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(1971) 03 AHC CK 0033

Allahabad High Court

Case No: Misc. Reference No. 15 of 1970

Tulsa Singh and Others	APPELLANT
Vs	
The Board of Revenue, U.P.	RESPONDENT

Date of Decision: March 24, 1971

Acts Referred:

- Stamp Act, 1899 - Article 15, 5, 2(5)
- Transfer of Property Act, 1882 - Section 54

Citation: AIR 1971 All 430 : (1971) 41 AWR 376

Hon'ble Judges: Satish Chandra, J; C.S.P. Singh, J; A.K. Kirty, J

Bench: Full Bench

Advocate: M.S. Negi, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Disposed Of

Judgement

Satish Chandra, J.
The Board of Revenue has submitted this statement of the case with a reference tinder Section 57(1)(a) of the Indian Stamp Act.

2. On 22nd March, 1966, the Cantonment Board Ranikhet, executed an indenture stating that in consideration of the purchase money of Rs. 7,525/- the Board had sold the right of collection of resin from the M. E. O. forests out of channels to be tapped during the year 1966. The tapping is to be started from 1st April, 196S and is to be completed by 15th October, 1966. Tulsa Singh, Bahadur Singh and Jaint Singh, the purchasers, were to deposit Rupees 5,643.50 P. upto 22nd July, 1966 and the balance Rs. 1,881.50 P. on or before the 15th August, 1966. The document was signed by the Vice-President of the Cantonment Board as well as the three purchasers. It was attested by two witnesses.

3. A similar indenture was executed by the Board on 6th June, 1966 in favour of the same three persons. Under it, in consideration of the purchase money of Rupees 32,175/- the Board sold the right of collection of resin from the Cantonment forests out of channels to be tapped during the year 1966 to the same three purchasers. Rupees 16,088/- were to be deposited upto 7-4-1966 and the balance in two equal installments of Rs. 8,043.50 P. on or before 15th June, 1966 and 15th August 1966. This document was also signed by the Vice-President on behalf of the Board, and by the three purchasers. It was attested by two witnesses. In this indenture, the purchasers were to start tapping from 1st March, 1966, and were required to complete it by the 15th October, 1966. Both the documents contained identical other terms as to penalty, fines, forfeiture, the method of collection and removal of resin etc. etc.

4. Tulsa Singh, one of the purchasers, presented the two documents before the Collector, Almora for adjudication of Stamp duty. The Collector in his turn referred the matter to the Board of Revenue for appropriate orders u/s 56(2) of the Stamp Act.

5. Before the Board, it was submitted on behalf of the purchasers that the two documents were merely agreements to sell goods, and were as such liable to a duty of Rs. 2.25 P. under Article 5 (c), Schedule I-B of the Stamp Act. The Board did not accept this submission. It held that the transaction related to resin which had to be formed in the trees during the period to which the grant related, and as such, the documents related to grant of a benefit arising out of something attached to the earth. This was benefit arising out of the earth, and was immovable property as defined by Sec. 3(26) of the General Clauses Act. Since the Stamp Act did not define "immovable property" its definition in the General Clauses Act was applicable. The Board placed reliance upon the case M. Lakshmana Ayyar and Another Vs. Aiyasami Chettiar and Another, and held that the grant of the right to tap and collect resin from the trees related to immovable property. The documents were held to be lease deeds for consideration of Rupees 32,175/- in one case and Rs. 7,525/- in the other, which sums represented the premium for which the lease had been granted. The two documents were chargeable as a lease under Article 35 (b) of Schedule I-B of the Stamp Act and were liable to a duty of Rs. 1,462.50 P. and Rs. 360/- respectively. As the Board felt that an important question of interpretation was involved it referred the following points for decision by this Court:--

"1. Whether the two documents aforesaid (copies of which are Annexures I and II) are lease deeds within meaning of Section 2(16) of the Stamp Act ?

2. If so, whether the amount of consideration i.e., the purchase money is to be treated premium or rent for the purpose of charging stamp duty.

3. In case the documents are not instruments of lease, what is their nature and under which article of Schedule I-B of the Stamp Act they are liable to stamp duty."

6. Learned counsel for the petitioner urged that under the two documents the purchaser has been given the right to, collect and carry away the resin from the forest. Such a transaction cannot, in law, be a lease, because in a lease the lessee has no right to carry away the subject-matter of the lease. In Shantabai Vs. State of Bombay and Others, , Bose, J., emphasised, as follows:--

"In a lease, one enjoys the property but has not the right to take it away. In a profit a prendre one has a licence to enter on the laud, not for the purpose of enjoying it, but for removing something from it, namely, a part of the produce of the soil."

7. These observations are apt and applicable to the documents before us. Since me purchasers had a right to take away the resin, the transaction could not, in law, be a lease. For the petitioner, it was urged that the indentures, in question, were simple agreements relating to sale of goods. There was some controversy at the Bar whether the sale in the present case was of future goods as defined by the Sale of Goods Act. For reasons to be stated presently, it is unnecessary to enter into that controversy. An agreement is liable to duty under Article 5, which reads:--

"5. Agreement or Memorandum of an Agreement: ◆	
(a) if relating to the sale of a bill of exchange;	Two Annas
(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate;	Subject to a maximum of ten rupees, one anna for every Rs. 10,000/- or part thereof of the value of the security or share.
(c) if not otherwise provided for	Eight Annas

Exemptions

Agreement or memorandum of agreement--

(a) for or'' relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43;"

Clauses (a) and (b) of Article 5 are not applicable to the present case. Under Clause (c) an agreement is liable to duty if it is not otherwise provided for. In other words, if the document is covered by some other Article, Clause (c) of Article 5 will not be attracted.

8. The learned Standing Counsel urged that the documents fulfilled the requirements of a bond as defined by Clause (5) of Section 2 and was as such chargeable to duty under Article 15. Section 2(5) defines a bond. It has three sub-clauses. Sub- clauses (a) and (c) are not relevant for our purposes. Clause (c) says that a Bond

"includes any instrument attested by a witness and not payable to order or to bearer whereby a person obliges himself to pay money to another".

Under the indentures, the three purchases obliged themselves to pay Rs. 32,175/- and Rs. 7525/- respectively to the Cantonment Board. These amounts were not payable to order or bearer. Both the documents are attested by witnesses. The documents fulfil all the ingredients of a bond, and prima facie, be chargeable to duty as such.

9. Learned counsel for the purchasers urged that the documents are wholly exempt from duty under Exemption (a) to Article 5, because they related to the sale of goods or merchandise exclusively. The submission is misconceived. In L.H. Sugar Factory Vs. Moti, Iqbal Ahmad, Acting, C. J., held:--

"Agreements for the sale of goods or merchandise contemplated by Article 5 of Sch, I do not require attestation and, therefore, such agreements, if unattested, would remain mere agreements, even though there is a covenant as to the delivery of the goods agreed to be sold. But the moment such an agreement is attested it becomes a bond."

10. Relying upon this decision as well as the decisions of the Full Bench of the Madras High Court in reference u/s 46, Stamp Act, ILR(1885) Mad 87, and of a Full Bench of the Bombay High Court in Re. Ralli Bros. ILR (1906) 8 Bom 234, a Full Bench of our Court in Board of Revenue Vs. Padum Bahadur Singh, held that an agreement for the sale of trees in a forest containing an undertaking to pay money and being attested by witnesses was a bond and was chargeable to duty as such. It was not a simple agreement relating to the sale of goods or merchandise and was not entirely exempt from duty. Clause (a) of the Exemptions to Article 5 was not applicable. The document was liable to duty as a bond under Article 15. These decisions are on all fours with the facts of the present case. The two documents, in question, contained an undertaking to pay money, not to order or bearer. They are attested by witnesses. They are not mere agreements relating to the sale of foods. By the fact of attestation they have become bonds. In this view, it is unnecessary to decide the question whether the indenture related to the sale of future goods within the meaning of Sale of Goods Act, so as to be covered by Exemption A of Article 5.

11. Our answers to the questions referred to us are as follows:

1. The two documents are not lease deeds.

2. In view of our answer to the first question, this question does not arise.

3. The documents are bonds and are chargeable to duty under Article 15 of Schedule I-B of the Stamp Act.

12. Let a copy of this judgment under the seal of the Court and the signature of the Registrar, be sent to the Board of Revenue.