
(1910) 01 AHC CK 0038
In the Allahabad High Court

Rameshar Das

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 05-01-1910

Acts Referred:

Stamp Act, 1899 — Section 27, 64(a)

Citation : 5 Ind. Cas. 697

Hon'ble Judges : Piggott, J; George Knox, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The essential facts of this case are as follows: On the 12th of September, 1908, Mahadeo Prasad and Sita Ram executed a sale-deed conveying certain property to Rameshar Das, the applicant in revision now before this Court. The consideration for the sale was Rs. 20,000 of which only Rs. 1,000 was paid down in cash, the covenant for the remainder being that Rameshar Das should keep the sum of Rs. 19,000 in deposit to the credit of the vendors, the latter to draw upon it at their convenience on tendering receipts. Before anything more was paid the parties repented of their bargain. Rameshar Das re-conveyed the same property to Mahadeo Prasad and Sita Ram, the sale-deed purporting to be simply for a consideration of Rs. 1,000 paid down in cash. The Courts below have held that Rameshar Das thereby committed an offence punishable u/s 64(a) of the Indian Stamp Act (Act No. II of 1899) in that he executed an instrument, in which all the facts and circumstances required by Section 27 of the said Act were not fully and truly set forth. This section requires that the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. The first point taken in Revision is that the Collector should not have instituted this prosecution without first levying the deficient duty and penalty on the deed in question. This the Collector could not have done. The deed was fully stamped on a sum of Rs. 1,000 the consideration as stated therein. The whole point of the prosecution is that the consideration for

the sale is not fully and truly set forth. We are of opinion that it is not. The actual consideration for the sale-deed of the 2nd of March 1909, was the cash payment of Rs. 1,000 plus an oral agreement cancelling the liability under which Rameshar Das lay to pay Rs. 19,000 on demand to the vendees under the said deed. It seems to us that we are not even concerned with the question whether, in the event of the said vendees, namely, Mahadeo Prasad and Sita Ram, behaving dishonestly and instituting a suit to enforce the provisions of the original sale-deed of the 12th of September, 1908, the Civil Court could, in view of the provisions of the Indian Evidence Act, permit Rameshar Das to prove this oral agreement. The question we have to answer is what was the real consideration for the second sale-deed and that consideration admittedly was not the mere payment of Rs. 1,000. We have next to consider whether Government has as a matter of fact been defrauded of stamp duty. Had the consideration been fully and truly set forth in the sale-deed, it seems clear that in view of the provisions of Section 24 of the Indian Stamp Act, the conveyance in question would have been chargeable with stamp duty upon the full sum of Rs. 20,000, The only exception to be found in Section 24 is the proviso in favour of a mortgagee purchasing the equity of redemption. But this is obviously inapplicable to the facts before us, and only serves to make it clearer that on a conveyance like the present, stamp duty must be calculated on the cash payment plus any debt or liability thereby remitted or transferred. A suggestion was thrown out in the course of argument that the parties might have availed themselves of the provisions of Article 17 or Article 55 of the first schedule to the Indian Stamp Act, so as to cancel the liability in respect of this sum of Rs. 19,000 upon an instrument bearing a stamp duty of Rs. 5 only. The answer to this argument is to be found in the provisions of Sections 5 and 6 of the Indian Stamp Act. The sale-deed of the 12th of September, 1908, had transferred to Rameshar Das full proprietary title in the land in question. Vide *Shib Lal v. Bhagwan Das* 11 A. 244. Because of the provisions of Section 54 of the Transfer of Property Act, (Act IV of 1882), this title could not be re-transferred to the original vendors except by a registered instrument. Such instrument, in whatever way the parties might elect to word it, would necessarily contain provisions bringing it within the definition of a "conveyance" in Section 2, Clause 10 of Act II of 1899. It would, therefore, be liable to duty as a conveyance upon the full consideration which actually passed between the parties. Finally, it is necessary for a conviction in this case that we should be prepared to hold that the sale-deed of the 2nd of March, 1909, was drafted in the particular form in which it actually stands, "with intent to defraud the Government." The Courts below have held that it was; and it would certainly be impossible for us to say on revision that this finding must be reversed because we were of opinion that there was no evidence on the record upon which such finding could properly be based. We think, moreover, that the omission in the sale-deed of March 1909, to make any reference whatever to the unpaid consideration could only have been intended to avoid any question being raised as to the liability of the parties to stamp duty over and above that due on the sum of Rs. 1,000. By evading the obligation which lay upon them, the parties

have defrauded the Government of stamp duty, just as much as they would have done if Rameshar Das had in the first instance paid the original vendors Rs. 19,000 in cash, taken the receipt for the same upon a one anna stamp, and the parties had then executed a deed of sale purporting to convey the property for a consideration of Rs. 1,000. It is to meet such abuses that Section 27 of the Indian Stamp Act was framed, and we think that the present case is within the purview of that section. We dismiss the application for revision.