

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Bhagwati and
Mr. Justice Tendolkar.

THE CHIEF CONTROLLING REVENUE AUTHORITY v. TRUSTEES
OF THE PORT OF BOMBAY AND ANOTHER.*

1951
August 28

Indian Stamp Act (II of 1899), Sch. I Arts. 5 and 35, Proviso—Agreement to lease not effecting present demise—Stamped *ad valorem*—Subsequent lease—Whether chargeable *ad valorem*.

An agreement to lease which does not effect a present demise falls under Art. 5 (c) of the Indian Stamp Act, 1899.

If an agreement to lease which does not effect a present demise is stamped *ad valorem* under Art. 35 of the Indian Stamp Act, 1899, the lease which is subsequently executed in pursuance of such agreement is governed by the proviso to Art. 35.

The Indian Stamp Act, 1899, which is a fiscal statute is to be given a construction which prevents hardship to the subject and which does not compel the subject to pay duty twice over.

Reference under s. 57 of the Indian Stamp Act, 1899.

On August 24, 1948 an agreement for lease was executed by the Trustees of the Port of Bombay and one Anandji Haridas and a stamp duty of Rs. 315 was paid on the same. This agreement did not effect a present demise. Pursuant to this agreement, a lease was executed on April 19, 1949, which was stamped with a stamp of annas 12 only. The duplicate of the said lease was also stamped with a stamp of annas 12 only. The original lease and duplicate were then sent to the Superintendent of Stamps, Bombay, for a certificate on the duplicate lease that the original lease was properly stamped. The Assistant Superintendent of Stamps came to the conclusion that the lease and the duplicate were not properly stamped, and impounded the documents and dealt with the same under ss. 33 and 40 of the Act. The Assistant Superintendent of Stamps also asked for the said agreement for lease dated August 24, 1948 from the Trustees of the Port of Bombay. He held the agreement for lease a simple agreement liable to stamp duty under Art. 5 (c) of the Schedule to the Act. The said document contained a recital that Anandji Haridas had deposited with the Trustees of the Port of Bombay a sum of Rs. 6,825 which deposit was to be the security for the due performance by Anandji Haridas of

* Civil Reference No. 13 of 1950.

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the terms of the agreement for lease. The Assistant Superintendent of Stamps was of the view that the said deposit money was chargeable with duty under Art. 40 (a) of the Schedule to the Act. With regard to the lease dated April 19, 1949 the Assistant Superintendent of Stamps held the document to be a regular lease for a term of 30 years at a monthly rent of Rs. 580 and chargeable as under:

| | Rs. |
|---|---------|
| Lease on average annual rent of Rs. 6,960 | |
| under Art. 35 (a) (iii) ... | 105-0-0 |
| Plus surcharge ... | 52-8-0 |
| Total ... | 157-8-0 |

He also held that the duplicate was chargeable with a duty of Rs. 3 under Art. 25. He, therefore, impounded both the documents and imposed a penalty of Rs. 15 and Rs. 2 on the original and duplicate lease respectively. The Trustees of the Port of Bombay paid the duty and penalty as required by the Assistant Superintendent of Stamps and got the documents duly certified by the Collector. On July 11, 1949 the Trustees of the Port of Bombay preferred an appeal to the Chief Controlling Revenue Authority for refund of stamp duty and penalty paid in excess on the original lease and its duplicate. The Chief Controlling Authority passed an order upholding the decision of the Collector.

The Trustees of the Port of Bombay and Anandji Haridas requested the Chief Controlling Revenue Authority to refer the matter to the High Court under s. 57 of the Act. Accordingly the following questions were referred to the High Court.

(1) Whether the document dated August 24, 1948 is chargeable with a stamp duty of Rs. 159 under Art. 5 (c) and Art. 40 (a) of the Schedule to the Act in accordance with the assessment of the Assistant Superintendent of Stamps and of the Chief Controlling Revenue Authority in appeal from the assessment of the Assistant Superintendent of Stamps?

(2) If the answer to the above question is in the negative, with what stamp duty is the said document chargeable?

(3) If the above document dated August 24, 1948 is held to be chargeable with a stamp duty of Rs. 159 or otherwise, is the Bombay Port Trust entitled to any refund of the excess duty paid thereon?

(4) Whether the impounded documents of original lease dated April 19, 1949 is chargeable with a stamp duty of Rs. 157-8-0 under Art. 35 (a) (iii) of the Schedule to the Act, in accordance with the assessment of the Assistant Superintendent of Stamps and of the Chief Controlling

Revenue Authority in appeal from the assessment of the Assistant Superintendent of Stamps?

(5) If the answer to the above question is in the negative, with what stamp duty is the said impounded document chargeable?

(6) Whether the impounded document dated April 19, 1949, being the duplicate lease is chargeable with stamp duty of Rs. 3/- under Art. 25 of the Schedule to the Act, in accordance with the assessment of the Assistant Superintendent of Stamps and of the Chief Controlling Revenue Authority in appeal from the assessment of the Assistant Superintendent of Stamps?

(7) If the answer to the above question is in the negative with what stamp duty is the said document chargeable?

The Chief Controlling Revenue Authority, while referring the above questions to the High Court, stated its opinion and observed as follows:—

“As regards the lease dated April 19, 1949, in my opinion this document is a regular lease attracting stamp duty under Art. 35 (a) (iii) of the Act. As no previous duty on a document coming under the heading “Lease” under Art. 35 was paid, the question of giving this document, the benefit of the proviso to Art. 35 does not arise”.

The reference was heard.

G. N. Joshi, with Little & Co., for the Superintendent of Stamps and Chief Controlling Revenue Authority.

N. A. Palkhiwalla, with Mulla & Mulla, for Trustees of the Port of Bombay and Anandji Haridas.

CHAGLA C. J. The question that arises for our determination on this reference made by the Chief Controlling Revenue Authority under s. 57 of the Indian Stamp Act is a very short one. On August 24, 1948, an agreement for lease was entered into between the Trustees of the Port of Bombay and one Anandji Haridas. Pursuant to this agreement, a lease was executed on April 19, 1949. It is common ground that the agreement for lease of August 24, 1948, did not effect a present demise. The agreement to lease was stamped *ad valorem* under art. 35 of the Stamp Act, and the lease of April 19, 1949, was stamped only with Annas 12. The question that we have to consider is whether the document of April 19, 1949, was properly stamped.

It is not necessary to consider on this reference a certain fact which has been mentioned in the opinion of the Chief Controlling Revenue Authority, because there is no dispute between the parties with regard to it, namely, that a certain sum was deposited by Anandji Haridas with the Trustees of the

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Port of Bombay for the due performance of various obligations undertaken by him under the lease.

Now, in order to appreciate the rival contentions put before us, it is important to look at the scheme of the Stamp Act with regard to leases. The article that deals with leases is art. 35, and under that article a lease includes an under-lease or sub-lease and any agreement to let or sub-let; and it is clear that only those documents fall under art. 35 which effect a present demise. There is also another article—art. 5-A—which deals with agreements to lease. The second column does not state what duty is payable on agreements to lease: the Legislature has only referred the Stamp Authorities to Lease—art. 35. Now, it is clear that, in law, an agreement to lease may effect a present demise or it may not. If it effects a present demise, then an agreement to lease would fall under art. 35; if it does not effect a present demise, then an agreement would fall under art. 5 which deals with agreements or memoranda of agreement and would fall under art. 5 (c) which deals with all those cases which are not dealt with under art. 5 (a) or art. 5 (b). Now, in the present case, the agreement to lease of August 24, 1948 not effecting a present demise fell under art. 5 (c), and it should have been stamped with Annas 12, which is the proper stamp duty in the State of Bombay. Instead of stamping it with Annas 12, it was stamped as if the agreement to lease fell under art. 35. Reliance is placed by the parties to the lease upon the proviso to art. 35, and the proviso is in the following terms:

“Provided that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.”

Therefore, obviously, the purpose of this proviso is to relieve the subject from paying twice over on a document which has already been subjected to tax as falling under art. 35. Now, what is contended on behalf of the Chief Controlling Authority is that “an agreement to lease” in this proviso should be construed as “an agreement to lease which effects a present demise”. According to Mr. Joshi, who appears for the Authority, it is only when an agreement to lease effecting a present demise is stamped as required by art. 35 that relief is given to the party if a lease is subsequently executed pursuant to the agreement; and, in that case only, the lease is to be stamped with the stamp fee of Annas 12. Now, in asking us to accept this construction, what Mr. Joshi wants us to do is to read the

proviso as if the words used by the Legislature were: "Provided that in any case when an agreement to lease is required to be stamped with the *ad valorem* stamp required for a lease". But the language used by the Legislature is not "is required to be stamped" but "is stamped". Therefore, what the Legislature is considering is the actual fact of a particular stamp being used on a particular document; it is not considering what the legal requirement under the Stamp Act is with regard to the stamping of the particular document. If an agreement to lease may either effect a present demise or it may not, all that the Legislature is concerned with is the fact that the particular document is stamped with the particular duty. If, in fact, it is so stamped, and then, in pursuance of that agreement, a lease is subsequently executed, then the parties are entitled to the relief which the proviso affords. Mr. Joshi says that in art. 5-A the expression "agreement to lease" is used with only one connotation, namely, an agreement which effects a present demise, and that we must import the same meaning in the expression "agreement to lease" used in art. 35. In our opinion, it is not at all necessary to construe the expression "agreement to lease" in that restricted manner. If, in law, an agreement to lease may effect a present demise or may not effect a present demise, then the Legislature, in art. 5-A, has dealt with both the kinds of agreements to lease. The Legislature has referred to art. 35 only to draw attention to the fact that, when an agreement to lease does effect a present demise, the duty to be charged is the same as provided for in art. 35. We must also bear in mind that this being a fiscal statute we should give it a construction which prevents hardship to the subject and which does not compel the subject to pay a duty twice over. The Stamp Authorities are only concerned with the collection of fiscal duty; and if two documents are executed, and between the two all the duty that the subject is liable to pay has been paid to the fiscal authorities, then the fiscal authorities are not concerned as to whether a particular duty should have been paid on the first document and a particular duty should have been paid on the second document. The proviso is intended to give effect to this very position. All that the Legislature was concerned with is that, when you have cases of agreements for lease and leases, between the two documents no more stamp duty should be paid than the *ad valorem* duty under art. 35 and the additional duty of annas 12, and the proviso was intended to give effect to this intention.

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Turning to the questions, on the first question there is no dispute between Mr. Palkhiwalla and Mr. Joshi that the document of August 24, 1948, falls under art. 5 (c), being an agreement for lease not effecting a present demise, and that it also falls under art. 40 (a) because it is a mortgage within the meaning of that expression as used in the Stamp Act. Therefore, we answer the first question in the affirmative.

Question (2) does not arise.

Question (3) does not arise, because there is no application for refund by the parties to the lease.

Question (4):—The answer is in the negative by reason of the proviso to art. 35.

Question (5):—The answer is, Annas 12.

Question (6):—The answer is, Annas 12.

Question (7) does not arise.

We might point out that this reference has been argued and our answers to the questions have been given on the basis, which has not been seriously controverted by the Stamp Authorities, that full *ad valorem* duty was paid on the first document as required by art. 35. As a matter of fact, the Stamp Authorities held that the first document had been over-stamped.

No order as to costs.

Order set aside.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

THE STATE OF BOMBAY *v.* MESSRS. DEVRAJ TULSI (ORIGINAL ACCUSED).*

Bombay Municipal Corporation Act (III of 1888), ss. 354, 507 (3), 514 (c) and 417—Non-compliance with the requirements of s. 507 (3), whether a continuing offence—Period for filing complaint prescribed by s. 514 (c)—Whether time begins to run from the first commission of the offence.

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* Criminal Appeal No. 498 of 1951 with Criminal Appeals Nos. 499, 500, 501, 503, 504, 505 and 506 of 1951.