

# PATNA HIGH COURT

Sitaram Kamalia

Vs

State of Bihar

M.J.C. No. 282 of 1958

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

29.10.1959

## ORDER

**R.K. Choudhary, J.**

1. On the 25th February, 1952, the petitioners along with nine other persons executed a trust deed with regard to certain properties which they had inherited on the death of Sri Ram Pratap Kamalia. The object of the trust deed was to pay off the debts of Sri Ram Pratap Kamalia and to spend the income of the properties for the maintenance of relations and for other charitable purposes mentioned in the document. It is alleged by the petitioners that the properties inherited by them from Sri Ram Pratap Kamalia were burdened with debts to the extent of Rupees 1,95,000/-. It appears that the document was presented for registration before the Joint Sub-registrar of Patna, who impounded the document under Section 33 of the Indian Stamp Act and forwarded it in original to the Collector of Patna. A proceeding under Section 40 of the Indian Stamp Act was subsequently initiated by the Collector of Patna for investigating the value of the properties. According to the recital in the document the value of the properties was Rs. 95,551/- but the Collector of Patna found on enquiry that the value of the properties was Rs. 2,05,613/15/6. By his order dated the 20th June, 1956, the Collector of Patna held that the deficit stamp duty was payable on the document to the extent of Rs. 1,128/7/- and penalty was also leviable to the extent of Rs. 5,642/3/-. Against the order of the Collector the petitioners moved the Commissioner of Patna in appeal. The Commissioner dismissed the appeal by his order dated the 28th August, 1957. There was a revision application made to the Board of Revenue on behalf of the petitioners, but the revision application was dismissed by the Board of Revenue on the 8th February, 1958.

2. The petitioners have now applied to the High Court under Article 227 of the Constitution for setting aside the order of the Collector of Patna, dated the 20th June 1956, the order of the Commissioner of Patna Division, dated the 28th August, 1957, and the order of the Board of Revenue, dated the 8th February 1958.

3. On behalf of the petitioners the argument advanced in the first place was that the document of trust executed on the 25th February 1952, by the petitioners was not a "settlement" within the

meaning of Article 58 of Schedule I of the Indian Stamp Act, but that it was a "declaration of trust" within the meaning of Article 64 of the same Schedule, and the view taken by the revenue authorities on this point is not correct.

It was submitted by learned counsel on behalf of the petitioners in the second place that even if the document was a "settlement" within the meaning of Article 58, the proper stamp duty has already been paid on the valuation given in the document, and the Collector of Patna had no jurisdiction to make an independent inquiry into the valuation of the properties and to require the petitioners to pay the excess stamp duty upon his finding of valuation. In our opinion, it is not necessary to decide in the present case whether the document of trust deed executed by the petitioners on the 25th February 1958, is a deed of settlement or whether it is a declaration of trust falling within Article 64 of the first Schedule of the Indian Stamp Act. We shall assume in favour of the respondent that the document is a document of settlement falling within Article 58. Even so, we are of opinion that the order of the Collector of Patna, dated the 20th June, 1956, is ultra vires and without jurisdiction. The reason is that under section 40 of the Indian Stamp Act the Collector has no power to embark upon an inquiry with regard to the market value of the properties and require the payment of further stamp duty by the petitioners in accordance with his finding as to valuation. According to Article 58, the instrument of settlement should be stamped with the same duty as a bond "for a sum equal to the amount or value of the property settled as set forth in such settlement" In our opinion, the words "as set forth 'in such settlement" refer back to the word "value" and not to the words "property settled". The view that we have expressed as to the interpretation of article 58 is borne out by a decision of a Full Bench of the Allahabad High Court, In the matter of Muhammad Muzaffar Ali, ILR 44 All 339 : ( AIR 1922 Allahabad 82 (2)) where a similar view was expressed as to the interpretation of Article 33 of Schedule I of the Indian Stamp Act where similar language has been employed. The same principle has been laid down by a Full Bench of the Madras High Court in the *Joint Secretary, Board of Revenue, Madras v. Venkatarama Iyyar*<sup>1</sup>, It was held in that case that the meaning of the word "value" in Article 58 of Schedule I of the Indian Stamp Act was the "market value" of the properties. It was, however, observed by Horwill, J., who pronounced the judgment of the Full Bench, that no machinery was set up in the Stamp Act for ascertaining the true value of the property or consideration, as the case may be, in every case that came before the Registrar, and so it would clearly be impracticable to cast the burden on the Registrar in each case to ascertain what the true market value was, and from an examination of the wording used in the various Articles of the Indian Stamp Act it was clear that the Stamp fee had to be collected on the value shown in the document itself. Reference was made by Horwill, J. to the previous decisions of the Madras High Court in Reference under Stamp Act, Section 46, IER 7 Mad 350, Reference under Stamp Act Section 46, ILR 8 Mad 453 (FB) and Reference under Stamp Act Section 46, ILR 20 Mad 27. There is a similar decision of a Full Bench of the Lahore High Court in *Miran Bakhsh v. Emperor*<sup>2</sup>, The document which was under examination in that case was a mortgage deed which was silent as regards the consideration paid for the mortgage, and the document also did not set forth the circumstances from which it could be gathered how much stamp duty was to be paid. It was held by the Full Bench that the Collector had no power to take any evidence to find out the consideration of the mortgage, and the only thing left for him was to prosecute the executant under section 64 of the Indian Stamp Act for not complying with the provisions of section 27. In view of the principles laid down by these authorities we hold that the Collector of Patna had no jurisdiction to embark upon an inquiry with regard to the valuation of the properties covered by the trust deed or to demand from the petitioners the excess stamp duty of Rs. 1,128/- and odd and a penalty of Rs. 5,642/-and odd. In exercise, therefore, of our

authority under Article 227 of the Constitution we set aside the order of the Collector of Patna, dated the 20th June. 1956, the order of the Commissioner of Patna,, dated the 28th August, 1957, in appeal, and the order of the Board of Revenue, dated 8-2-1958. The case must now go back to the Collector of Patna, who will adopt the procedure laid down in section 40 of the Stamp Act. If he is of opinion that the instrument is duly stamped with proper duty, according to the valuation given by the petitioners in the deed of trust, it is his duty to give a certificate under clause (a) of sub-section (1) of Section 40, and thereafter return the document to the impounding Officer.

4. We accordingly allow this application with costs. Hearing Fee Rs. 100/-.  
Application allowed.

Cases Referred.

<sup>1</sup> AIR 1950 Mad 738

<sup>2</sup> AIR 1945 Lah 69