
(1974) 09 MAD CK 0001
In the Madras High Court
Case No : C.R.P. No. 2064 of 1971

The Bank of Madurai Ltd. and another APPELLANT
Vs
P.C. Subba Raju and another RESPONDENT

Date of Decision : 06-09-1974

Acts Referred:

Stamp Act, 1899 — Article 5(c), 6

Citation : (1975) ILR (Mad) 496

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : N.C. Raghavachari and N.S. Varadachari, for the Appellant; V. Manivannan, Addl. Govt. Pleader No. II for State, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—In connection with the execution of a promissory note on 30th October 1968, by the respondents they deposited

with the petitioner bank on 31st October 1968, documents relating to their immovable property with intent to create an equitable mortgage upon it.

On failure of the respondents to pay the debt evidenced by the aforesaid promissory note, the petitioner bank came to court and sought for a

mortgage decree claiming an equitable mortgage over the property and relied on the document dated 31st October 1968 executed by the

respondents in evidence of such deposit. A check slip was issued by the court below stating that the deposit so created would not permit the

plaintiff to sue on it as if a mortgage has been created and treated the document as coming within the purview of Art. 6 of the Indian Stamp Act.

Though, no doubt the office of the Subordinate Judge, Chingleput, was in favour of admitting the instrument as an agreement under Art.5(c) of the

Indian Stamp Act, the court-fee examiner took a different view and claimed the deficit stamp duty as also the penalty. The matter came up before

the court and the point for determination was whether the document, dated 31st October 1968 purporting to be an agreement has to be valued

under Art.6 of the Indian Stamp Act or only under Art. 5(c). The learned Judge took the view that on a reading of the agreement as above the title

deeds should be deemed to have been deposited only in pursuance of the above agreement and as such it should be treated as an instrument within

the meaning of Art. 6 of the Indian Stamp Act. He, therefore, directed the plaintiff-petitioner to pay the additional stamp duty. It is against this the

present civil revision petition has been filed. The relevant portion of the document which has come up for scrutiny before the lower court as well as

before me runs as follows:½

That we P.C. Subbaraju and R. Venugopalan aforesaid do hereby acknowledge that we deposited with the Bank on 31st October 1968 the

documents specified in the schedule hereto, with intent to create an equitable mortgage upon all our estates and interest in the properties....for the

purpose of securing repayment to the Bank on demand of all moneys now owing or which shall be due by us on the promote dated 31st October

1968 executed by us for Rs. 21,000 in favour of the Bank.....

The borrowing was on 30th October 1968, The deposit of the title deeds was on 31st October 1963. It is to confirm such deposit on 31st

October 1968 in connection with the debt which by then was subsisting that the instrument was executed by the respondents in favour of the bank.

I am unable to agree with the learned Subordinate Judge that on a fair reading of the recitals in the instrument it should be interpreted as a

document under which an equitable mortgage has been created. It is evidence of deposit of title deeds and does not itself create a mortgage over

the property. I am, therefore, of the view that Art.6 of the Indian Stamp Act is not inviolable in the instant case.

2. Under similar circumstances, the Supreme Court in United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and Others, held that the letter

considered by court in that case did not by itself create a mortgage over the properties, but was only an instrument which could be interpreted as

being evidence of the deposit of the title deeds by the borrower. In the instant

case, it is only a bare agreement that was entered into between the parties, and not an instrument which contains the bargain between the parties with regard to the deposit of title deeds and conditions subsidiary and ancillary thereto. The deposit preceded the time when the documents were handed over to the bank. They were only confirming the deposit under the instrument. The instrument does not, by itself evidence the deposit nor does it create a mortgage by itself. As this is only a record of past events and indeed a confirmation letter and does not lead to the conclusion that it is a contemporaneous record bringing home to the creditor that the deposit was made at or about the time when the agreement was drafted, I am of the view that this is not only admissible in evidence as an agreement, but it is only not necessary to invoke Art. 6 of the Indian Stamp Act, and hold that the instrument is not properly stamped. The Government Pleader, after going through the documents, is satisfied that the decision in United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and Others, which has been followed in Deb Dutta Seal Vs. Ramanlal Phumra and Others, would apply to the facts of this case and that the instrument is not chargeable as was directed to be done by the court below. The Civil Revision Petition is allowed. There will be no order as to costs.