(1967) 04 MAD CK 0032

In the Madras High Court

Case No : Referred Case No. 16 of 1965

The Chief Controlling Revenue Authority, Madras — APPELLANT

Vs

Pioneer Spinners Private Ltd. — RESPONDENT

Date of Decision : 21-04-1967

Acts Referred:
Stamp Act, 1899 — Article 5, 6, 57

Citation : AIR 1968 Mad 223 : (1968) ILR (Mad) 284 : (1967) 80 LW 483

Hon'ble Judges : M. Anantanarayanan, C.J;Ramakrishnan, J;Natesan, J

Bench : Full Bench

Judgement

Natesan, J.—This is a reference under S. 57 of the Indian Stamp Act and the question for decision is, whether the instrument in the case falls

under Art. 6 of the Stamp Act as an agreement relating to deposit of title deeds or is only an agreement falling under Art. 5. To get at the true

character of the instrument in question, it is necessary to briefly refer to the circumstances in which it came to be executed and the material terms of

this instrument. The executants, the respondents herein, on 13th February 1963 applied to the Canara Bank Ltd. Advance Dept. Bangalore, for a

loan of Rs. 8,00,000, for business purposes at the Coimbatore office of the Bank, offering to secure the repayment of the loan, (1) by executing in

favour of the Bank a document termed. ""Articles of Agreement"" for Rs. 8,00,000, with other relative papers and (2) by delivering and depositing

with the Bank with intent to create security thereon title deeds of properties set out in the schedules to their proposal. The proposal contained, the

list of documents which they would be depositing, the description of the properties to which their title deeds related, Immovable properties

including machineries. On the Bank expressing their willingness to grant the loan, on 21-2-1963, the executants called at the Coimbatore office of

the Bank and deposited the title deeds of their properties as security for the loan of Rs. 8,00,000 which they had. The petitioners also executed in

favour of the Bank the articles of Agreement embodying the terms and conditions governing the repayment of the loan. It is the stamp payable on

this instrument, the articles of agreement, that is now in question. The executants have stamped it under Art. 5 of the Stamp Act. According to the

executants, the articles of agreement do not relate to the deposit of title deeds; but is only a collateral agreement governing the repayment of the

advance of Rs. 8,00,000, and matters incidental to the advance. The instrument, no doubt in the annexed schedule, contains a list of title deeds of

property, which had been deposited. For the Revenue, emphasis is laid on certain terms and provisions of the instrument in particular to the

reference in the preamble to the borrower''s proposal dated 13-2-1963, a copy of which is annexed to the Articles of Agreement and the

covenants to the effect that.

(a) the borrower''s proposal shall be deemed to constitute the basis of this agreement and of the loan to be advanced by the Bank; and

(b) that the advance shall be governed by the terms contained in the agreement as well as in security documents listed in the schedule.

2. A provision in clause (6) of the agreement entitled the Bank to enforce the security for the whole advance upon the happening of the events

mentioned therein, notwithstanding other provisions in the instrument and clause (7) entitled the Bank to assign the debt and the benefit of the

agreement and the securities for the advance, and the security documents to the Refinance Corporation for Industry (Pvt.) Ltd., as security for the

refinance obtained by the Bank from the said Corporation. But what has to be noticed is, that in this elaborately drawn up articles of agreement,

containing the terms and conditions governing the loan or advance and the mode of repayment, there is no record of the bargain relating to the

deposit of title deeds.

3. The instrument styled articles of agreement, even though it is executed on the date of the deposit of the title deeds, does not itself evidence or

contain the terms regarding the deposit of title deeds. In the original proposal which emanated from the executants to the Bank, the executants had offered (1) to execute the article of agreement and (2) to deposit the title deeds of their Immovable property as security. The deposit of title deeds

and the execution of the articles of agreement may all be in the course of the same transaction. But the articles of agreement does not itself embody

the bargain for security by the deposit of title deeds; in fact it proceeds upon the existence of the security when it is executed. It itself does not

bring about any security by deposit of title deeds.

2. The material part of Art. 6 of the Stamp Act reads:--

Agreement relating to deposit of title deeds............ that is to say, any instrument evidencing an agreement relating to

1. the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security)

2.................. where such deposit........... has been made by way of security for the repayment of the money advanced by way of loan or an

existing or future debt...........

The question here is whether the articles of agreement under consideration is an agreement relating to deposit of title deeds. The first column of the

Schedule I of the Stamp Act specifies the instrument and the second column the duty payable on the instrument. An instrument to fall under Art. 6

must be an agreement relating to the deposit of title deeds. The expression ""that is to say"" in Art. 6 is explanatory and in the explanation there is

also a limitation. The Article takes in the most common class of equitable mortgages by deposit of title deeds accompanied with a Memorandum of

charge containing the terms of the mortgage.

5. Can it be said that the instrument in question here evidences an agreement relating to the deposit of title deeds? This aspect, we have to consider

from the well established principle that oral proof cannot be substituted for the written evidence of any agreement, which the parties have put into

writing. If the writing evidences the agreement, it must be taken that the parties themselves have tacitly considered the writing as the repository and

appropriate evidence of the agreement. Can it be said that the ""article of agreement"" in this case is the repository of the agreement between the

parties relating to the deposit of title deeds as security for the advance? Unless, the instrument could be so read, it cannot be said that it is an

agreement relating to deposit of title deeds, or expanding the same concept, an instrument evidencing the agreement relating to deposit of title

deeds, by way of security for advance. The mere fact that there is reference to the original proposal, and the proposal is made the basis for the

articles of agreement, and there is thus reference in a way to the deposit of title deeds and the documents deposited are also specified in the articles

of agreement, cannot make the instrument itself the repository of the bargain between the parties relating to the deposit of the title deeds. The

proposal contains a provision for the execution of the document called ""articles of agreement"" and with reference to this document, certainly the

proposal does form a basis. In our view, the phrase ""relating to"" in Art. 6 cannot be read as merely meaning ""connected with"". Statutes imposing

duties are to be so construed as (not?) to make any instrument liable to stamp unless manifestly within the intention of the legislature.

3. A mortgage by deposit of title deeds, does not requires any writing in law. Besides the deed and the deposit, what is required is an intention that

the deeds shall be security for the debt. The existence of the intention is a matter for inference from facts. The existence of the intention may be

established by written documents alone, or coupled with oral evidence or oral evidence only. In a particular case, the circumstances may warrant

the inference of a deposit for security from the very fact of deposit. The question whether oral evidence is admissible to explain or establish a

deposit of title deeds, would depend on, whether the writing itself has constituted the bargain between the parties. As parties can put thorough a

transaction of loan on security furnished by the deposit of title deeds, without an instrument made for a collateral purpose, referring to the deposit

incidentally as an agreement relating to deposit of title deeds. It is only the instrument which itself is the agreement relating to deposit of title deeds

that is taken in under Art. 6. It cannot be said that in the present case the deposit was contemporaneous with the execution of the instrument and

the instrument was intended to evidence the deposit of title deeds. The instrument by itself does not evidence any deposit of title deeds.

4. We are, therefore, of the view that the instrument is not an agreement relating to the deposit of title deeds governed by Article 6 of the Stamp

Act. It would fall under Art. 5 of Schedule I of the Stamp Act.

5. The reference is answered accordingly. No order as to costs.

