

the idea that notice in fact of this prohibitory order came to the knowledge of the defendant.

For these reasons we hold that the decree of the lower Appellate Court must be upheld.

The decree will therefore be confirmed with costs.

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SANADEV
RAVJI
SHEKH. PAPA
MIYA.

Decree confirmed.

G. B. R.

CIVIL REFERENCE.

*Before Mr. Justice Chandavarkar, Mr. Justice Batty,
and Mr. Justice Aston.*

IN RE NIRABAI IN RE LUXMAN AND GANPAT*.*

*Indian Stamp Act (II of 1899), sec. 24 †—Mortgage-deed—Exemption from duty—
Statute—Construction—Exemption.*

1904.
September 5.

The proviso to section 24 of the Stamp Act (II of 1899) contemplates that to entitle the mortgagor to a deduction thereunder, the property transferred should be identical with that mortgaged and should not merely form a portion thereof.

An enactment imposing a burden requires a strict construction in favour of the subject; but an exemption must be strictly construed in favour of the State.

CIVIL references made by A. D. Younghusband, Commissioner, Central Division, under section 59 of the Indian Stamp Act (II of 1899).

* Civil References Nos. 8 and 3A of 1904.

† Section 24 of the Indian Stamp Act (II of 1899) runs as follows:—

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either, certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty

Explanation :—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale.

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

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The facts, in the first of these references, were as follows:—

One Nirabai kom Ramchandra of Kane executed a conditional sale-deed of Rs. 300 of Survey No. 294 on behalf of her minor son in favour of one Nagu bin Kondiba in the year 1896. She afterwards executed a simple mortgage-deed for Rs. 60 of the same property in favour of the same person in 1889. The interest accrued due on this sum of Rs. 60 was Rs. 25.

On the 1st April, 1902, Nirabai, the original vendor, passed to Bhagu bin Kondiba, a sale-deed in respect of a portion of the property to the following effect:—

“Deed of sale. The lunar date the 8th of Falgun Vadya of Shake 1823, the name of the cyclical year being Plava, the day of the week Tuesday (1st April 1902). To the party taking (this deed) in writing, namely, Bhagu bin Kondiba Bhandekari, by caste Kasar (coppersmith), age 57 years, by occupation a trader, residing at Mouze Lawha of the taluka of Karmala. From the party giving (this deed) in writing, namely, Shrinivas Ramchandra, Jan Pandit Kulkarni and Nirabai, wife of Ramchandra Jan Pandit, by caste Brahmins, ages 21 and 53 years respectively, by occupation agriculturists, residing at Mouze Lawha of the taluka of Karmala. We give this deed of sale in writing for a reason as follows:—Bai Nirabai, wife of Ramchandra, guardian of the minor Shrinivas Ramchandra Kulkarni, having given in writing on the 5th day of September in the year 1896 a deed of sale for fixed period for Rs. 300 in respect of the property below mentioned, have got the same registered. The balance in respect thereof is Rs. 300 (namely) three hundred. Moreover, as to the mortgage-deed without possession of other property for Rs. 60 passed to you on the 10th day of November 1899 by Shrinivas Ramchandra Kulkarni, on making calculations in respect thereof inclusive of interest and on making deductions for remission rupees eighty-five have been fixed to be due, and about eight days ago Rs. 90, (namely) ninety, were taken from you for household expenses, and Rs. 75, (namely) seventy-five, have been taken this day in cash from you; thus in all Rs. 550, namely, five hundred and fifty are due to you. As a consideration for the said amount we have sold to you half of the southern land out of Survey No. 294, situate at Mouze Lawha on the Sub-District of Karmala, in the district of Sholapur, which (land) being ancestral (property) belongs to us by right of ownership and which has been under your vahivat (occupation) since the passing of the sale-deed for a fixed period * * * * * This has already been given into your possession. Henceforth we and our heirs have no right to the said land. Should any person bring an obstacle, we are to remove the same. We have received the payment of the money. So there is no hitch as regards payment. We having cancelled the previous paper, i. e., sale-deed for a fixed period, have given the same to you for vahivat (possession). We having cancelled the mortgage-deed without possession (of the land) have taken the same back.”

This deed was drawn up on a stamp of Rs. 3 instead of Rs. 2-8. The District Magistrate of Sholapur, in submitting the proceeding to the Commissioner, C. D., stated:

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"It is doubtful whether the executant can sell a portion of the mortgaged property and, if so, whether he is entitled to a deduction under section 24. Proviso to section 24 read side by side with the examples does not warrant the inference that he is entitled to sell a portion and consequently to get a deduction of the stamp duty."

The facts, in the second reference, were as follows:—

Luxman and Ganpati passed a sale-deed for Rs. 750 in favour of one Rupchand Nandram. They stated that they both together with Bala valad Appa and Kesu valad Tukaram have* executed in 1897 in favour of the same person a mortgage-deed of Rs. 400 of a moiety of Survey Nos. 396, 397, 398 and 400. Afterwards in 1901, Luxman and Ganpat only executed a mortgage-deed for Rs. 200 of the same property. The interest for the above sums amounted to Rs. 76. They both received at the time of the execution of the deed Rs. 274, and thus the total amount was made Rs. 750, in consideration of which they both sold their shares.

The deed in question ran as follows:—

"Deed of sale. The lunar date the 12th of Kartik Shudha in Shake 1821, the day of the week Wednesday (12th November 1902), the name of the cyclical year being Subhkrit.* To the party taking (this) deed in writing (namely) Rupchand Nandram, surnamed Katara, by caste a Marwadi, aged 41 years, by occupation a trader, residing in Peth Karmale, taluka Karmale. From the party giving this deed in writing (namely), Lakshman and Ganpati bin Pandurang, surnamed Bendarde, by caste weavers, aged 33 and 25 respectively, by occupation weavers, residing at the village of Korti, taluka Karmale. For a reason we give this deed of sale in writing as follows:—We ourselves and Bala valad Appa and Kesu valad Tukaram Bendarde out of our (family) have together passed to you in writing a deed of mortgage with possession for a sum of Rs. 400 on the 17th of April 1897. The debt payable to you which came to our share out of the same is Rs. 200, two hundred. Moreover, we have passed to you in writing a separate deed of mortgage with possession in respect of the very same property for Rs. 200 on the 2nd of May 1901. The balance due under the same is Rs. 200 representing the principal, and on making calculation of interest in respect of both the said mortgage-deeds and on making a deduction of the payments made, Rs. 76 (seventy-six) are (found to be) payable as our share of interest. Moreover we have this day taken from you Rs. 274, (namely) two

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hundred and seventy-four in cash for household expenses and for making payments to people. Thus Rs. 750, seven hundred and fifty, in all are due from us to you. In consideration for the said sum we have sold to you our ancestral land belonging to us by right of ownership, being a moiety of land bearing Survey Nos. 396, 397, 398 and 400 * * * * * which has been in your occupation and vahivat (management) since the time it was mortgaged under the said deed of mortgage (that is to say) the moiety of land out of the said survey numbers, which came to our share out of the said (survey) numbers after good and bad land was taken into consideration, in consequence of a partition having taken place amongst our kinsmen since the aforesaid deeds of mortgage with possession had been passed * * * * *. You are therefore to enjoy the said property from generation to generation and carry on vahivat (thereof) for ever by right of ownership. In the same we and our heirs have no right, title and interest, should any person cause any obstacle, &c., to your vahivat (management) we are to remove the same."

This deed was written on a stamp of Rs. 6 instead of Rs. 4. The District Magistrate, in submitting the papers to the Commissioner, C. D., observed :—

"If Luxman and Ganpati be allowed a deduction of the whole stamp duty under section 24 of the Stamp Act, the other sharers Bala valad Appa and Kesu valad Tukaram will not, if they happen to sell their shares, have the benefit of section 24. If they be allowed to sell their shares and deduct the whole of the stamp duty on the original deeds Government will lose revenue. The stamp duty may be divided among them in order that Government may not suffer loss, but there are no rules as to how the deduction is to be proportionately made."

The Commissioner, C. D., in submitting both the references to the High Court, observed :—

"The proviso to the explanation in section 24 of the Stamp Act does not specifically include cases in which part of the property previously mortgaged is subsequently sold. My opinion is that such cases are not covered by the proviso because it is difficult to assign a portion of the mortgage money to a part of the mortgaged property subsequently sold."

Ráo Bahádur Vasudéo J. Kirtikar, Government Pleader, for Government.

PER CURIAM :—We think that the proviso to section 24 of the Indian Stamp Act (II of 1899) contemplates that to entitle the mortgagor to a deduction thereunder, the property transferred should be identical with that mortgaged and should not merely form a portion thereof. Had the intention been otherwise, we

think the Legislature would have found no difficulty in expressing it. The words "wholly or in part" used in the 1st paragraph of the section would in such case probably have been inserted in the proviso to the explanation after the words "is transferred". An enactment imposing a burden requires a strict construction in favour of the subject. But this is an exemption and must therefore be strictly construed in favour of the State. This answers both references.

R. B.

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APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Batchelor.*

PARVATIBAI KOM MAHADEV (ORIGINAL PLAINTIFF), APPELLANT, v.
VISHVANATH GANESH (ORIGINAL DEFENDANT), RESPONDENT.*

1904.

November 23.

Court-Fees Act (VII of 1870), section 7, paragraph 4, clause (c)—Specific Relief Act (I of 1877), section 39—Suit for declaration—Cancellation of document—Consequential relief—Valuation.

The plaintiff having sued for the cancellation of a sale-deed framed the prayer in the plaint so as to seek a declaration that the sale-deed was fraudulent and for an order to have it cancelled and a copy sent to the Sub-Registrar as provided by section 39 of the Specific Relief Act (I of 1877).

Held that the suit was one for a declaration with a distinct prayer for consequential relief.

Karam Khan v. Dargai Singh⁽¹⁾ dissented from.

The plaint was stamped with a Court-fee stamp of Rs. 10 only.

Held that the case was one falling under section 7, paragraph 4, clause (c) of the Court Fees Act (VII of 1870), and must be valued accordingly.

SECOND APPEAL from the decision of J. J. Heaton, District Judge of Násik, reversing the decree of C. D. Kavishvar, First Class Subordinate Judge.

The plaintiff sued for the cancellation of a sale-deed of certain lands, the consideration stated being Rs. 7,058. She prayed (a) that it might be declared to have been obtained from her by the defendant by means of fraud and misrepresentation, (b) that

* Second Appeal 315 of 1904.

(1) (1883) 5 All. 331.