

(1969) 11 MAD CK 0025

In the Madras High Court

Case No : Refd. Case No. 19 of 1965

The Chief Controlling Revenue Authority, Madras

APPELLANT

Vs

S.M. Abdul Jammal and Another

RESPONDENT

Date of Decision : 03-11-1969

Acts Referred:

Stamp Act, 1899 — Article 35, 16
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1970 Mad 288

Hon'ble Judges : K. Veeraswami, C.J;Somasundaram, J;Natesan, J

Bench : Full Bench

Advocate : Ramaswami, Addl. Govt. Pleader, for the Appellant; C. Chinnaswami, for the Respondent

Judgement

Veeraswami, C.J.—This is a reference u/s 57 of the Indian Stamp Act, 1899, the question being:

Whether the cost of the repairs, additions and improvements to be effected on the premises by the lessees would fall "within premium or for money advanced" in addition to rent received.

One Abdul Jameel, the first respondent, who is the owner of premises No. 22 Errabalu Chetty St., G. T. Madras, entered into an agreement of

lease with the second respondent in respect of a major portion of the premises on a monthly rent of Rs. 5000. The lease is dated 22-6-1964 and

was, in the first instance, for a period of 20 years with an option to renew it for a further period of 7 years. Clauses 7 and 8, which in effect give

rise to this reference read:

Clause 7: The lessee shall effect the repairs and make additions and improvements at their own cost, at a cost not less than Rs. two lakhs, such

improvements and additions shall also include construction of a building in the vacant plot of land in front of the main building including electric installations and the lessor shall sign all applications which are necessary to be made to the Corporation of Madras for effecting the said repairs, improvements and construction.

Clause 8. The improvements and additions so made and effected shall belong to the lessor and form an accretion to the demised premises.

The Revenue at the lower stages was 08 opinion that these two clauses reserved a premium and it should be subjected to additional duty. Article

35 of the Stamp Act, as amended in Madras, by clause (a) Sub-clause (iv) provides that where the lease purports to be for a period of ten years

but not exceeding 20 years, the same duty as a conveyance for a consideration equal to twice the amount or value of the average annual rent

reserved should be paid. By clause (c) it is provided that where the lease is granted for a fine or premium, or for money advanced in addition to

rent reserved, the document will be chargeable with duty as a conveyance for a consideration equal to the amount or value of such fine or

premium. This will be in addition to the duty which would be payable under Article 35(a)(iv). In view of the Revenue below the stage of the Board

of Revenue the document attracted charge under both the clauses. That is how the reference has been made before us.

2. The contention for the Revenue is that the two clauses we have extracted provided for an obligation on the part of the lessees and

correspondingly a right in the lessor to have repairs, additions and improvements made at a cost not less than Rs. two lakhs and that this stipulation

amounted to a premium. It seems to us that the answer to the reference really turns on the true effect of the two clauses as to whether they

stipulated a premium in consideration of the granting of the lease, or constituted but contractual stipulations contrary to the normal rights and

obligations as between a lessor and lessee provided for by Section 108 of the Transfer of Property Act, especially in relation to effecting of repairs

and improvements or additions being put up.

3. There is a definition of a lease in the Stamp Act, which, however, does not assist us in the present instance. Section 105 of the Transfer of

Property Act defines a lease as one of Immovable property in which there is a

transfer of a right to enjoy such property, that it is made for a certain term, express or implied, and in consideration- of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms, The price paid or promised, or money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions would both form part of the consideration for the lease, but the distinction between a premium and a rent, in the context, lies in the fact that premium is one paid in consideration of the conveyance implied in the lease and is quantified in lump, whether it is paid outright or by instalments over a period or promised to be paid at a certain time. But, a rent, while it is also in consideration of a lease, is in lieu of the enjoyment which the lessee has and particularly as consideration therefor. The further feature of rent is, it is payable as and when it accrues unlike a premium the liability for which arises at the time the contract is entered into. This Court in a few cases, which *Vinay Construction and Development Company, Hyderabad Vs. Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad* and *Another*, followed, has held that the price paid or promised should be in terms of money is contradistinction with a share of crops, service or any other thing of value to be rendered. But, for purposes of answering the question under reference, we do not think it necessary to decide that question.

4. As we mentioned earlier, the duty chargeable in this case will entirely depend on the construction we place on the two clauses above extracted.

As we read these clauses along with the rest of the terms of the document, we are inclined to think that their effect is not to stipulate for a premium,

that is to say, in the sense of a price paid or promised in consideration of the execution of the contract of lease. In our view they appear to be

provisions contracting out of the normal rights and obligations provided in Section 108. Under Clause (f) of that section, the obligation to effect

repairs is on the lessor. If the repairs which he is bound to make to the property have not been made within a reasonable time after notice by the

lessee, the latter has been given the liberty to effect the repairs and deduct the expenses from the rent. Under Clause (h) the lessee has, even after

the termination of the lease, a right to remove at any time whilst he is in possession of the property leased, but not afterwards, all things which he had attached to the earth, subject of course, to the condition that he left the property in the same state in which he received it. The obligation of the lessee to restore the premises in as good a condition as it was at the time when he was put in possession has also been reiterated in clause (m) of

Section 108. The two clauses we have referred to in the lease deed undoubtedly provide to the contrary, but, subject to limits.

In the nature of things, therefore, the imperative "shall" is called for in the terms, that is to say, notwithstanding the law as indicated in the Transfer of Property Act that the lessor should effect the repairs, in the instant case the lessee should effect them, but subject to the limit in value mentioned in the deed.

Likewise, whereas the lessee at the time of the determination of the lease is entitled to remove such additions or improvements he has effected to

the building, under the two clauses in the deed, the lessor is entitled to appropriate, but the limit on that matter in favour of the lessee is Rs. two

lakhs. That is the reason why the two clauses speak of the obligation of the lessee that he "shall" effect the repairs and additions and improvements

but at a cost not less than Rs. two lakhs. In our view, far from these two clauses providing for payment of a premium, they, in the sense we have

mentioned, enter into a contract contrary to the statutory rights and obligations we have mentioned if and when they arise, and, the two clauses

make an adjustment of such rights and obligations, but subject to certain limits.

5. On that view it will follow that Clause (c) of Article 35 of the Stamp Act is not applicable. We answer the question against the Revenue with

costs. Counsel's fee Rs. 250.