

(2009) 04 MP CK 0026

Madhya Pradesh High Court

Case No: None

Ramlakhan APPELLANT

Vs

Rambahadur RESPONDENT

Date of Decision: April 30, 2009

Acts Referred:

- Stamp Act, 1899 - Article 35

Citation: (2009) ILR (MP) 2811 : (2009) 5 MPHT 60 : (2009) 3 MPLJ 259

Hon'ble Judges: Sushma Shrivastava, J; A.K. Mishra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

The plaintiff/petitioner is assailing the order dated 26-2-2002, passed by First Civil Judge Class II, Panna, in C.S. No. 14-A/2001, by which the Trial Court has impounded the lease document and has ordered payment of stamp duty and penalty, consequently assailing the order the writ petition has been preferred.

It is submitted by Shri Pranay Verma, learned Counsel appearing for petitioner that as per the exemption carved out under Article 35 of Schedule 1-A of Indian Stamp Act, 1899, an agricultural lease for a period of one year is exempt from the payment of stamp duty. The Trial Court has not correctly interpreted Article 35. It is specifically provided in Article 35 that when a definite term is expressed and such term does not exceed one year or when the average annual rent reserved does not exceed one hundred rupees. In the instant case, the lease was only for the period of one year, thus the document could not have been impounded by the learned Trial Judge, the order being illegal, deserves to be set aside.

We have perused the document (Exh. P-1). It is an agricultural lease for a period of one year though 19 quintal of wheat was agreed to be paid, in lieu of cultivating land for a period of one year, however, considering the exemption clause of Article 35 contained in Schedule 1(a) of Indian Stamp Act, it is apparent that lease for a period of one year is exempted from payment of stamp duty. Exemption Clause of Article 35 is quoted below:

Description of Instrument	Proper Stump duty
Exemption	
Lease:-- Executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium when a definite term is expressed and such term does not exceed one year or when the average annual rent reserved does not exceed one hundred rupees.	

It is apparent in the instant case that lease was given for the purpose of cultivation for a definite term, i.e., for a period of one year, hence the lease in question is exempt from payment of stamp duty. The later requirement for exemption is that when the average annual rent reserved does not exceed one hundred rupees. Both the requirements should not be read together. In case, lease does not exceed one year, may be that average annual rent reserved exceed Rs. 100/- lease would be exempted from payment of stamp duty as period does not exceed one year. The average annual rent does not exceed Rs. 100/- has to be read in alternative, these requirement cannot be said to be cumulative requirements. This Court in *Dharamdas v. Babulal* 1961 JLJ SN 579, has taken the similar view that the lease for one year by cultivator of land for cultivation, does not require stamp duty. This Court has relied upon the decision rendered in *In re. Bhavan Badhar* ILR 6 Bom. 691, by Full Bench of the High Court of Bombay in which following decision has been rendered:

Per curiam.-- We think that the language of Clause (b), Article 13, of Schedule II of Act I of 1879, exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever there served or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed Rs. 100.

In our opinion, the order passed by the Trial Court cannot be said to be sustainable, same is hereby set aside. Writ petition is allowed. No costs.