(1946) 04 AHC CK 0036

In the Allahabad High Court

Case No : Civil Misc. No. 178 of 1942

Rishidev Sondhi APPELLANT

Vs

Dhampur Sugar Mills RESPONDENT

Date of Decision : 01-04-1946

Acts Referred:

Citation : (1946) 04 AHC CK 0036

Final Decision : Disposed Off

Judgement

1. I have the honour to submit for the orders of the Hon''ble High Court copies of two documents which were detected by the Inspector of Stamps, Bareilly Circle, in the course of his inspection of the records of the Court of Additional Civil Judge, Bijnor. These documents were filed in Suit No. 32 of 1939, Messrs. Rishidev Sondhi v. Dhampur Sugar Mills.

2. The document bore stamps of annas 12 and annas 8 as if they were mere agreements. But the Inspector was of opinion that they were mortgage-deeds with possession chargeable under Art. 40 (a), Stamp Act. He, therefore, brought the two instruments to the notice of the Court in para. 7 of his inspection note suggesting that the documents be impounded and deficit duty and penalty levied in respect of them under S. 35 of the said Act.

3. The learned Court, however, in its order dated 14th August 1940 disagreed with the Inspector and held that the documents were not mortgage deeds, but mere agreements and as such properly stamped.

4. As would appear from a perusal of the documents, they are mortgage deeds without possession, chargeable under Art. 40 (B), Stamp Act, as the usufruct of the money deposited would not be enjoyed by the mortgagee, but will go to the mortgagor. The Inspector''s opinion that the documents were mortgages with possession does not seem to be justified? The Court''s view that there is no mortgage of money and the documents do not, therefore, come under the category of mortgage deeds, hardly finds support from the definition of a

"mortgage" as given in S. 2 (17), Stamp Act, which is much wider than that given in the Transfer of Property Act and which includes every instrument whereby, for the purpose of money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance an engagement, one person transfers or creates, to or in favour of, another a right over or in respect of specified property. The specified property may be immovable or moveable. The latter includes cash or equivalent of cash. In the cases under consideration specific sums have been offered as security. The amounts deposited with the other party are, therefore, "specified property" within the meaning of S. 2 (17) Stamp Act, and the documents in question come under the category of mortgage deed for purposes of stamp duty.

5. In exercise of the powers of a Collector conferred upon me by Government Notification No. 4135/X-525, dated 20th August 1928, I refer the matter for the orders of the Hon''ble High Court under S. 61, Stamp Act, and request that a declaration be made in terms of sub-s. (2) thereof.

Allsop J.

6. In our judgment money is not moveable property. Specie might possibly be, but that question dots not arise in this case. The instruments which are the subject of this reference are not mortgage deeds. The stamp duty paid is sufficient.