

(1950) 08 BOM CK 0017

In the Bombay High Court

Case No : Civil Reference No. 13 of 1947

The Chief Controlling Revenue Authority

APPELLANT

Vs

The Maharashtra Sugar Mills Ltd.

RESPONDENT

Date of Decision : 22-08-1950

Acts Referred:

Stamp Act, 1899 — Section 17

Citation : AIR 1951 Bom 28 : (1951) 53 BOMLR 82 : (1951) ILR (Bom) 226

Hon'ble Judges : Chagla, C.J.;Tendolkar, J;Gajendragadkar, J

Bench : Full Bench

Advocate : C.K. Daphtary, General and Little and Co, for the Appellant; M.P. Amin, S.S. Rangnekar, Sabnis Goregaonkar and Senjit, for the Respondent

Judgement

Chagla, C.J.—This is a reference made to us u/s 57, Stamp Act, by the Chief Controlling Revenue Authority, and the facts giving rise to this reference may be briefly stated. The Maharashtra Sugar Mills borrowed a certain sum of money from the Central Bank of India, Ltd., on the security of various goods and movables belonging to the company, and a document was executed reducing to writing the terms of the transaction between the parties. That document was executed on 22-8-1945. The company sent this document to the Registrar of Companies. The Registrar of Companies took the view that the document was inadequately stamped and therefore forwarded it to the Assistant Superintendent of Stamps. The Assistant Superintendent of Stamps called upon the Sugar Company to pay the proper duty along with penalty. The Sugar Company resisted the demanded filed a suit, being Suit No. 1108 of 1945, in this Court for a rectification of the document. The contention of a Sugar Company was that although in form the document was a mortgage with possession, the intention of the parties was that it should be a deed of hypothecation and the document was drawn up in the form in which it was drawn up by mutual mistake of the parties. This Court passed a decree rectifying the document and giving effect to the real intention of the parties. Notwithstanding this decree the revenue authorities insisted on assessing the stamp payable on the document on the basis of the

instrument as it was originally executed, and the question that has now been submitted to us by the Chief Controlling Revenue Authority is mainly concerned with the effect of the decree of rectification on the instrument as originally executed. It is common ground between the parties that the document as originally executed was a mortgage with possession and chargeable to duty under Article 40(a) of the schedule of the Stamp Act. It is also common ground between the parties that the document as rectified by the Court is a deed of hypothecation and comes within the exemption given to that document under a notification issued by Government. The only question that we have to consider in this reference is, what is the effect of the decree of rectification on the duty payable on the document of 22-8-1946, and that in terms is the second question submitted to us by the Authority.

2. Now, rectification is ordered by a Court on equitable principles, and the equitable doctrine underlying rectification is partly, as the Advocate-General contends, the doctrine of estoppel and partly the doctrine that equity looks to the substance and not to the form. The doctrine of estoppel is that if parties intended that there should be a particular transaction between them and by mutual mistake a document comes into existence which does not give true expression to that intention, equity will not permit the parties to deny what the true intention was. But, as we said before, underlying rectification is also the other and equally important equitable doctrine that equity always prefers to look to substance of things rather than to the form. Even though in form a particular intention maybe evidenced, if in substance the intention was different, equity would pay greater importance to the substance rather than to the form. Now, the contention of the Advocate-General is that under the Stamp Act what is material is the date when the instrument has to be stamped, and if the instrument was of a particular nature at that relevant date, then as far as the stamp authorities are concerned it is entirely immaterial if at a subsequent date a competent Court of law rectifies that document. Reliance was placed on Section 17, Stamp Act. That section provides :

"All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution."

Therefore this document in question had to be stamped before or at the time of execution, and what the Advocate-General says is that before or at the time of execution this instrument was a mortgage with possession and, therefore, it was chargeable to duty as such. In our opinion, that is not the proper construction of Section 17. The question that has to be decided is, what was the instrument which was chargeable to duty, and if we come to the conclusion that the instrument chargeable was not a mortgage with possession but a deed of hypothecation, then the instrument must be charged as a deed of hypothecation and not as a mortgage with possession. It must be borne in mind that when a Court orders rectification of an instrument, the rectification has a retrospective effect and it goes back to the date of execution of the instrument. In fact in the

eye of the law the original document ceases to exist and the only document which has existence is the document which was rectified in accordance with the decree of the Court. Therefore, in our opinion, the instrument which is chargeable to duty u/s 17 is not the unrectified instrument, but the instrument which a competent Court rectified by its decree, because that is the only instrument now in existence in respect of which any duty can be charged. The learned Advocate-General has contended that when a document is rectified, the rectification can only apply to parties who are privy to the instrument or the document and those claiming under those parties. The Advocate-General says that the stamp authority was not a party to the document, it does not claim under the document and it has nothing whatever to do with the document. In a sense the Advocate General is right. But the law entitles the stamp authority only to charge duty on instruments which bear a certain characteristic and which are of a particular nature. Therefore, although the rights qua the provisions of the instrument may only affect the parties to the instrument as far as the nature of the instrument is concerned the stamp authority would be equally bound by the decree of the Court. The Advocate-General has also argued that the decree of the Court was passed as between the Maharashtra Sugar Mills and the Central Bank of India and that the revenue authority was not a party to that suit and therefore cannot be bound by that decree. In our opinion so long as the decree stands, it is not open to the revenue authorities to deny the validity of the decree; nor is it open to them to urge that the instrument which was affected by the decree was something different from what the decree says that instrument was. We are not suggesting that the revenue authorities are without a remedy. It would be open to them, for instance, to challenge the decree as having been obtained fraudulently or collusively and we asked the Advocate-General whether he wanted to challenge the decree on that ground, and if he did, we might have considered whether a proper issue should not be framed and opportunity should not be given to the Advocate-General to lead evidence on that point. But the Advocate-General was not pre-pared to accept that suggestion. Therefore, as the matter stands, there is a decree of a competent Court not challenged on the ground of fraud or collusion and which has rectified the instrument. Therefore the only instrument which we can consider and which the stamp authorities can consider is the instrument as rectified by the decree of the Court. Halsbury, Hailsham Edn., vol. XXIII, p. 156, para. 224, puts the effect of rectification in these words :

"" Ratification ,, if granted, relates back to the time when the instrument was executed, and after rectification the instrument is to be read as if it had been originally drawn in its rectified form.

And our attention has been drawn by Mr. Amin to two observations appearing in *Craddock Bros. v. Hunt* (1923) 2 Ch. 136: 92 L. J. Ch. 378. At p. 151 Lord Sterndale M. R. says :

"After rectification the written agreement does not continue to exist with a parol

variation; it is to be read as if it had been originally drawn in its rectified form."

And at p. 160 Warrington L. J. says this :

"It seems to me that, on principle, if an instrument of whatever nature is rectified it ought to be treated as if the necessary alteration had actually been made with the pen and had been part of the document at the date of its completion."

Therefore, as soon as the decree for rectification was passed, the alterations ordered by the Court were embodied in the document and the document must be looked at and read and understood as rectified as if that was the document from its very inception. The other document disappears from the scene and does not exist.

3. We, therefore, answer the questions put to us as under : (a) Unnecessary, (b) The effect of the decree of rectification is that the duty payable on the document is on the basis that the rectified document was the document originally executed and therefore the duty chargeable must be as if the document was a deed of hypothecation, (c) In the affirmative.

4. There will be no order as to costs.

5. The costs of the application for mandamus which was made to Blagden J. when the Chief Controlling Revenue Authority refused to state their case u/s 57 were reserved by the learned Judge to be dealt with by us. As the Chief Controlling Revenue Authority was in error in not stating the case as now finally laid down by the Supreme Court, we direct that those costs which were reserved should be paid by the Chief Controlling Revenue Authority.