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**(1916) 03 AHC CK 0015**

**Allahabad High Court**

**Case No:** None

Somwarpuri

APPELLANT

Vs

Mata Badal and Others

RESPONDENT

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**Date of Decision:** March 10, 1916

**Citation:** (1916) ILR (All) 351

**Hon'ble Judges:** Tudball, J; Pramada Charan Banerji, J; George Knox, J

**Bench:** Full Bench

**Final Decision:** Dismissed

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### **Judgement**

George Knox, Pramada Charan Banerji and Tudball, JJ.

The proceedings before us consist of a reference by the Chief Controlling Revenue Authority u/s 57 of Act No. II of 1899. The case as stated to us is that on receipt u/s 17 of the Bundelkhand Alienation of Land Act (II of 1903), of a decree passed by the Munsif of Allahabad against Mata Badal and others, the Collector of Allahabad offered the decree-holder, Mahant Somwarpuri, Secretary of the Akhara Niranjani, a usufructuary mortgage of the judgement-debtor's property for twenty years in full satisfaction of the decree. The decree-holder expressed his willingness to accept the offer and the Collector therefore executed a mortgage-deed in accordance with the powers conferred on him under the said Act II of 1903.

2. We have perused the particular deed and have considered its provisions. The question asked by the Chief Controlling Revenue Authority is whether this mortgage deed requires to be stamped and registered.

3. There is only one section in Act No. II of 1899, which sets out what instruments are instruments on which no duty should be chargeable. The Government has, however, power to remit duties under this Act in certain cases. As regards Section 3 of Act No. II of 1899, we are of opinion that this mortgage-deed is not an instrument executed by, or on behalf of, or in favour of the Government. It is, as it purports to be, an instrument executed by the Collector of Allahabad, under the provisions of

Section 17 of the Alienation of Land Act No. II of 1903. Such instrument can in no way be said to be executed in favour of, or on behalf of Government; if anything, it is an instrument executed in favour of the mortgagee by the Collector on behalf of the mortgagor. No remission under which this document will fall has been pointed out to us and we know of none. Our attention was directed to the remissions set out in Appendix C of the Stamp Manual. There is a Government Order dated the 31st August, 1909, which expressly remits duty upon a fresh mortgage and executed in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of Section 9, Sub-section (2), of the Bundelkhand Alienation of Land Act, 1903. The document before us can in no sense be said to have been executed u/s 9 of the Bundelkhand Alienation of Land Act. The existence of this exception points, if anything, to the conclusion that it was not the intention of Government to remit the duty on a document executed u/s 17. This is our answer to the reference made to us under the Stamp Act.

4. With reference to the question whether the mortgage-deed requires to be registered, we know of no power conferred upon the Board of Revenue to refer questions to this Court under the Registration Act.

5. We therefore do not answer this part of the question.