Thus for the purpose of payment of ad valorem stamp duty the value of the consideration would be Rs. 61,600 under Article 23 of Schedule I-B of the U. P. Stamp (Amendment) Act, 1962.

6. We are unable to agree with the contention of the learned counsel for the vendee that the house being valued at Rs. 15,500 in the sale-deed under Article 23 of the U. P. Stamp (Amendment) Act, 1962 the stamp duty was payable on that amount and not on the amount of debt of Rs. 61,600 inasmuch as the house was not sold in consideration of the payment of that debt and what the recital in the sale-deed showed was only the previous transaction and history, of the settlement between the parties and the contract of sale of the house was an independent transaction, distinct from the settlement, arrived at between the creditor and the debtor, the creditor having relinquished a part of the debt and having agreed to the amount of Rs. 15,500 as representing the existing debt. In other words, the argument was that on the date the sale-deed was executed there was no existing debt of Rs. 61,600 but only of rs. 15,500. The contention of the learned counsel is against the tenor of the recital of the sale-deed itself. The learned Addl. Collector and the Board of Revenue, in our judgment, have rightly construed the recital in coming to the conclusion that the transfer of the house was in consideration of the payment of the full debt of Rs. 61,600. In fact the finding is based on the recital and admission of the existing liability of Rs. 61,600 on the part of the vendor. It is recited in the sale-deed that the vendor being in difficulty, the vendee, as a measure of concession, agreed to buy the house for Rs. 15,500 and discharged the vendor of the liability and there remained nothing outstanding against the vendor in regard to the debt of Rs. 61,600.

7. Learned counsel referred to Section 63 of the Indian Contract Act in support of his submission that it is always open to a creditor to relinquish any part of the debt and this having been done by the vendee, as a creditor, the only liability which remained on the vendor was of Rs. 15,500 and that is all what the recital in the sale-deed evidenced. The further submission was that the consideration for the sale was only Rs. 15,500 and the Board of Revenue was in error in taking the view that the consideration for the sale was of Rs. 61,600. In this connection

learned counsel drew our attention to the case of Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, wherein it was held that the Revenue Authorities are not permitted by law to go behind the valuation of the property mentioned in the document for purpose of determining the stamp duty payable. We do not think that here any such question arises. Once Section 24 of the Act applies then the consideration would be the value of the debt which stands discharged or paid up, no matter whatever may be the market value of the property mentioned in the sale-deed itself. The revenue authority have not gone behind the market value of the house but they have applied the provisions of Section 24 of the Stamp Act.

8. It was next urged that Section 24 of the Stamp Act was not attracted inasmuch as the house was not sold subject to the mortgage or encumbrance. Reliance was placed on the Board of Revenue, Uttar Pradesh Vs. Rai Saheb Sidhnath Mehrotra, . It is not necessary for us to further discuss the facts of the instant case in order to find out whether the declaration of law by the Supreme Court helps the learned counsel. We have already found above that the house was transferred in consideration of the full payment of the debt of Rs. 61,600, and we have further found that the house was not transferred for enforcing the security of the debt of Rs. 61,600 nor was the transfer subject to that debt. The Supreme Court has held in the case cited that when the sale is subject to encumbrance then the Explanation to Section 24 is applicable. Here on the facts we find that the sale was in consideration of the payment of the debt. It was not the case here that the sale was subject to any encumbrance. Section 24 clearly applies and the consideration would be for purposes of calculating stamp duty, payable, ad valorem on the amount of the debt discharged i.e. Rs. 61,600. Learned counsel referred to the decision of this Court in Chief Inspector of Stamps, Allahabad Vs. Murlidhar Kanodia, Kanpur, . We do not think the ratio of the decision in that case, in any way helps the learned counsel. There a power of attorney, executed was the subject-matter of consideration and this Court was concerned only to find whether it was for a valuable consideration or only for a good consideration. It was found that power of attorney or the contract of agency therein was not for valuable consideration hence the ad valorem stamp duty was not payable. Further it was found on the document considered in that case that there was no transaction of transfer of any property. It is clear, therefore, that nothing in that case will be helpful in resolving the controversy in the instant case.

8. It was also argued that the document in question be read in two parts; first part as release and the second part as transfer. No such question was raised either before the Additional Collector or the Board of Revenue and it is not a part of the statement of the case. Moreover we have already found that on the tenor and the nature of the recital in the document, it appears to be one and single transaction, namely, the transfer of the house in consideration of the payment of debt of Rs. 61,600.

10. For the reasons given above we answer that ad valorem stamp duty on the amount of total debt of Rs. 61,600 is chargeable under Article 23, Schedule I-B of the U. P. Stamp (Amendment) Act, 1962 and Section 24 thereof. No order as to costs.