
(1931) 08 CAL CK 0011
In the Calcutta High Court

Verajlal Muljee

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 17-08-1931

Acts Referred:

Stamp Act, 1899 — Section 2(17), 40(b)

Citation : AIR 1931 Cal 732

Hon'ble Judges : C.C. Ghose, Acting C.J.; Pearson, J; Mukerji, J

Bench : Full Bench

Judgement

C.C. Ghose, Ag. C.J.

1. This is a reference by the Board of Revenue under the Stamp Act. The facts are as follows: A document in Guzarati was executed on 28th August 1928 in favour of one Verajlal Muljee by his partner Golabchand Anandjee. The document after stating that the accounts between the parties had been examined by an arbitrator went on to state that a sum of Rs. 1,12,500 had been found to be due to Verajlal Muljee. This amount the executant Golabchand Anandjee promised to pay as soon as his moveable and immovable properties situated in Calcutta and its suburbs could be sold, In the paragraph which follows the executant says:

I have lands and estates in Kankurgachi, Belur, Maniktola, Manharpuker and Puri, etc. Suits are pending in respect of some of them as there are disputes in connexion with documents relating thereto. Some of the disputes are settled and the rest will be settled in a short time. And for selling these lands and estates, I have in my possession their title-deeds. When they are sold, I will pay in full anyhow your dues within four years. Till then as a security I pledge to you all these properties and the properties of my share in the company. The documents thereof which I hold are to be deemed to be held on your behalf. After paying your debts I can make any other disposal. I pass the writing to that effect.

2. It appears that the executant Golabchand Anandjee died some time ago. When the petitioner Verajlal Muljee produced the document in question before

the Probate Deputy Collector in Calcutta in support of his claim against the estate of the executant who died on the 1st December 1928, it was impounded and assessed by the Collector of Stamp Revenue, on 30th October 1929 to a stamp duty of Rs. 844-8-0 together with a penalty of Rs. 4,222-8-0 half of the maximum, as provided in Section 40 (b), Stamp Act (2 of 1899), Against this order an application was made before the Board of Revenue on 2nd January 1930 u/s 56 of the Act, praying that the Collector's orders might be set aside and the case, if necessary, might be referred to the High Court for decision. The Board of Revenue at first did not think it necessary to refer the matter to the High Court being of opinion that the Collector's orders were right in law. Thereafter the present applicant Verajlal Muljee applied to my learned brother Panckridge, J., for an order in the nature of a mandamus requiring the Board of Revenue to state a case for the opinion of this Court. He obtained such an order, and, in accordance with that order the Board of Revenue has stated the present case.

3. The point for determination is whether the document amounted to a mortgage deed. If the document amounted to a mortgage deed it is not disputed that a stamp duty of the amount indicated above was payable on it on account of stamp and that not having been done the applicant is now bound to pay the penalty demanded from him. Mr. Banerji who appears for Verajlal Muljee contended that, having regard to the language of Section 2 (17), Stamp Act, the document in question cannot amount to a mortgage deed, inasmuch as there is no "specified property" to which the mortgage was to attach. There is no doubt whatsoever that on the words used the document amounted to a transfer by way of mortgage. Whether the word "pledge", is a correct translation of the vernacular word or not, the document has got to be taken as a whole, and taking the document as a whole there cannot be much doubt that the document did amount to a transfer by way of assurance or mortgage. That being so the only question is whether it was a mortgage of "specified property" within the meaning of the relevant section of the Stamp Act. As I read the words in the Stamp Act along with the words used in the document, I have no doubt in my mind that the mortgage attached to the property which was specified, that is to say, which was ascertained or ascertainable on reference to the title-deeds mention of which is to be found in the document; "in other words, the mortgage attached to the property which could be ascertained with reasonable certainty. If that is so then there is nothing to be said in favour of the contention which Mr. Banerji has put forward before us.

4. In my opinion, the order made by the Collector of Stamp Revenue was correct and the order made by the Board of Revenue was equally correct. The present application to revise the said orders fails and must be dismissed with costs.

Pearson, J.

5. I agree.

Mukerji, J.

6. I agree.