

**In Re: Indian Stamp Act, li of 1899**

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**Court :** Mumbai

**Decided On :** Aug-28-1951

**Reported in :** AIR1952Bom199; (1952)54BOMLR230; ILR1952Bom881

**Judge :** Chagla, C.J., ;Bhagwati and ;Tendolkar, JJ.

**Acts :** [Stamp Act, 1899](#) - Sections 57 - Schedule - Articles 5, 5-A, 35 and 40

**Appeal No. :** Civil Ref. No. 13 of 1950

**Appellant :** In Re: Indian Stamp Act, li of 1899

**Advocate for Pet/Ap. :** G.N. Joshi, Adv. for the Supdt. of Stamps and Chief Controlling Revenue Authority and ;N.A. Palkhiwalla, Adv. for Trustees of the Port of Bombay and Anandji Haridas

**Judgement :**

Chagla, C.J.

[1] The question that arises for our determination on this reference made by the Chief Controlling Revenue Authority under Section 57, Stamp Act is a very short one. On 24 8-1948, 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 19.4 1949. It is common ground that the agreement for lease of 24 .8.1948, did not effect a present demise. The agreement to lease was stamped ad valorem under Article 35, Stamp Act, and the lease of

19-4-1949 was stamped only with annas 12. The question that we have to consider is whether the document of 19-4-1919, was properly stamped.

[2] 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 Port of Bombay for the due performance of various obligations under, taken by him, under the lease.

[3] 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 lease. The article that deals with lease is Article 36 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 Article 35 which effect a present demise. There is also another article -- Article 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: Article 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, than an agreement to lease would fall under Article 35; if it does not effect a present demise, then an agreement would fall under Article 5 which deals with agreements or memoranda of agreement and would fall under Article 5 (c) which deals with all those cases which are not dealt with under Article 5 (a) or Article. 6 (b). Now, in the present case, the agreement to lease of 24-8-1948, not effecting a present demise fell under Article 5 (e), and it should have been stamped with annas 19 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 Article 35. Reliance' is placed by the patties to the lease upon the proviso to Article 35, and that 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 still 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 Article 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 present demise is stamped as required by Article 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 that 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. 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 stated, 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 Article 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 that expression 'agreement to lease' used in Article 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 Article 5-A, has dealt with both the kinds of agreements to lease. The Legislature has referred to Article 33 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 Article 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 second document, The proviso is in-tended to give effect to this very position. All that the Legislature was concerned with is that when you have oases of agreements for lease and leases, between the two documents no more stamp duty should be paid than the ad valorem duty under Article 35 and the additional duty of annas 13, and the proviso was intended to give effect to this intention.

[4] Turning to the questions, on the first question there is no dispute between Mr. Palkhiwalla and Mr. Joshi that the document of 24.8.1918, falls under Article 5 (c), being an agreement for lease not effecting a present demise, and that it also falls under Article 40 (a) because it is a mortgage within the meaning of that expressions as used in the Stamp Act. Therefore, we answer the first question in the affirmative,

[5] We might point 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 Article 35. As a matter of fact, the Stamp Authorities held that the first document had been over stamped.

[6] No order as to costs.

[7] Reference answered.

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