

(1950) 03 MAD CK 0055

Madras High Court

Case No: Case Referred No. 16 of 1949

The Joint Secretary, Board of
Revenue

APPELLANT

Vs

K.R. Venkatarama Ayyar

RESPONDENT

Date of Decision: March 20, 1950

Acts Referred:

- Stamp Act, 1899 - Article 58, 27

Citation: AIR 1950 Mad 738 : (1951) ILR (Mad) 119 : (1942) 55 LW 753 : (1950) 2 MLJ 213

Hon'ble Judges: Viswanatha Sastri, J; Horwill, J; Balakrishna Ayyar, J

Bench: Full Bench

Advocate: Government Pleader, for the Appellant; R. Ganapathi Aiyar, for the Respondent

Judgement

Horwill, J.

We are here concerned with a reference made by the Board of Revenue u/s 57, Stamp Act II [2] of 1899 on a question of the stamp duty payable on a settlement deed.

2. It is conceded that the document contains terms which make it a settlement deed and that for purposes of stamp duty it should be treated as such. Under Article 58, Stamp Act (Schedule 1), the duty is to be the same as for a bond for a sum equal to the amount or "value of the property settled as set forth in such settlement." The real value of the property is admitted by the settlor to be Rs. 2 lakhs; and since it is subject to a mortgage of one lakh of rupees, the value of the equity of redemption would be at least one lakh of rupees. The revenue authorities value it at Rs. 1,59,300, The settlor did not in so many terms purport to give the real value of the property; because if he gave a false value, he would be liable to prosecution. So he tried to guard himself by saying, "Value for purposes of stamp and registration, Rs. 3000". He argued before the Revenue authorities, as he did here, that he was entitled to put any notional value on the property. Since however it was clear from the

document itself that the property was worth a great deal more than Rs. 3000, the matter was referred by the Registrar to the Collector and by the Collector to the Board of Revenue, which body, we are told, directed that the instrument should be registered and that proceedings should be taken against the settlor. The Board of Revenue thereupon referred to this Court the question as to, "the effect of Section 27 on the words "value of the property as set forth in the settlement" occurring in Article 58, Schedule 1, Stamp Act, as the term "value" may be interpreted in different ways, namely, (1) the market value at the time of execution, (2) the value to the executant when he acquired it, i. e., purchase price, and (3) A nominal or fictitious value." Value, unless the term in any enactment suggests the contrary, must of course mean the real value, the real value of property of the nature of land and houses being ordinarily and most suitably estimated by determining what that property would fetch if sold in the open market. In other words, "value" ordinarily means "market value". There are certain provisions in the Court-fees Act and elsewhere which provide some special methods for calculating the value in certain cases and so by way of contrast, the expression "market value" is used where the value is not to be calculated in a special way; but the expression "market value" is not found anywhere in the Stamp Act. We find only the expression "value"; and so we must take it that the term "value" means market-value. Nominal value means, value only in name and not in fact. The expression "fictitious value" shows that the value given is not the value. If, as here contended, persons who convey property could value it as they pleased; the Act would be purposeless; for little or no revenue would ever be collected. The value of the property when an executant acquired it cannot be relevant value, which must mean the value at the time when the document is executed.

3. No machinery is 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 comes before the Registrar; and it would clearly be impracticable to cast the burden on the Registrar in each case to ascertain what the true market value is. If the stamp duty were payable only on a market value to be ascertained, then it would have to be definitely stated in the Act who was to ascertain the market value and what rights, if any, an aggrieved party had by way of appeal, revision, or the like.

4. Even if the matter were *res integra*, we should have no hesitation in holding from an examination of the wording used in the various Articles of the Indian Stamp Act that the Stamp fee had to be collected on the value shown in the document itself. The matter is however very fully covered by authority. In this Court it was held in Reference under Stamp Act Section 46, 7 Mad 350 and 8 Mad 453 that the value was the value indicated in the sale-deed or in the settlement deed respectively, and Reference under Stamp Act, Section 46, 8 Mad. 453 has been followed in Reference under Stamp Act, Section 46, 20 Mad. 27 by this Court; and by other High Courts also. It is sufficient to refer to *The Financial Commissioner, Burma v. C. R. M. M. L. A. Chettiar firm*, 13 Rang. 613 : A. I. R. 1935 Rang 243 In the matter of [In Re:](#)

[Muhammad Muzaffar Ali](#), in which reference was expressly made to Reference under Stamp Act, Section 46, 8 Mad. 453 and to [In Re: Khetramoni Debya](#), In the last case, it was held that the valuation should be the valuation at the time of execution, In The Financial Commissioner, Burma, v. C. R. M. M. L. A. Chettiar Firm, 13 Rang. 613 : A. I. R. 1935 Rang. 243 , it was laid down that although the Court could not take evidence de hors the document itself to ascertain what the real consideration was, it was not bound to take the consideration stated by the party, if the document itself showed that the consideration was incorrect and was, in fact, from the terms of the document itself, something different. Although the Registrar cannot embark on an independent enquiry regarding the value of the property, yet he has power u/s 35 of the Stamp Act to refuse registration if the document is not duly stamped; from which it would seem to follow that he can require the person seeking registration to furnish the particulars required for the calculation of the duty payable. He could in this case, for example, have refused to accept the settlor's evasive statement and insisted upon a valuation being given which purported to be the market value.

5. The more Important question is as to the effect of Section 27, Stamp Act on this matter. That section runs,

"The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable shall be fully and truly set forth therein."

In order to properly calculate the amount of duty payable on a settlement, the value of the property settled must be known, as Article 58 itself makes clear. Since the Registrar is not empowered to conduct an enquiry himself as to the market-value, the value must be set out in the document itself; and Section 27 requires that that fact (the value) should be truly set forth. It seems to as that the principle underlying the provisions of the Stamp Act with regard to valuation and estimation of the duty payable is that the value of the property should be taken from the face of the document, and that the revenue of the Government is protected by requiring the parties to make a true and full disclosure of all facts and circumstances having any bearing on the duty payable, failing which they must suffer the consequences of their false or defective statements. In many of the cases cited above, the learned Judges have had to consider what protection revenue authorities have against false recitals in documents. The judgment in Reference under Stamp Act, Section 46, 3 Mad. 453, for example, concludes by saying:

"There ate provisions which appear sufficiently to protect the revenue, if we adopt this construction (that the stamp duty should be collected on the valuation given in the document itself." In In the matter of [In Re: Muhammad Muzaffar Ali](#), no value was given at all; but nevertheless the Registrar registered the document. The learned Judges held that the words "as set forth in such instrument" refer back to the word "value" and not to the word "property". Then they went on to say :

"In the present instance there is no "value" set forth in the said instrument. No doubt this is a contravention of Section 27, Stamp Act, and, if it be found that the omission to state the value of the property conveyed was done with intent to defraud the Government, a prosecution will lie against the person who executed the instrument u/s 64, Stamp Act." With regard to undervaluation they later on added,

"If there was an intentional undervaluation, then a prosecution would protect the Government against the attempted fraud."

From these authorities and from the wording of Section 27, it seems clear to us that the settlor was bound to give the true value of the property. So whether his statement "for purposes of stamp duty and registration the value is Rs. 3,000" be regarded as a valuation of the property or a failure to value the property, he equally contravened the provisions of Section 27 of the Act.

2. There will be no order as to costs.