

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Batchelor and  
Mr. Justice Beaman.*

1915.

IN RE GANGARAM NARAYANDAS TELI.\*

February 26.

*Indian Stamp Act (II of 1899), section 59, schedule I, article 35, clause (a),  
sub-clause (iii)—Lease—Lessee agreeing to pay annual rent plus Government  
assessment—Whether rent includes assessment for purposes of stamp duty.*

A piece of land was leased for five years whereby the lessee agreed to pay to the lessor Rs. 100 as rent plus Rs. 16-8-0 on account of Government assessment. The question being referred whether the stamp duty should be levied on Rs. 100 or Rs. 116-8-0 the total amount of rent and Government assessment.

*Held*, that the Government assessment did not form part of the profit and therefore the stamp duty was leviable only on Rs. 100 the annual rent, under schedule I, article 35, clause (a), sub-clause (iii), of Stamp Act.

REFERENCE by Mr. McNeill, Acting Commissioner, Central Division, under section 59 of the Indian Stamp Act (II of 1899).

A piece of land was leased at Sholapur for five years at an annual rent of Rs. 100 plus Rs. 16-8-0 on account of Government assessment, the terms of the lease being as follows :—

“ Lease of a piece of land for 5 years reserving annual rent of Rs. 116-8-0 executed in favour of Gangaram Narayandas Teli, agriculturist, inhabitant of Sholapur, by Vithoba valad Onkari Patel, Vani, agriculturist, inhabitant of Hodgí, taluka Sholapur.

I have taken from you on lease for cultivation your ancestral land which is in your possession and enjoyment. The land in question is situated at Mouje Hodgí in the taluka and sub-district of Sholapur, district Sholapur.

(Here follows the description of the land given on lease.)

The above described land has been taken from you on lease from Chaitra Shudha 1st Shake 1835 to the end of Shake 1839 for five years and has been given into my possession from the same date. I will take great pains for cultivating the land and one-half portion of every kind of produce that may be raised will be given to you every year and the remainder will be appropriated

\* Reference No. 25 of 1914.

by me. I will pay you every year Rs. 16-8-0 on account of Government assessment which you may pay. I will repair and keep in order the earthen *bandhas* round the fields. I shall protect the trees and manage to pay other dues (balutas). If in any one year, I make default in giving you moiety of the produce I shall pay you Rs. 100 as damages in addition to the assessment of Rs. 16-8-0. In case I fail to give either the produce or the damages I shall hand over the possession of the land to you without questioning the period of the lease and I will pay you the unpaid amount of the rent from my personal property. If I continue to pay the rent together with the assessment as agreed I will cultivate the land till the determination of the lease and will transfer its possession to you when the period of the lease is over without any objection. This lease has been executed by me on 10th April 1913."

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The deed was presented on a stamp of Rs. 2 and the question of proper stamp duty having arisen, the Inspector General of Registration decided that the stamp and registration fees were leviable on Rs. 116-8-0 that is on the amount directly paid to the lessor plus Government assessment paid directly by the lessee on behalf of lessor to Government.

The matter went up to the Commissioner, Central Division, who in making the reference to the High Court, observed as follows :—

"As explained by the Inspector-General of Registration in paragraphs 6 and 7 of his letter No. 1656-Genl. of 13th August 1914 to Government the orders of Government of 1875 are old and conflicting with the decision of the Madras High Court (I. L. R. 7 Mad. 155) and require amendment.

In my opinion the words 'the rent reserved' in Article 35, Schedule I, should in their application to a lease in which a yearly rent is reserved be construed to mean the amount annually payable by the lessee to the lessor or to any other on behalf of the lessor. The direct payment of the Government assessment seems to be a 'service or other thing of value rendered to the transferee.' Rent as defined in the Transfer of Property Act is obviously not limited either to the amount of net profit accruing to the lessor or to the actual payment made to him direct."

The reference was heard.

*S. S. Patkar*, Government Pleader, in support of the reference :—The lease being for five years, Article 35, clause (a), sub-clause (iii), applies. The proper stamp is the "duty equal to the amount or value of the

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average annual rent recovered." Rent would include the amount of assessment agreed to be paid. I rely on *Reference under Stamp Act, section 46*<sup>(1)</sup> and *In re A Reference by the Financial Commissioner of the Punjab*<sup>(2)</sup>. The stamp duty should, therefore, be levied on Rs. 116-8-0. This point is dealt with in the Punjab case, where Elsmie J. lays down "Had the lessee agreed to pay an uncertain amount and to be responsible for rise and fall of Government demand, it might have been difficult to regard the payment as of the nature of rent." Rent is defined by Transfer of Property Act, section 105, as "money, share of crops, service or any other thing of value to be rendered periodically or on specified occasion to the transferor by the transferee." The landlord is primarily liable to pay land revenue under the Land Revenue Code and when the tenant agrees to pay Government assessment it is service or other thing of value to be rendered periodically by the transferee to the transferor. Supposing the land is let in consideration of payment of assessment only can it be said that there is no rent? The proper stamp duty therefore should be levied on Rs. 116-8-0.

SCOTT, C. J. :—This is a reference to the Court under section 59 of the Indian Stamp Act in the matter of a lease executed in favour of Gangaram Narayandas Teli by Vithoba valad Onkari Patel Vani, and the question, as stated in the reference, is, whether in the case of a lease containing a stipulation regarding the payment by the lessee to the lessor of Government assessment, etc., for its eventual payment by the lessor to the Government, stamp duty should be calculated on the total amount of rent and Government assessment, etc. The stipulations in the lease are as follows :—

"The above described land has been taken from you...for five years and has been given into my possession from the same date. I will take great pains for

(1) (1883) 7 Mad. 155.

(2) (1882) P. R. No. 102 of 1882.

cultivating the land and one-half portion of every kind of produce that may be raised will be given to you every year, and the remainder will be appropriated by me. I will pay you every year Rs. 16-8-0 on account of Government assessment which you may pay. I will repair and keep in order the earthen *bandhas* round the fields. I shall protect the trees and manage to pay other dues. If, in any one year, I make default in giving you moiety of the produce, I shall pay you Rs. 100 as damages in addition to the assessment of Rs. 16-8-0."

The Article of the Indian Stamp Act which applies to the case is Article 35. Assuming this to be a lease for a term in excess of five years, it would fall under clause (a), sub-clause (iii), and the duty prescribed would be "the same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved," and the question is whether the rent is anything more than the moiety of the produce contracted to be given, or whether it includes Rs. 16-8-0 which is payable to Government as assessment by whoever may hold the land under the Government. The term "rent" is explained in Woodfall on Landlord and Tenant, as "a retribution or compensation for the lands demised." "Rent must always be a profit; . . . This profit must also be certain, or capable of being reduced to a certainty by either party, and must issue out of the thing granted, and not be part of the land or thing itself." Now applying that description to the present case, it appears to us that the only profit for the lands demised which the landlord would realize is the half of the produce, and that Rs. 16-8-0 is not part of the profit. It is a liability attaching to the thing itself in the hands of the lessor. The lessor under this covenant is really in no better position than if he had a covenant by a tenant to pay the assessment direct to Government, and if it were paid direct to Government, it could not be contended, as is admitted by the Government Pleader, that Rs. 16-8-0 should be deemed to be part of the rent. We answer the question referred in the negative. A question arising upon this lease appears not to have

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occurred to the referring authority, *viz.*, whether the lease does not fall under the exemption from Article 35 being a lease executed in the case of a cultivator for the purposes of cultivation, the average annual rent reserved not exceeding Rs. 100.

*Answer accordingly.*

J. G. R. .

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APPELLATE CIVIL.

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*Before Mr. Justice Heaton and Mr. Justice Shah.*

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March 9.

DAYABHAI RAGHUNATHDAS (ORIGINAL APPLICANT), APPELLANT, v.  
BAI PARVATI AND ANOTHER (ORIGINAL OPPONENTS), RESPONDENTS.\*

*Guardians and Wards Act (VIII of 1890), section 25—Custody of minor—  
Application by guardian—Guardian need not be a certificated guardian.*

An application under section 25 of the Guardians and Wards Act (VIII of 1890) for the custody of a minor can be made by a guardian, who need not be a certificated guardian.

APPEAL from the decision of M. S. Advani, District Judge of Surat.

This was an application under the Guardians and Wards Act (VIII of 1890).

The applicant applied under section 25 of the Act to the District Judge at Surat to recover the custody of his minor daughter Bai Mani.

The District Judge was of opinion that the applicant, not being a certificated guardian of the minor, could not maintain application. The learned Judge dismissed it on the following grounds :—

It is contended by the learned Vakil that as the applicant is the natural guardian of the minor under the Hindu Law you could seek assistance of the Court under section 25 of the Act to have the custody of the minor. He has quoted no direct authority in support of his contention. He

\* First Appeal No. 240 of 1914.