

(1965) 11 AP CK 0001
In the Andhra Pradesh High Court
Case No : Case Ref. No. 51 of 1964

Vinay Construction and Development Company, Hyderabad	APPELLANT
Vs	
Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad and Another	RESPONDENT

Date of Decision : 19-11-1965

Acts Referred:

Stamp Act, 1899 — Article 31, 57, 59(1)
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1967 AP 90

Hon'ble Judges : Venkatesam, J;Jaganmohan Reddy, J;Chandrasekhara Sastry, J

Bench : Full Bench

Advocate : Jaleel Ahamed and N.P. Bhargava, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Jaganmohan Reddy, J.

(1) This reference under S. 57(1) of the Indian Stamp Act involves the interpretation of Cl. (5) of the amended lease deed filed by M/s. Vinay Construction and Development Co., Hyderabad, for adjudication under S. 31 of the Indian Stamp Act (hereinafter called the Stamp Act) of the Collector of Stamps.

(2) The Collector of Stamps, viz., the Inspector-General of Registration and Stamps, Andhra Pradesh, had by his letter, dated 25-6-1964 referred the several matters arising out of the lease deed for an authoritative opinion of the Chief Controlling Revenue Authority, viz., the Board of Revenue, u/s 56(2) of the Stamp Act. The lease was for 55 years at an annual rent of Rs. 36,000 and under Cls. 7 and 12, municipal taxes and insurance premium were payable by the lessees. Under the terms of the lease, a sum of Rs. 40,000 was to be paid as advance and the lease is to commence from the date the lessor puts the lessees in vacant possession of the premises at 6-1-1081 and 6-1-1082, Lakdikapul, Hyderabad. The rent reserved was payable in quarterly instalments of Rs. 9,000

each the first instalment to commence from one year after the lessees are put in vacant possession of the premises; and out of the amount of Rs. 40,000 paid as advance, Rupees 3,000 per quarter is to be adjusted towards rent from the date the lessees have to pay the quarterly instalments of rent. Clause 5 of the lease deed is as follows:-

"The lessees have obtained the premises on lease inter alia for constructing thereon a building or buildings, which are valued at approximately Rs. 6 lakhs. In pursuance of this purpose the lessors hereby further covenant that the lessees will have liberty to demolish the existing structures on the premises if necessary and construct the building or buildings on the premises in any manner whatsoever the lessees think proper. The lessees covenant with the lessors that they shall spend not less than rupees six lakhs on such construction during the terms of the lease provided that the lessees will not undertake to demolish any of the existing structures unless and until they have, prior to such demolition, constructed a building or buildings not less in value than the structure proposed to be demolished."

(3) In the reference to the Chief Controlling Revenue Authority, the Inspector-General of Registration and Stamps had expressed the view that the lease deed which is for an annual rental of Rs. 36,000 and for an advance of Rs.40,000 is chargeable with duty under Articles 31 (a) (vi) and 31 (c) read with Art. 20 of Sch. I-A of the Stamp Act as applicable to Andhra Pradesh. He has also expressed a doubt whether the investment of Rs. 6 lakhs by the lessees can be treated as premium and stamp duty charged on it in addition to that chargeable on the annual rent reserved and the advance paid. The order of reference by the Board discloses that arguments were addressed by the Advocate for the lessee and the Government Pleader on the question whether the amount of Rs. 6 lakhs which is required to be spent on new structures on the premises leased during the lease term is a premium within the meaning of S. 105 of the Transfer of Property Act. The Government Pleader argued before it that it is not and supported the Advocate for the lessees on the point that it is only chargeable with a duty of Rs. 1.50 under Art. 5 (c) of Sch. I-A of the Stamp Act, as an agreement not otherwise provided for. The Board, however, was

"of the view that the amount of Rs. 6 lakhs which amount would be invested in the new buildings is a premium within the meaning of S. 105 of the Transfer of Property Act as the premises would be conveyed to the lessors without any compensation at the end of lease period and that the difference alone between Rs. 6 lakhs and the value of the existing buildings which may or may not be demolished for the reason that if at all any building or buildings are demolished another new building or buildings of the same value has to be constructed before demolition of the buildings, cannot be valued as premium."

The Referring Authority, viz., the Board of Revenue, has merely enclosed a copy of the above order along with a copy of the letter of the Inspector-General of Registration and Stamps, dated 25-6-1964 and copies of the draft original and

revised lease deeds presented for adjudication, for the decision of the High Court under S. 57(1) of the Stamp Act.

(4) It may be observed that no question or questions have been formulated for the opinion of the High Court, as the Referring Authority was bound to do, which has given rise to the contention by the learned Advocate for the lessees Mr. Jalil Ahmed, that not only the question of the premium of Rs. 6 lakhs has to be determined but also the question of the addition of municipal taxes and insurance premium to the rent reserved required to be considered by the High Court. He also complained that no opportunity was given to him, as in the Income Tax cases, of making any suggestions in the statement of the case, by giving an advance copy and consequently he was unable to know what was being referred or to bring to the notice of the revenue Board the further point that requires to be determined.

(5) A reference under S. 57 empowers the Chief Controlling Revenue Authority to state any case referred to under S. 56(2) or otherwise coming to its notice and refer such case, with its own opinion thereon to the High Court for that State if it arises in a State. The case that has to be referred under the above finally and conclusively determined by the collector or other competent authority. If from the several matters referred to it, the Chief Controlling Revenue Authority refers only one of such matters, it cannot be said that the other matters before it have not been finally determined, and consequently, we cannot accept the contention of the learned Advocate that we should also express opinion on the question whether the municipalities and insurance premium should be treated as part of the rent reserved for levy of stamp duty on the lease deed. It may be the revenue board has decided that question, or it may have intended to decide that matter, but inasmuch as it has not adverted to that aspect of the matter we cannot go into that question. Apart from that, as pointed out already the reference order shows that the only question that was argued before it is whether the value of the new structure, worth Rs. 6 lakhs to be built on the premises and to be handed over to the lessor at the end of the period of lease is premium or not. On that question be decided that the entire Rs. 6 lakhs was premium and not the difference between Rs. 6 lakhs and the value of the structures already existing.

(6) We think it necessary to point out that it is the duty of the Revenue Board as the Chief Controlling Revenue Authority to formulate questions and refer them to the High Court for its opinion. Section 59(1) of the Act says that the High Court upon the hearing of any such case shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded. Though no doubt this provision does not specifically state that the Board should formulate a question or questions to avoid all controversy as to the exact point or points out which the Board requires the opinion of the High Court arising out of the case stated by it, and also in view of the fact that the jurisdiction of the High Court, as under the Income Tax Act, is advisory in

character, the High Court insists on such questions being formulated. Where matters are likely to give rise to controversy it can always refer, and has invariably referred, the matter back under S. 58 to frame the questions and to revise, alter, add to, or formulate its statement sufficiently clear to enable the High Court to determine the questions raised thereby. It is also a helpful procedure as adopted in the Income Tax references, to allow the parties affected thereby to see a draft statement of the case and invite suggestions or objections thereto and thereafter finalise the statement of the case and formulate the questions upon which the decision of the High Court is invited. We do hope the Chief Controlling Revenue Authority will keep these matters in view and prescribe the necessary procedure which will avoid the necessity of the High Court to remit the case back to it to rectify the defect. This will save a good deal of time and inconvenience to the parties concerned.

(7) We would have asked the Board to formulate the questions upon which our opinion is to be expressed, but having regard to the expression of final opinion on the only point as expressed in the statement of the case, this Court formulated the following two questions, which both the lessees's Advocate as well as the Government Pleader submitted are the only two questions that are likely to arise from the statement of the case, viz.,

1. On the facts and in the circumstances of the case whether the amount agreed to be invested in a new building under Cl. 5 of the lease deed is premium for purposes of levy of stamp duty under Art. 31 (c); and
2. In the event of the first question being answered in the affirmative whether sum of Rs. 6 lakhs should alone be treated as premium, or the difference between Rs. 6 lakhs and Rs. 3,50,000 the existing value of the building as per Cl. 5 of the lease deed should be treated as premium.

(8) On the first question, Mr. Jalil Ahmed submits that under the terms of the lease there is no obligation for the lessees to construct the building, and as such the question of premium does not arise; even otherwise, the clause does not attract the provisions of Art. 31 (c). On the first submission, we do not propose to express any opinion inasmuch as it would necessitate the adjudication and interpretation of the terms of the agreement and the obligations arising under the lease, particularly when the lessor is not represented before us. We feel also that it is unnecessary to determine that question, having regard to the fact that even if the agreement enables the lessees to spend a large amount by demolishing the structures and constructing a new building thereon of similar value and/or additional structures of a value of Rs. 6 lakhs, the question that would arise is whether the amount agreed to be spent thereon-whether in fact spent or not-is premium within the meaning of Art. 31 (c).

(9) Article 31 (c) is as follows:-

"31. Lease including an under-lease or sub-lease and any argument to let or sub-let-

(c) where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved;

The same duty as a Conveyance (No. 20) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered; Provided that, in any case when an agreement to lease is stamped with the advalorem stamp required for a lease and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed one rupee fifty naye paise.

The stamp duty leviable under this Article pertains to fine or premium or for money advanced in addition to the rent reserved, as defined in S. 105 of the Transfer of Property Act, Section 105 is as under:-

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, 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 accepted the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called, the premium , and the money, share, service or other thing to be so rendered is called the rent."

(10) The section clearly shows that not only the price paid but even the price promised is premium, so that the contention of the learned Advocate, Mr. Jalil Ahmed, that unless there is an obligation to spend Rs. 6 lakhs, it cannot be said that it is premium, is not tenable. Even if there is promise to spend the money, that would be considered to be premium. The question, therefore, is, what is "Premium". Mr. Jalil Ahmed says that it is nazarana or salami. But this does not help in determining the question; it only explaining one term by another term which equally requires to be constructed.

(11) The words "Price paid or promised" have also been used in S. 54 of the Transfer of Property Act and in that context have been construed by the several High Court in this country. It may be stated that the word "price" in ordinary parlance implies value, usually in money, and in common usage price is understood to mean money, although this is not always so. It does not necessarily mean value in money; it may mean money or some other equivalent. In *Madam Pillai Vs. Badrakali Ammal and Another*, at p. 313), to which we shall advert later, *Coutts Trotter, J.*, cited the quotation from Adam Smith's *Wealth of Nations* - 1776, found in the Oxford English Dictionary for the meaning of price. It is:

"The real price of everything what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. Labour was the first price, the original purchase money that was paid for the things." The decisions of most of

the High Court in India have understood the word "Price" used in S. 54 and price or premium under S. 105 of the Transfer of Property Act as meaning money only. The same meaning was given to that word in the other Acts also. In *Queen Empress v. Appavu*, (1886) ILR 9 Mad 141, the question was whether the payment of wages in liquor amounts to a sale of liquor within the meaning of S. 2 of the Akbari Act. Kutchins, J., in dealing with this question stated at p. 142 thus:-

"The question still remains whether a payment of wages by liquor is included in the general term "selling." It seems to us that it is not. Both in the Contract Act and the Transfer of Property Act a sale is defined to be an exchange of property for a price. Section 118 of the latter Act deals with exchanges for other considerations than a money payment, and thereby indicates that a price included money only, and that is the ordinary meaning of the word "price".

Chandavarkar, J., in *Samaratmal Uttamchand v. Govind*, (1901) ILR 25 Bom 696 (FB), delivering the judgment of the Full Bench which considered the question whether agreements or memoranda of agreements to deliver goods in exchange for goods are not agreements of sale under Art. 5, Sch. I of the Stamp Act and are liable to stamp duty of eight annas each, as agreements "not otherwise provides for", after quoting Chitty on Contracts 12th Edition, p. 430, viz., "The difference between a sale and a exchange is this, that in the former the price is paid in money, whilst in the latter it is paid in goods by way of barter, observed thus:-

"The distinction has been observed by the legislature in this country, as will appear on a reference to S. 118 relating to exchange and the sections relating to sales in the Transfer of Property Act."

In *Volkart Brothers v. Vettivelu Nadan*, 1888 ILR 2 Mad 459 at 467, a Bench of the Madras High Court consisting of Kernan and Muttusami Ayyar, JJ., while considering the meaning of the word "price" in S. 77 of the Indian Contract Act, which defines sale as an exchange of property for a price, observed that when S. 54 of the Transfer of Property Act enacts that

"sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised, it means price in money paid or to be paid."

No doubt in *Ariya Puthira Padayachi v. Muthu Komaraswami Padayachi*, ILR 37 Mad 423: (AIR 1914 mad 489), Sadasiva Ayyar, J., sought to explain the word "Price" so as to cover all cases where the articles are exchanged for one to another. The learned Judge observed thus:-

"If two persons mentally fix the values of the exchanged thing in current coin and then exchange them as of equal value, I think they might be held of effect sales and not to pay prices and not merely to effect an exchange."

But this observation was disapproved in *Madam Pillai Vs. Badrakali Ammal and Another*, by a Full Bench of that Court. In that case the Full Bench was

considering whether the transfer of a land by a husband to his wife to be enjoyed by her during her life time in discharge of future maintenance is a gift or sale and whether it requires to be in writing. At Schwable, C.J., said with reference to Sadasiva Ayyar, J.'s observation:-

"I must say that I think that that was going beyond anything that one can find in the Act. It seems to me that those observations were quite unnecessary for the decision which was arrived in that case, and I confess that I cannot agree that the mental process gone through of valuing in one's mind the different articles to be exchanged can possibly turn an exchange transaction into a sale." The Full Bench adopted the meaning given to the word "price" in the commentaries on the Transfer of Property Act by Shepherd and Brown, p. 175, viz., that "price" includes money only, for if the thing given in exchange for land consists of goods and not money, there is no sale but an exchange. A transfer not made in exchange for a money consideration, e.g., a transfer made in pursuance of a compromise of a family dispute, would not be a sale, and might be altogether outside the provisions of the Act." Coutts-Trotter, J., who agreed with the learned chief Justice, after citing the quotation from Adam Smith, in the Oxford English Dictionary, for the meaning of the word "Price", to which we have made reference earlier, observed:-

"But it seems to me that the answer is to be found in what I said during the course of the argument, that a trained English lawyer would never use the word "price", unless it be to connote something other than the perfectly familiar phrase "valuable consideration," which would naturally occur to his mind; and it seems to me that the whole of Mr. Krishnaswami Ayyar's ingenious argument comes to this: that we are to construe price as meaning the familiar form "valuable consideration". I think that the word "price" was put into the section to connote something different and something more limited, that is, money."

Kumaraswami Sastri, J., did not express any opinion on this point but came to the conclusion purely on a consideration of Hindu law.

In *Rajah Kocherlakota Venkata Jagannadha Rao Garu Vs. Maharajah Ravu Venkata Kumara Mahipati Surya Rao Bahadur Zamindar Garu and Others*, at p. 142), this decision of the Full Bench was followed. Beasley, C. J., and Curgenvin, J., accepted the contention of Mr. Rangachari on behalf to the 1st defendant in that case that "price" means money only, and that if the consideration for the transfer of immovable property is partly money and partly something else, then the transaction ceases to be a sale. A Special Bench of the Calcutta High Court considered this question In *Re: United Provinces Electric Supply Co. Ltd.*, (SB). In that case, an indenture purporting to be a lease deed on the face of it, provided in one of the clauses that the lessor had demised to the lessee certain lands together with electric generating station and other building, etc., belonging to the lessor in consideration of annual rent of Rs.3,000; and further provided that the lessee shall take over the liability to pay up a certain loan incurred for the installation of the electric generating station in certain fixed half-yearly

instalments. In another clause the deed provided that if the lessee paid up the whole of the apportioned loan either by instalments or in a lump sum, the electric generating station, with the buildings and appurtenances, etc. excepting the land would become the absolute property of the lessee. The condition re-entry in case of default of payment was omitted. It was held that the sum to be paid by the so-called lessee was not premium within the meaning of Section 105, but was in the nature of purchase price to be paid for the acquisition of the electric generating station and was not referable to the lease of the land of Rs. 3,000 per annum. It was further held that the instrument was not assessable to stamp duty under Stamp Act, Sch. I, Art. 3(c), corresponding to Art. 31 (c) of Sch. I-A of the Stamp Act. This case which is of course a reverse case deals with a similar situation and in respect of a similar question where the advantage accruing was from the lessee to the lessor. Costello, J., with whom the other two Judges, Buckland Ag. C. J., and Panckridge, J., agreed observed at p. 805:-

"In popular parlance in England, at any rate, the expression "premium" is more often used to denote a consideration passing between a lessee and his assignee, rather than consideration passing from a lessee to a lessor. Moreover, even when it is used in the latter sense it would generally speaking mean something over and above the consideration for the lease, which is given in the form of a rent. It is a little remarkable that S. 105, T.P. Act, looked at strictly would seem to contemplate that a consideration for a lease must be either a price paid or promised or money, share of services or any other thing of value rendered periodically on a specified occasion. The former is called a "premium" and the latter is called rent. Construed literally, it would appear that it was not within the contemplation of S. 105, that there should ever be both a premium and a rent. I think we must assume, however, that even so, it is possible for the consideration for a lease to take the form partly of a price paid and partly of rent."

(12) The cases to which the learned Government Pleader referred, viz., Commissioner of Income Tax, Assam etc. Vs. The Panbari Tea Co. Ltd., and Mohan Chand Vs. Manindra Nath, , are cases under the Income Tax Act, where the question was whether the premium paid was a capital receipt or a revenue receipt; as such they do not throw any light on the meaning to be given to the words "premium" or "price".

(13) As can be seen from these decisions, particularly the pronouncements of the Full Benches of the Madras High Court, the word "price", which is called "premium" in S. 105 of the Transfer of Property Act is money only and not any valuable consideration. The amount agreed to be invested in the construction of a building as consideration for the lease is, therefore, not premium within the meaning of Art. 31 (c) of the Stamp Act.

(14) In the result, we answer the first question in the negative, i.e., in favour of the lessees. In view of the answer to the first question, there is no need to answer the second question. Let the reference be answered accordingly, with costs. Advocate's fee Rs. 200.

(15) Answer in the negative.