

1891

15 B. 675.

JAN. 29.

APPELLATE CIVIL.

APPEL-
LATE
CIVIL.*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood
and Mr. Justice Candy.*

15 B. 675

SINAPAYA BIN RAMAPAYA HARIDAS (*Plaintiff*) v. SHIVAPA
BIN SHIDAPA BAMNI (*Defendant*).* [29th January, 1891.]*Instrument—Conveyance—Consideration—The General Stamp Act (I of 1879), s. 24—
Agreement—Stamp—Construction.*

Where under an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee and also agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee-purchaser in the Collector's books.

Held, that such an instrument was a conveyance of which the amount of the consideration calculated according to s. 24 of the General Stamp Act (I of 1879) was the original mortgage amount *plus* the amount mentioned in the instrument.

Held, also, that the instrument was an agreement to pay assessment until the land conveyed was transferred in the Collector's books, and as such should bear the additional stamp for an agreement, namely annas eight.

THIS was a reference made to the High Court by Rao Saheb Vinayak Vithal Tilak, Subordinate Judge of Bijapur, under s. 49 of the General Stamp Act (I of 1879).

The reference was made in the following terms :—

"As I feel doubt as to the amount of duty to be paid in respect of Ex. A produced in suit No. 380 of 1889, I have the honour, [676] under s. 49 of the Stamp Act, to refer the questions hereinafter mentioned for the decision of the High Court.

"The facts which gives rise to this reference are :—

"Sinapaya, the plaintiff in the above suit, sues to redeem land mortgaged by him with possession to the defendant for a term of four years. The mortgage-deed was executed on 5th November, 1879, and the land was mortgaged in lieu of interest on Rs. 125 borrowed by the plaintiff on the date.

"The defendant states that on 18th March, 1885, the equity of redemption was orally sold to him by the plaintiff for Rs. 50.

"Exhibit A is put in by the defendant for the purposes of proving payment of the purchase-money. The plaintiff denies execution of the document.

"The defendant alleges that Ex. A is a receipt, and he adds that if it be held to be a conveyance, the amount of duty is 8 annas only, the amount of the consideration for the conveyance being Rs. 50.

"But I am of opinion that the document is either a deed of sale, or an agreement falling under art. 5, cl. (c), sch. I of Act I of 1879. I am further of opinion that Rs. 125 (mortgage money) *plus* Rs. 50 (alleged to be paid on 18th March, 1885) formed the consideration of the document. *Vide* I.L.R., 5 Bom. 470; I.L.R., 10 Bom. 58.

"Hence the questions for consideration are :—

"(1) Whether Ex. A is a receipt, or a deed of sale, or an agreement alling under art. 5, cl. (c), sch. I of Act I of 1879?

* Civil Reference No. 25 of 1890.

"(2) If Ex. A is a deed of sale, whether the amount of stamp duty is 8 annas or Rs. 2?"

1891
JAN. 29.

The following is the translation of Ex. A referred to above:—

APPEL-
LATE
CIVIL.

"Memo.

"To Shivapa *bin* Shidapa Bamni, inhabitant of Kakhandki.

"Sinapaya *bin* Ramapaya Haridas, inhabitant of Kakhandki, gives in writing as follows:—

15 B. 675.

"I have mortgaged my land No. 296, area 10 acres 32 gunthas, assessment Rs. [677] to you for Rs. 125; but being in want of money, I have this day relinquished my title to the land in your favour, in consideration of an additional sum of Rs. 50 received from you. Hence you may enjoy the land without disturbance from generation to generation. As I have, at this time, no stamp with me, and as I cannot execute a deed of sale, I have executed this memo, in your favour. I shall, at my leisure, transfer the *khata* of the land to your name and then take back this memo. I shall not fail to do so. I have received the aforesaid sum of Rs. 50 in cash in the presence of the writer and the attesting witnesses. The aforesaid agreement binds me and my heirs. Until the land is transferred to your name, I shall pay the assessment, and you should keep the boundary-marks in good repair according to the Government rules. This is the memo. given in writing on 18th March, 1885 A. D. Written by Bhau Dattatraya Talaghatti of Kakhandki.

"Witnesses—

Martand Jivaji.

One anna receipt stamp.

Nagapa Bhojapa.

SINAPAYA BIN RAMAPAYA HARIDAS."

OPINION.

Per Curiam.—We are of opinion that the instrument is a conveyance, of which the amount of the consideration, calculated according to s. 24 of Act I of 1879, is Rs. 175, and that it is also an agreement to pay assessment until the land conveyed is transferred in the Collector's books to the purchaser. The stamp duty leviable in respect of the conveyance would be Rs. 2, and in respect of the agreement 8 annas.

Order accordingly.