

APPELLATE CIVIL.

Before Mr. Justice Ranade, Mr. Justice Crowe and Mr. Justice Whitworth.

1900.

November 30.

*IN RE MEGHA AND OTHERS.**

*Indian Stamp Act (II of 1899), schedule I, articles 32 and 40—
Mortgage—Further charge—Stamp.*

Certain property was mortgaged with possession for Rs. 180 by a deed of mortgage dated 23rd May, 1895. The deed was on a stamp paper of Rs. 2 (two).

On 23rd August, 1899, the same property was re-mortgaged to the same mortgagee for Rs. 250, made up of Rs. 180, the consideration for the former deed, and another sum of Rs. 70 due to the mortgagee. This second deed was written on a stamp paper of Re. 1.

Held, that the second deed was not intended to operate merely as a further charge, but as a new mortgage in which the previous one merged, and that it should therefore be stamped as a mortgage-bond with possession for Rs. 250.

REFERENCE under section 57 of the Indian Stamp Act (II of 1899), by F. S. P. Lely, Esquire, Commissioner, N. D.

The reference was in the following terms:—

“Megha Ada and his two brothers mortgaged with possession their field situate in the limits of Mouje Kaligooa, taluka Viramgám, to Agarsing Jalamsing for Rs. 180, and passed a deed of mortgage on 23rd May, 1895, on a stamp paper of Rs. 2. The deed was duly registered.

“The same executants re-mortgaged the same field to the same mortgagee for Rs. 250, which consideration was made up of the said Rs. 180 and other debt of Rs. 70 due to the mortgagee. The mortgage-deed was executed on 23rd August, 1899. The stamp duty paid on this was Re. 1 only.

“The document having been produced for registration, the Sub-Registrar impounded and forwarded it to the Collector under section 33 of the Stamp Act, in order to decide whether the stamp duty paid was sufficient.

“The Collector referred the question for the opinion of the Government Pleader, and the latter opined that the duty paid was sufficient, holding that the instrument was one of further charge on mortgaged property, and therefore fell under article

* Civil Reference, No. 20 of 1900.

32 of schedule I of the Indian Stamp Act. The Collector endorsed the instrument accordingly and returned it to the Sub-Registrar through the District Registrar. The latter officer, instead of sending it on, returned it to the Collector for re-consideration, pointing out that by the execution of the mortgage-deed of 23rd August, 1899, that of 23rd May, 1895, had lost its force, that it was worded accordingly, that it was no instrument of further charge, that the amount secured thereby was Rs. 250, that such instruments were always treated as mortgage-deeds, and stamp duty and registration fee were levied accordingly, that if it be held to be a deed of further charge, Government revenue would suffer and that it was chargeable with a stamp duty of Rs. 3.

“ The Collector again consulted the Government Pleader, who said that as the District Registrar was for Rs. 3 stamp duty, it might be levied.

“ The Collector has therefore referred the matter to me.

“ The question for decision is whether the duty of Re. 1 paid on the fresh mortgage-deed is sufficient or not.

“ The landed property secured by the mortgage-deed is continued in the possession of the mortgagee in satisfaction of an account debt of Rs. 70, which is practically a further charge on the property mortgaged. The instrument therefore seems to fall under article 32 (a) of schedule I of the General Stamp Act, and is liable to a stamp duty of Re. 1.

“ As the point is not quite clear and as the decision in this case will govern future similar cases, that matter should be referred for the decision of Her Majesty's High Court of Judicature at Bombay (section 57 of the Indian Stamp Act).”

The mortgage deed of Rs. 250 was as follows:—

(Translation.)

“ We have mortgaged to you pasaetu field 1 in number belonging to us for Rs. 250, namely two hundred and fifty of the Bombay currency. The said field is situate within the sim (field limits) of the village of Mouje Kaliaana, Sub-Tukdi taluka Viramgam, Tukdi Zilla. Ahmedabad. The particulars of the four boundaries thereof are as follows :

(Here the description of the boundaries is given.)

“ The field situate within the aforesaid four boundaries together with the border lands and embankments in accordance with its original limits. The same is entered in the Government records in the name of our uncle, Gadhvi Jibhai

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Dungar. The same was at first in the possession and enjoyment of our father, who used to cultivate the same, and after his death, the same was in our possession and enjoyment by right of heirship and we used to cultivate the same. And from the time the same was mortgaged to you on the 14th of Vaisakh Vad of Samvat 1951 (corresponding with the English date the 23rd of May in the year 1895) for Rs. 180 and was handed over in your possession, up to this day the same has been in your possession and enjoyment and you have been enjoying the income thereof. The very same field has again this day been mortgaged to you and (possession thereof) has been handed over to you by this deed of mortgage, and we have given the same to you in mortgage for the above mentioned Rs. 250. No interest is to be paid in respect of the said rupees, and in consideration thereof no vaje or ghas (grass) has to be claimed in respect of the said field. The period in respect thereof is fixed at 1, namely one year, at the expiration of which period the said field can be redeemed at the time of furrowing for sowing cotton pods on the amount being paid off. Therefore up to that time you are to cultivate and get others to cultivate or sub-mortgage the said field or sell off your mortgage right to another person, or deal with your said mortgage right in any way you may please. We nor our heirs and representatives are to cause any sort of objection in injury to you and your heirs and representatives, and should any one cause any obstruction or raise any objection or raise any claim against you in respect of the said field, we and our heirs and representatives are to answer for the same amicably. And we have taken the above mentioned mortgage sum of Rs. 250 in accordance with the following particulars:—Rs. 180 were payable in respect of your mortgage right on the said field on the said date and Rs. 70 have been caused to be credited in respect of the debt due by us to you under an account. In this way we have received Rs. 250 in all and we have given this mortgage-deed in respect thereof of our free will and pleasure and in sound and conscious state of our minds. The same is valid. And as to the salami payable to the Sarkár for the field the same is on you as long as the field remains mortgaged with you. You are to pay the same.”

There was no appearance for any of the parties.

RANADE, J. :—On reading the bond of Rs. 250, it seems clear that it was not intended to operate merely as a further charge under a still subsisting mortgage, but as a new mortgage for Rs. 250 in which the previous one merged. It should therefore be stamped accordingly as a mortgage-bond with possession for Rs. 250.

Order accordingly.