(1940) 07 BOM CK 0002

In the Bombay High Court

Case No : Civil Reference No. 2 of 1940

The Superintendent of Stamps APPELLANT

Vs

Tejmal Nihalchand Shah RESPONDENT

Date of Decision : 26-07-1940

Acts Referred:

Stamp Act, 1899 — Section 24

Citation : AIR 1940 Bom 360 : (1940) 42 BOMLR 964

Hon'ble Judges : Wassoodew, J;Sen, J;John Beaumont, J

Bench : Full Bench

Judgement

John Beaumont, Kt., C.J.—This is a reference made to this Court u/s 57 of the Indian Stamp Act, 1899, raising a short question. By a conveyance of June 26, 1939, the one-fourth undivided share of the vendors in two Immovable properties was sold to the purchasers for a sum of Rs. 14,000. One of the properties sold was subject to a mortgage debt amounting to Rs. 66,633, and that property was sold subject to the mortgage. The question referred to us is: What stamp should be placed upon the conveyance ? The purchasers, in the first instance, seem to have contended that it should be stamped only on the consideration of Rs. 14,000, but subsequently they admitted that it should be stamped on Rs. 14,000 plus one-fourth of the mortgage debt. The revenue authorities were of opinion that the stamp should be based on the consideration of Rs. 14,000 plus the whole amount of the mortgage debt, that is to say, on a total consideration of Rs. 80,633, and the question we have to determine is whether that view is right.

2. Section 24 of the Indian Stamp Act, so far as material, provides that, where any property is transferred to any person, subject either certainly or contingently to the payment or transfer of any money, whether being or constituting a charge or incumbrance upon the property or not, such money is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad volorem duty. There was difference of opinion between

various High Courts in India as to the meaning of that Section, and accordingly, on amendment, an explanation was added in these terms:

Explanation.-In the case of a salq of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale.

3. In our opinion, the meaning of the Section, with the explanation, is clear. The consideration for the sale includes the amount of the mortgage debt charged upon the property, and subject to which the sale is made. The whole mortgage debt is charged on every part of the property. It would be impossible for the holder of a one-fourth share successfully to contend that the mortgagee could only recover one-fourth of the mortgage debt from, his share. He might have a right of contribution against his co-owners, but that is not a matter which affects the mortgagee. The whole of the mortgage debt being charged on the one-fourth share included in the conveyance, Section 24 provides that that mortgage debt must be included in the consideration for the purposes of stamp duty. No doubt, such a view of the Act is hard upon the purchaser. But the whole principle of Section 24, which is founded on Section 57 of the English Stamp Act, is hard upon the purchaser, because he is charged duty on something which he has not acquired, namely, the interest of the mortgagee. Ifj our opinion is right, where the equity of redemption is sold in parts the revenue authorities are entitled to charge, on the sale of each part, stamp duty, which includes the amount of the whole mortgage debt, with the result that they may collect stamp duty on the mortgage debt many times over. However, that is the effect of the Section, and it was construed in that sense by this Court in In re Vishnu Keshav Sathe (1885) 10 ILR Bom. 58, which was a case decided before the addition of the first proviso to Section 24, but, so far as the present question is concerned, is a direct authority.

4. In Alpe on " Stamp Duties", 21st Edition, at p. 142, in a note to Section 57 of the English Stamp Act, this statement appears: " A conveyance on sale of a moiety or other part of mortgaged property must be stamped with ad valorem duty u/s 57 in respect of the moiety or other proportionate part of the amount owing on the mortgage for principal and interest." No authority is cited for that proposition, but as "Alpe" is the recognised authority on stamp duties, we have no doubt that so dogmatic a statement was based on an inquiry made by the learned authors of the Inland Revenue Authorities to ascertain what their practice, was; and, if we may say so, to treat the mortgage money as apportioned, and to charge stamp duty only on the proportion attributable to the share of the property conveyed, seems just and reasonable. We may commend that passage in Alpe to the attention of the revenue authorities in India; but so far as the law is concerned, we must answer the reference by saying that the stamp duty on the indenture of. June 26, 1939, must be calculated on a total sum of Rs. 80,633.

