The Member, Board of Revenue

Vs

Arthur Paul Benthall

Civil Appeal No. 159 of 1954

(CJI S. R. Dass, Sayed Jafar Imam, T. L. Venkatarama Ayyar, N. H. Bhagwati, N. Chandrashekar Aiyar JJ)

04.10.1955

JUDGMENT

VENKATARAMA AYYAR, J. -

This appeal raises a question under section 5 of the Indian Stamp Act II of 1899. The respondent was, at the material time, the Managing Director of Messrs Bird and Co. Ltd., and of Messrs F. W. Heilgers and Co. Ltd., which were acting as Managing Agents of several Companies registered under the Indian Companies Act. He was also a Director of a number of other Companies, and had on occasions acted as liquidator of some Companies, as executor or administrator of estates of deceased persons and as trustees of various estates. On 4-7-1949 he applied to the Collector of Calcutta under section 31 of the Stamp Act for adjudication of duty payable on a power-of-attorney, marked as Exhibit A in the proceedings, which he proposed to execute. By that power, he empowered Messrs Douglas Chisholm Fairbairn and John James Brims Sutherland jointly and severally to act for him in his individual capacity and also as executor, administrator, trustee, managing agent, liquidator and all other capacities. The Collector referred the matter under section 56(2) of the Act to the decision of the Chief Controlling Revenue Authority, who eventually referred it under section 57 to the High Court of Calcutta stating his own opinion that the stamp duty was payable on the power "for as many respective capacities as the principal executes the power". The reference was heard by a Bench consisting of the Chief Justice, Das, J. and S.R. Das Gupta, J., who differed in their opinion. The learned Chief Justice with whom Das, J. agreed, held that the different capacities of the executant did not constitute distinct matters for purposes of section 5 of the Act, and that the proper duty payable on the instrument was Rs. 10 under article 48(d) of schedule 1-A of the stamp Act as amended by section 13 of Bengal Act III of 1922. S.R. Das Gupta, J. was of the opinion that the different capacities of the executant were distinct matters for the purpose of sections 5, and that the instrument was chargeable with the aggregate amount of duty payable if separate instruments were executed in respect of each of those capacities. In the result, the question was answered in accordance with the opinion of the majority in favour of the respondent. Against that decision, the Board of Revenue, West Bengal has preferred this appeal by special leave, and contends that the instrument in question comprises distinct matters, and must be stamped in accordance with section 5.

The statutory provisions bearing on the question are sections 3 to 6 of the Act. Section 3 is the charging section, and it enacts that subject to certain exemptions, every instrument mentioned in the Schedule to the Act shall be chargeable with the duty of the amount indicated therein as the proper duty therefore. Section 4 lays down that when in the case of any sale, mortgage or settlement several instruments are employed for completing the transaction, only one of them called the principal

instrument is chargeable with the duty mentioned in Schedule I, and that the other instruments are chargeable each with a duty of one rupee. Section 5 enacts that any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. Section 6, so far as is material, runs as follows;

> "Subject to the provisions of the last preceding section, and instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties".

The point for decision in this appeal is as to the meaning to be given to the words "distinct matters" in section 5. The contention of the respondent which found favour with the majority of the learned Judges in the Court below is that the word "matters" in section 5 is synonymous with the word "description" occurring in section 6, and that they both refer to the several categories of instruments which are set out in the Schedule. The argument in support of this contention is this : Section 5 lays down that the duty payable when the instruments comprises or relates to distinct matters is the aggregate of what would be payable on separate instruments relating to each of these matters. An instrument would be chargeable under section 3 only if it fell within one of the categories mentioned in the Schedule. Therefore, what is contemplated by section 5 is a combination in one document of different categories of instruments such as sale and mortgage, sale and lease or mortgage and lease and the like. But when the category is one and the same, then section 5 has no application, and as, in the present case, the instrument in question is a power-of-attorney, it would fall under article 48(a) in whatever capacity it was executed, and there being only one category, there are no distinct matters within section 5.

We are unable to accept the contention that the word "matter" in section 5 was intended to convey the same meaning as the word "description" in section 6. In its popular sense, the expression "distinct matters" would connote something different from distinct "categories". Two transactions might be of same description, but all the same, they might be distinct. If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters. If the intention of the legislature was that the expression 'distinct matter' in section 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in section 5 and "description" in section 6 have different connotations.

It is urged against this conclusion that if the word "matters" in section 5 is construed as meaning anything other than "categories" or in the phraseology of section 6, "descriptions" mentioned in the Schedule, then there could be no conflict between the two sections, and the clause in section 6 that it is "subject to the provision of the last preceding section" would be meaningless and useless. We see no force in this contention. Though the topics covered by section 5 and 6 are different, it is not difficult to conceive of instruments which might raise questions falling to be determined under both the sections. Thus, if a partnership carried on by members of a family is wound up and the deed of dissolution effects also a partition of and family properties as in Secretary, Board of Revenue v. Alagappa Chettiar (I.L.R. [1937] Mad. 553), the instrument can be viewed both as a deed of

dissolution and a deed of partition, and under section 6, the duty payable will be the higher duty as on an instrument of partition. But supposing by that very deed one of the members creates a charge or mortgage over the properties allotted to his share in favour of another member for moneys borrowed by him for his own purposes, that would be a distinct matter which would attract section 5. Now, but for the saving clause, a contention might be advanced that section 5 and 6 are mutually exclusive, and as the instrument falls within section 6, the only duty payable thereon is as on an instrument of partition and no more. The purpose of the clause in section 6 is to repel any such contention.

Considerable stress was laid by Mr. Chaudhury on the scheme of the Act as embodied in sections 3 to 6 as strongly supporting the view that 'matters' in section 5 meant the same thing as 'description' in section 6. He argued that under section 3 the duty was laid not on all instruments but on those which were of the descriptions mentioned in the Schedule, that section 4 enacted a special provision with reference to three of the categories mentioned in the Schedule, sale (conveyance), mortgage and settlement, that if they were completed in more than one instrument, not all of them were liable for the duty specified in the Schedule, but only one of them called the principal document, and that section 6 provided that when the instrument fell under two or more of the categories in the Schedule, the duty payable was the highest payable on any one of them, that thus the categories in the schedule were the pivot on which the entire scheme revolved, and that in construing the section in the light of that scheme, the expression "distinct matter" must in the setting be construed as distinct categories. To construe "distinct matters" as something different from "distinct categories" would be, it was argued, to introduce a concept foreign to the scheme of the enactment.

The error in this argument lies in thinking that the object and scope of sections 4 to 6 are the same, which in fact they are not. Section 4 deals with a single transaction completed in several instruments, and section 6 with a single transaction which might be viewed as falling under more than one category, whereas section 5 applies only when the instrument comprises more than one transaction, and it is immaterial for this purpose whether those transactions are of the same category or of different categories. The topics dealt with in the three sections being thus different, no useful purpose will be served by referring to section 4 or section 6 for determining the scope of section 5 or for construing its terms. It is not without significance that the legislature has used three different words in relation to the three sections, 'transaction' in section 4, 'matter' in section 5, and 'description' in section 6.

In support of his contention that 'distinct matters' in section 5 meant only different categories, learned counsel for the respondent relied on certain observations in Ansell v. Inland Revenue Commissioners ([1929] 1 K.B. 608). There, the instrument under consideration was a deed of settlement which comprised certain Government securities as also other investments, and under the Stamp Act, 1891, it was chargeable with a single duty ad valorem on the value of all the properties settled. By section 74, sub-section (1) of the Finance Act, 1910, voluntary dispositions were chargeable with a higher stamp duty as on a conveyance; but Government securities were exempted from the operation of the section. The question that arose for decision was whether a separate duty was payable in respect of Government stocks under the provisions of the Stamp Act, 1891 over and above what was paid under section 74, sub-section (1) of the Finance Act, 1910 on account of other investments. Answering it in the affirmative, Rowlatt, J. observed :

> "If two different classes of property are being transferred by the same words of assignment in the same document, and those two different classes of property in the same document are different from the point of view of the Stamp Act and taxation, it

seems to me in common sense that they must be distinct matters".

The respondent wants to read these observations as meaning that where the matters are not dealt with separately for purposes of stamp duty, then they are not distinct matters. This, however, does not follow. The case before the court was one in which the instrument dealt with properties which fell under two categories, and the decision was that they were distinct matters. There is nothing either in the decision or the observations quoted above to support the contention of the respondent that if the instrument comprises matters falling within the same description, it is not to be construed as comprising distinct matters. Reliance was also placed on the observations in Reversionary Interest Society v. Commissioners of Inland Revenue ([1906] 22 T.L.R. 740), in which it was held that a statutory declaration for the purpose of carrying through a transaction was liable for a single stamp duty. There, the declaration was made by husband and wife, and in view of the purpose for which it had to be used, it was construed as one declaration. This is a decision on the facts, and is not of much assistance.

In the view, then, that section 5 would apply even when the instrument comprises matters of the same description, the point for decision is whether the instrument proposed to be executed by the respondent is a single power-of-attorney or a combination of several of them. The contention of Mr. Chaudhury is that when the executant of one instrument confers on the attorney a general authority to act for him in whatever matters he could act, then there is, in fact, only a single delegation, and that therefore the instrument must be construed as a single power-of-attorney liable for a single duty under article 48(d) of the Schedule. The contention of the appellant, on the other hand, is that though the instrument is executed by one person, if he fills several capacities and the authority conferred is general, there would be distinct delegations in respect of each of those capacities, and that the instrument should bear the aggregate of stamp duty payable in respect of each of such capacities. The question is which of these two contentions is correct.

We are unable to agree with the respondent that when a person executes a power-of-attorney in respect of all the matters in which he could act, it should be held, as a matter of law and without regard to the contents of the instrument, to comprise a single matter. Whether it relates to a single matter or to distinct matters will, in our opinion, depend on a number of factors such as who are parties thereto, which is the subject-matter on which it operates and so forth. Thus, if A executes one power authorising X to manage one estate and Y to manage another estate, there would really be two distinct matters, though there is only one instrument executed by one person. But if both X and Y are constituted attorneys to act jointly and severally in respect of both the estates, then there is only one delegation and one matter, and that is specifically provided for in article 48(d). Conversely, if a number of persons join in executing one instrument, and there is community of interest between them in the subject-matter comprised therein, it will be chargeable with a single duty. This was held in Davis v. Williams ([1804] 104 E.R. 358), Bowen v. Ashley ([1805] 127 E.R. 467, 469), Goodson v. Forbes ([1815] 128 E.R. 999, 1000-1001) and other cases. But if the interests of the executants are separate, the instrument must be construed as comprising distinct matters. Vide Freeman v. Commissioners of Inland Revenue ([1870-71] L.R. 6 Exch. 101). Applying the same principle to powers-of-attorney, it was held in Allen v. Morrison ([1828] 108 E.R. 1152, 1153) that when members of a mutual insurance club executed a single power, it related to one matter, Lord Tenterdon, C.J. observing that "there was certainly a community of purpose actuating all the members of this club". In Reference under Stamp Act, s. 46 ([1886] I.L.R. 9 Mad. 358), a power-of-attorney executed by thirty-six persons in relation to a fund in which they were jointly interested was held to comprise a single matter. A similar decision was given in Reference under Stamp Act, s. 46 ([1891] I.L.R. 15 Mad. 386) where a power-of-attorney was executed by ten mirasdars

empowering the collection of communal income appurtenant to their mirasi rights. On the other hand, where several donors having separate interests execute a single power-of-attorney with reference to their respective properties as, for example, when A constitutes X as attorney for management of his estate Black-acre and B constitutes the same person as attorney for the management of his estate White-acre, then the instrument must be held to comprise distinct matters. It was so decided in Reference under Stamp Act, s. 46 ([1892] 2 M.L.J. 178). Thus, the question whether a power-of-attorney relates to distinct matters is one that will have to be decided on a consideration of the terms of the instrument and the nature and the extent of the authority conferred thereby.

It may be mentioned that questions of this character cannot now arise in England in view of the special provision contained in the Finance Act, 1927 (17, 18, Geo. 5, Ch. 10), section 56 which runs as follows :

> "No instrument chargeable with stamp duty under the heading 'Letter or Power of Attorney and Commission, Factory, Mandate, or other instrument in the nature thereof' in the First Schedule to the Stamp Act, 1891, shall be charged with duty more than once by reason only that more persons than one are named in the instrument as donors or donees (whether jointly or severally or otherwise), of the powers thereby conferred or that those powers relate to more than one matter".

There is no provision in the statute law of this country similar to the above, and it is significant that it assumes that a power of attorney might consist of distinct matters by reason of the fact that there are several donors or donees mentioned in it, or that it relates to more than one matter.

Now, considering Exhibit A in the light of the above discussion, the point for determination is whether it can be said to comprise distinct matters by reason of the fact that the respondent has executed it in different capacities. In this form, the question is benefit of authority, and falls to be decided on well-recognised principles applicable to the matter. It is, as has been stated above, settled law that when two persons join in executing a power-of-attorney, whether it comprises distinct matters or not will depend on whether the interests of the executants in the subject-matter of the power are separate or joint. Conversely, if one person holding properties in two different capacities, each unconnected with the other, executes a power in respect of both of them, the instrument should logically be held to comprise distinct matters. That will be in consonance with the generally accepted notion of what are distinct matters, and that certainly was the view which the respondent himself took of the matter when he expressly recited in the power that he executed it both in his individual capacity and in his other capacities. But it is contended by Mr. Chaudhury that the fact that the respondent filled several capacities would not affect the character of the instrument as relating to a single matter, as the delegation thereunder extended to whatever the respondent could do, and that it would be immaterial that he held some properties in his individual capacity and some others as trustees or executor, as the legal title to all of them would vest in him equally in the latter as well as in the former capacity. We are concerned, he argued, not with the source from which the title flowed but with the reservoir in which it is now contained.

This is to attach more importance to the form of the matter than to its substance. When a person is appointed trustee, the legal title to the estate does, under the English law, undoubtedly vest in him; but then he holds it for the benefit of the cestui que trust in whom the equitable estate vests. Under the Indian law, it is well established that there can be trusts and fiduciary relations in the nature of trust even without there being a vesting of the legal estate in the trustee as in the case of mutts and

temples. Vide Vidya Varuthi v. Balusami ([1921] 48 I.A. 302). In such cases, the legal title is vested in the institution, the mahant or shebait being the manager thereof, and any delegation of authority by him can only be on behalf of the institution which he represents. When a person possesses both a personal capacity and a representative capacity, such as trustee, and there is a delegation of power by him in both those capacities, the position in law is exactly the same as if different persons join in executing a power in respect of matters which are unrelated. There being no community of interest between the personal estate belonging to the executant and the trust estate vested in him, they must be held to be distinct matters for purposes of section 5. The position is the same when a person is executor or administrator, because in that capacity he represents the estate of the deceased, whose persona is deemed to continue in him for purposes of administration.

It was finally contended by Mr. Chaudhury that if every capacity of the donor is to be considered as a distinct matter, we should have to hold that there are distinct matters not only with reference to the capacity of the executant as trustee, executor and so forth, but in respect of every transaction entered into by him in his personal capacity. Thus, it is argued, if he confers on his attorney authority to sell one property, to mortgage another and to lease a third, he would have acted in three different capacities as vendor, mortgagor and lessor, and the instrument will have to be stamped as relating to three distinct matters. This, he contended, would destroy the very basis of a general power-of-attorney. The fallacy in this argument is in mixing up the capacity which a person possesses with acts exercisable by virtue of that capacity. When an executor, for example, sells one property for discharging the debts of the testator and mortgages another for raising funds for carrying on his business, he no doubts acts in two different transactions; but in respect of both of them, he functions only in his capacity as executor. In our opinion, there is no substance in this contention.

In result, we are of the opinion, differing from the majority of the learned Judges of the court below, that the instrument, Exhibit A, comprises distinct matters in respect of the several capacities of the respondent mentioned therein, and that the view taken by the revenue authorities and supported by S. R. Das Gupta, J. is correct. This appeal will accordingly be allowed. The respondent will pay the costs of the appellant here and in the court below.

BHAGWATI J. - I regret I am unable to agree with the conclusion reached in the Judgment just delivered.

While agreeing in the main with the construction put upon the sections 4, 5 and 6 of the Act and the connotation of the words "distinct matters" used in section 5, I am of the view that the question still survives whether the instrument in questions is a single power of attorney or a combination of several of them. The argument which has impressed my Brother Judges forming the majority of the Bench is that though the instrument is executed by one individuals, if he fills several capacities and the authority conferred is general, there would be distinct delegations in respect of each of those capacities and the instrument should bear the aggregate of stamp duty payable in respect of each of such capacities. With the greatest respect I am unable to accede to that argument. I agree that the question whether a power of attorney relates to distinct matters is one that will have to be decided on the consideration of the terms of the instrument and the nature and the extent of the authority conferred thereby. The fact, however, that the donor of the power of attorney executes it in different capacities is not sufficient in my opinion to constitute the instrument, one comprising distinct matters and thus requiring to be stamped with the aggregate amount of the duties with which separate instruments each comprising or relating to one of such matters would be chargeable under the Act, within the meaning of section 5. The transaction is a single transaction whereby the donor constitutes the donees jointly and severally his attorneys for him and in his name and on his behalf

to act for him in his individual capacity and also in his capacity as managing director, director, managing agent, agent, secretary or liquidator of any company in which he is or may at any time thereafter be interested in any such capacity as aforesaid and also as executor, administrator, trustee or in any capacity whatsoever as occasion shall require. No doubt, different capacities enjoyed by the donor are combined herein but that does not constitute him different individuals thus bringing this instrument within the mischief of section 5. The executants of the instruments are not several individuals but is only one individual, the donor himself, though he enjoys different capacities. These different, capacities have a bearing on the nature and extent of the powers which he could exercise as such. In his own individual capacity he could exercise all the powers as the full owner qua whatever right, title and interest he enjoys in the property, whether it be an absolute interest or a limited one; he may be the absolute owner of the property or may have a life interest therein, he may have a mortgagee's interest or a lessee's interest therein, he may be a dominant owner of a tenement or may be a mere licensee; but whatever interest he enjoys in that property will be the subject-matter of the power which executes in favour of the donee. He may, apart from this individual interest which he enjoys therein, be a trustee of certain property and he may also enjoy the several interests described above in his capacity as such trustee. It may be that in his turn he may be accountable to the beneficiaries for the due administration of the affairs of the trust but that does not mean that he, as trustee, is not entitled to exercise all these powers, the trust property having vested in him, and he being therefore in a position to exercise all these powers in relation thereto. The same would be the position if he were an executor or an administrator of an estate, in possession of the estate of the deceased as such. The property of the deceased would vest in him though his powers of dealing with the same would be circumscribed either by the provisions of the testamentary instrument or the limitations imposed upon the same by law. All these circumstances would certainly impose limitations on his powers of dealing with the properties but that does not detract from the position that he is entitled to deal with those properties and exercise all the powers in relation thereto though with the limitations imposed upon them by reason of the capacities which he enjoys. It follows, therefore, that, though enjoying different capacities, he is the same individual who functions though in different capacities and conducts his affairs in the various capacities which he enjoys but as a single individual. He is not one individual when he is acting in his own individual capacity; he is not another individual when he is acting as a trustee of a particular estate and he is not a third individual when he is acting as an executor or administrator of a deceased person. In whatever capacity he is acting he is the same individual dealing with various affairs with which he is concerned though with the limitations imposed upon his powers of dealing with the properties by reason of the properties having vested in him in different capacities.

I am therefore of the opinion that the instrument in question does not comprise distinct matters but comprises one matter only and that matter is the execution of a general power of attorney by the donor in favour of the donees constituting the donees his attorneys to act for him in all the capacities which he enjoys. The instruments in question cannot be split up into separate instruments each comprising or relating to a distinct matter in so far as the different capacities of the donor are concerned. A general power of attorney comprises all acts which can be done by the donor himself whatever be the capacity or capacities which he enjoys and cannot be split up into individuals acts which the donor is capable of performing and which he appoints his attorney to do for him and in his name and on his behalf. It is within the very nature of the general power of attorney that all the distinct acts which the donor is capable of performing are comprised in the one instrument which is executed by him, and if that is the position, it is but logical that whatever acts the donor is capable of performing whether in his individual capacity or in his representative capacity as trustee or as executor or administrator are also comprised within the instrument and are not distinct matters to be

dealt with as such so as to attract the operation of section 5.

I am therefore of the opinion that the conclusion reached by the majority judges in the High Court of Judicature at Calcutta was correct and would accordingly dismiss this Appeal with costs.

BY THE COURT. - In accordance with the opinion of the majority the Appeal is allowed with costs here and in the Court below.

</html