(1900) 02 CAL CK 0007

In the Calcutta High Court

Queen-Empress APPELLANT

Vs

Debendra Krishna Mitter RESPONDENT

Date of Decision : 23-02-1900

Acts Referred:
Stamp Act, 1899 — Section 13(3)

Citation : (1900) ILR (Cal) 587

Hon'ble Judges : Macpherson, J;Francis W. Maclean, J

Bench : Division Bench

Judgement

Francis W. Maclean, K.C.I.E., C.J.—The short point we have to decide is whether the document in this case ought to have been stamped under Article 44 of schedule I of the Stamp Act of 1879 or under Article 29 of that schedule.

2. I am unable to agree with the learned Chief Presidency Magistrate in his view that, for the purpose of ascertaining what stamp duty is payable, we are to look to the definition of a mortgage given in the Transfer of Property Act. We need not travel so far afield, for a mortgage-deed is defined by Sub-section 13 of Section 3 of the Stamp Act, and the instrument in question in this case is, in my opinion, a mortgage-deed within the meaning of that subsection. It is an instrument whereby for the purpose of securing an existing debt, the transferor transferred to or created in favour of the transferee, a right over specified property. If this be so, as I think it must, what is the stamp duty properly payable upon a mortgage deed? Article 44 of schedule I tells us what is the duty to be paid upon a mortgage-deed not provided for by Article 14; 15, 29, or 55. We may admittedly lay aside Article 14, 15, and 55. They have no bearing upon the present question. The duty then will be payable under Article 44, unless the case is covered by Article 29. That brings us to the question whether this is an instrument evidencing an agreement to secure the repayment of a loan made upon the deposit of a valuable security. I think it is not. That article applies to an instrument evidencing the agreement to secure the repayment of the loan which means, I think an instrument executed at the time the loan is made, not to the

case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. The most common class of case to which it would apply would be that of an ordinary equitable mortgage by deposit of title deeds, accompanied with a memorandum of charge. The article seems to me to contemplate an instrument contemporaneous with the advance and with the deposit, and that is not the case here. I think, therefore, that duty is payable under Article 44 and that the case must go back to the learned Magistrate with this intimation of our opinion.

Macpherson, J.

3. I also think that the document in question is a mortgage deed and that it requires to be stamped under Article 44 of the First Schedule of the Stamp Act of 1879 and that it is not a document provided for in Article 29 of that schedule.

