ANDHRA PRADESH HIGH COURT

Bharpet Mohammad Hussain Saheb

Vs.

District Registrar

Case Referred No. 31 of 1959, in Ref. No. (W) 1528 of 1959

(P. Chandra Reddy, C.J., Narasimham and Gopalrao Ekbote, JJ.)

29.10.1962

JUDGMENT

Chandra Reddy, C.J.

1. The questions referred to this Court for its opinion under Section 57 of the Indian Stamp Act by the Board of Revenue (Chief Controlling Revenue Authority) are these:

1. What is the correct classification of the two documents ?
2. What is the correct stamp duty on each document ?

2. The facts, which have given rise to this controversy arising in this enquiry, are shortly these. Applicant No. 1 executed a deed of simple mortgage for Rs. 1,00,000 (one lakh) on 6th June 1958 in favour of the Andhra Cotton Company, Secunderabad, paying a stamp duty of Rs. 1,500/-. Two days thereafter, an agreement was executed by applicant No. 1 in favour of applicant No. 2 appointing the latter as his agent for managing the Ginning and Pressing Factory situated at Adoni, Kurnool District, engrossing this document on a stamp paper of Rs. 37-50 Np., under Article 6, Schedule I-A of the Indian Stamp Act. When this document was presented for registration, as the Registration Department had a doubt as to whether this instrument was really governed by Article 6 or whether this document together with the mortgage of 6th June 1958 would constitute a usufructuary mortgage chargeable to duty under Article 33(a) of Schedule I-A of the Indian Stamp Act, it referred the matter to the Board of Revenue, the Chief Controlling Revenue Authority.

3. The Board of Revenue was inclined to the view that the two documents together constitute a deed of mortgage with possession. However, the Board submitted the case under Section 57 of the Indian Stamp Act for the decision of this Court.

4. It is not disputed that proper stamp duty was paid on the document dated 6th June 1958 and it is not also contested that the stamp duty paid on the second document is proper if it is treated as agency agreement. In order to judge whether the two documents read together evidence a transaction of a usufructuary mortgage, we shall, look at the terms of the documents which have

a bearing, on this enquiry.
5. Under the document dated 6th June 1958, interest was to be paid at the rate of twelve per cent per annum annually as it became due and if the accrued interest for any year was not paid on the due date, the mortgagee was entitled to call for payment of the entire principal together with the outstanding interest. Coming now to the second document, i.e., the agreement, apart from the usual terms contained in the managing agency agreements, it was stipulated between the parties that the arrangement would be in force for a period of ten years with the option for its renewal for another period of ten years, even if the mortgage was discharged. It is also significant that there is no provision in the agreement dated 8th June 1958 enabling the agent to appropriate any part of the income towards the mortgage. Under clause 4, he is required to keep regular accounts of the expenses incurred for working the factory and the income derived from the ginning and pressing section. The agreement contemplated payment of commission at the rate of Re. 1/- per naga of cotton ginned and also at the rate of Re. 1/- per bale of cotton pressed in lieu of the services rendered by him as a managing agent.

6. It is seen that none of the essentials of a usufructuary mortgage is present either in the later document or even in both the instruments taken together. The essence of a usufructuary mortgage is that the mortgagee will be authorized to retain possession until payment of mortgage-money to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest, or partly in payment of the mortgage-money. As we have already mentioned, under the document of 8th June 1958, the agent is not authorized to adjust any part of the income towards interest or towards payment of the mortgage-money or partly in lieu of interest or partly in payment of the mortgage-money. The two transactions are kept separate. The mortgagor had to pay interest every year as and when it fell due, while the agent had to keep regular accounts of the expenses incurred and income derived from this property. It is true that there is no clause in the document that the income earned from the mill has to be made over to the principal. Even in the absence of a specific provision, the agent is bound to pay this money to the principal under the general law.
Another feature of the transaction covered by the document dated 8th June 1958 is that even if the mortgage was discharged, the mortgagor was not entitled to claim possession from the agent. The latter is entitled to continue as a managing agent for the full period of ten years with the option for renewal for another period of ten years. In this situation, it is difficult to premise that the simple mortgage dated 6th June 1958 and the agreement dated 8th June 1958 together establish a mortgage with possession in favor of applicant No. 2. We feel that it is difficult to spell out such a transaction even from both these documents. In the circumstances, the argument raised by the learned counsel for the Board of Revenue cannot be sustained. The Board of Revenue thought that this was a device adopted by applicant Nos. 1 and 2 to escape payment of a higher stamp-duty. We are unable to accede to this view of the Board of Revenue. Assuming that that was the motive that operated on the minds of both the applicants, that is beside the point. There can be no impediment to a party adopting a particular form to minimize the expense of stamp-duty. If the parties are entitled under law to take advantage of any camouflage for the purpose of avoiding higher duty, they cannot be penalized for taking advantage of the letter of the law.
7. In *Commissioner of Income Tax v. Ibrahimsa*[1], a Full Bench of five Judges of the Madras High Court laid down that the motives of an assessee could not be taken into consideration in inquiries relating to taxing or financing statutes. It was observed by Srinivasa Ayyangar J., who delivered

the leading opinion of the Court :

> "There can be no question also in this case of the motive of the assessee in bringing about a particular arrangement, because, as has been pointed out by the House of Lords in more than one case, it is not proper to take such motives or objects into consideration, and a subject is entitled, if he can in any legal manner, to circumvent the incidents of a particular taxing or financing Act ....."

8. To a like effect are the observations of a Division Bench of the same High Court the *Pathumma Umma v. Mohideen*[2], It was ruled by the learned judges of the Division Bench that the parties could avail of camouflage of law, if any, and the Court should take the form and not the substance into consideration in such matters.

9. Though these two cases deal with different enactments, the principle is the same and it applies with fall force to a case like this.

10. It is now well-settled that in revenue cases it is the letter of the law that should be taken into account and it is not the spirit or substance of it that should decide whether a document would fall under one category or another. It is the form adopted by the parties that is relevant and not the substance of the matter.

11. In *Bank of Chettinad Ltd. v. Commissioner of Income Tax*[3], this is what Sir Lancelot Sanderson stated in the course of his opinion :

> "Their Lordships think it necessary once more to protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position."

He also cited with approval the following passage from the opinion of Lord Russell of Killowen in *Inland Revenue Commissioners v. Westminste*[4],:

> "I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if, in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in *Partington v. Attorney General*[5]:
> "As I understand the principle of all fiscal legislation it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be on the other

[1] AIR 1928 Mad 543 (FB) [3] ILR (1941) Mad 89 at p. 98 : (AIR 1940 PC 183 at p. 185)
[2] AIR 1928 Mad 929 [4]1936 AC 1
[5](1869) 4 HL 100 (122)

> hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of

the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be'."

12. The principle emerging from these decisions is that due regard must be had to the form adopted by the parties and not to the substance of the matter. We cannot enter into the spirit of it for the purpose of deciding whether it falls within the ambit of Article 33(a) or 33(b) of Schedule 1-A to the Indian Stamp Act. As we have already stated, in this case, even the spirit of the law does not help the Revenue for the reason that it is difficult to postulate that the document dated 8th June 1958 could be regarded as one falling under Section 58(d) of the Transfer of Property Act and that it has all the characteristics of a managing agency agreement.

13. Another principle that is to be borne in mind in the context of this enquiry is that it is the instrument that is presented for registration that should be taxed. We cannot read a number of documents to see if a particular transaction is spread over all these instruments. We have to take into account the nature of the document that is sought to be taxed.

14. The position is tersely put by Lord Loreburn L.C. in *Minister of Stamps v. Townend*[6], who adopted the reasoning of the learned Chief Justice of the Supreme Court, New Zealand, whose judgment was under appeal before the Judicial Committee. The learned Law Chancellor observed as follows :

> "The second question is whether or not certain deeds fall within the duty chargeable upon deeds of gift. The type of document in question is as follows : A mortgagor owing money to Mr. Moore pays it to his daughter, with his consent, and she relends the money to the same mortgagor. This transaction, although carried out by two deeds, is carried out by deeds which do not themselves convey anything to the daughter. What does convey something to her is the authority emanating from Mr. Moore that his daughter might have for herself moneys received by her under his power-of-attorney, and this authority, being verbal, could not be stamped. 'The learned Chief Justice puts it in the most concise way when he says that the statute taxes instruments and does not tax transactions'. Here there was no gift by any document, and therefore there is no duty payable. Their lordships agree with the observation made by the learned Chief Justice in regard to the 35th section of the Deceased Persons' Estates Duties Act, 1881."

15. It is plain from this statement of law that it is only the instrument that is presented for registration that should be charged with stamp-duty. The authorities cannot look into the various documents that are connected with it with a view to judge the nature of the transaction that is covered by this document read in conjunction with several others. That being the legal position, there will be no warrant for taking into consideration the several connected instruments with a view to judge the character or the transaction evidenced not by one document but all of them put together.

[6](1909) A C 633 at pp. 638 and 639 (P C)

16. Taking into consideration the principles enunciated above and also the contents of the documents in question, we have no hesitation in holding that the first document dated 6th

June 1958 is a simple mortgage as observed at the outset falling within the connotation of Article 33(a) of Schedule I-A to the Indian Stamp Act and the second document dated, 8th June 1958, is an instrument attracting Article 6 of the same Schedule as applicable to Andhra. Pradesh State. We answer the two questions accordingly. The applicants are entitled to their costs from the Revenue. The advocate's fee is fixed at Rs. 100/- (one hundred).
Answer accordingly.