

State of Maharashtra and ors. Vs. M.S. Builders (Private) Limited and anr.

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Court : Mumbai

Decided On : Feb-13-1992

Reported in : 1992(1)BomCR568

Judge : S.P. Kurdukar and ; K. Sukumaran, JJ.

Acts : [Bombay Stamp Act, 1958](#) - Sections 2, 2(1) and 2(9); Bombay Stamp (Amendment) Act, 1985; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2 - Order 23, Rule 1

Appeal No. : Appeal No. 224 of 1991 in Writ Petition No. 1568 of 1984, Appeal No. 238 of 1991 in Writ Petition No

Appellant : State of Maharashtra and ors.

Respondent : M.S. Builders (Private) Limited and anr.

Advocate for Def. : D.J. Khambata, Adv. and ;G.S. Patel, Adv. i/b., ;D.N. Nanavati, Adv. in A. No. 238, 224/1991 in W.P. No. 198 of 1985 with W.P. No. 2134 of 1986, ;S.T. Tijoriwala and ;S.N. Vimadalal, Advs. in Appeal N

Advocate for Pet/Ap. : P.D. Anklesaria, Adv., ;L.C. Chogle, Govt. Pld. for appellants in A. Nos. 238, 224, 275 and 551, 1031/1991, ;A.R. Kini, Adv. in A. Nos. 275 and 551 of 1991, ;S.T. Tijoriwala and ;S.N. Vimadalal, Advs

Judgement :

S.P. Kurdukar, J.

1. These two appeals and other connected matters which were heard together raise common question of law under the [Bombay Stamp Act, 1958](#). We heard advocates for parties in all these matters and we propose to dispose of them by this common judgment.

2. The common question of law raised in all these matters is as to whether a consent decree whereunder title to immovable property is conveyed falls under the definition of 'conveyance' under section 2(g) of the [Bombay Stamp Act, 1958](#) - hereinafter referred to as 'the Act', or an 'instrument' under section 2(1) of the Act or such consent decree falls outside the ambit and scope of the definition of 'conveyance' or 'instrument' under the Act. According to the appellants (State of Maharashtra and Others) consent decree is clearly covered by the definition of 'conveyance' under the Act or at any rate an 'instrument' falling under the definition of section 2(1) of the Act. According to the respondents 1 and 2 - the writ petitioners, the consent decree does not fall either in the definition of 'conveyance' or 'instrument' under the Act. This is the main controversy which requires to be considered in these matters.

3. The consent decrees in all these matters are almost identical and for the purpose of this judgment, we will set out the relevant facts in Appeal No. 238 of 1991. This appeal arises out of a decision dated 10-12-1990 rendered by a learned Single Judge in Writ Petition No. 198 of 1985. The learned Single Judge while construing the definition of 'conveyance' under section 2(g) and 'instrument' under section 2(1) of the Act, held that the consent decree does not fall in any of these definitions and therefore, such a consent decree is not liable for payment of stamp duty. Learned Single Judge drew support to his interpretation from the decision of this Court in Sharanbasappa Tippanna Indi v. Sanganbasappa Sridramappa Sahapur and others, A.I.R. 1935 Bom. 256 : 37 Bom.L.R. 246. Consequently the learned Single Judge allowed the writ petition. It is this judgment of the learned Single Judge which is sought to be challenged in this appeal.

4. M/s. Ruby Sales and Services Private Limited 1st respondent-writ petitioners (plaintiffs) on 17th April, 1984 obtained a consent decree in Suit No. 321 of 1984

against Mukesh Dehyabhai Patel and others. It was a suit filed by the plaintiffs against the defendants for specific performance of the agreement for sale dated 18th October, 1982. On the basis of the consent terms filed by the parties in Court, the Court on 17.4.1984 passed a decree (consent decree). We may reproduce some of the recitals in the consent decree which have got bearing upon the controversy raised before us. Consent decree is at pages 19 to 25 of the compilation, and it recites, '...and the suit being this day called on for hearing and final disposal and the plaintiffs and the defendants appearing by their respective advocates and at this stage the parties hereto through their advocates consenting to the following order and decree, this Court by and with such consent both order and decree that sale dated 18th day of October, 1982 being Exhibit `B' to the plaint and do grant, sell, convey, assign, transfer, release and assure in favour of the plaintiffs, the immovable property comprising of the pieces or parcels of land...' '...And this Court by and with such consent both record that on or before execution of the consent terms herein, the plaintiffs have paid to the defendants and the defendants have received from the plaintiffs the sum of Rs. 9,55,000/- (Rupees Nine Lakhs Fifty Five Thousand) being the full amount of the agreed purchase price of the said property and the defendants do and each of them both hereby admit and acknowledge receipt of the said agreed purchase price of the said property more particularly described in Exhibit `A' to the plaint being the same property as described in the Schedule hereto and do hereby acquit, release and discharge the plaintiffs from payment thereof and this Court by and with such consent both further record that the defendants do and each of them both for themselves and for their respective heirs, executors and administrators declare that they have now no right, title, interest, claim or demand of any kind or nature whatsoever against the plaintiffs in respect of the said property more particularly described in the Schedule hereto or any part of portion thereof and in respect of the purchase price of the said property or portion thereof and this Court by and with such consent both order and decree that this decree do operate as the conveyance from defendants in favour of the plaintiffs in respect of the said property more particularly described in Exhibit `A' to the plaint...And this Court by and with such consent both further record that prior to the execution of the consent terms herein the defendants have handed over to the plaintiff complete vacant

possession of the said immovable property more particularly described in Exh. 'A' to the plaint.'

From the above recitals in the Consent Decree there can be no manner of doubt that the parties to the transaction and the suit agreed that this Consent Decree shall operate as the conveyance from the defendants in favour of the plaintiffs in respect of the suit property more particularly described in Exh. A to the plaint. It is also not contested before us by the respondents that this Consent Decree does operate as a conveyance. We may therefore, proceed on the footing that the consent decree operates as a conveyance in favour of the plaintiffs-first respondent-writ petitioners.

4-A. As indicated earlier the material and relevant recitals in the consent decree in all these matters are almost identical except description of the property, parties, consideration and date of consent decree. Each of the consent decree does record that the consent decree operates as a conveyance in favour of the plaintiffs-purchasers. With this background we may now advert to the provisions of the Act to find out whether or not such consent decrees fall within the definition of 'conveyance' section 2(g) or, 'instrument' section 2(1) and consequently liable or not for stamp duty under the Act.

5. Mr. Chogle learned Government Counsel argued on behalf of the Government-appellants in Appeal No. 238 of 91, and the same arguments were adopted by other learned Government pleaders in other matters. Mr. Chogle assailed the impugned judgment of the learned Single Judge on various grounds. He firstly urged that when under the consent decree parties accepted the position that the consent decree operates as the conveyance, it would not be open to them now to content contrary and say that such a consent decree falls outside the definition of conveyance under section 2(g) of the Act. Alternatively Mr. Chogle urged that at any rate the consent decree is an instrument as defined under section 2(1) of the Act and consequently such a consent decree is liable to the stamp duty under Entry 25(a) of Schedule 1 of the Act. The learned Government Counsel further urged that amended definition of section 2(g) and in particular, Clause (iii) is added by way of clarification. Consistent with the object of the amending provisions, the

consent decree in question is liable for stamp duty under the Act. The respondents supported the impugned judgment and their arguments in that behalf will be referred to at appropriate places.

6. At the outset it may be stated that definition of conveyance under section 2(g) came to be amended by Maharashtra Act No. 27 of 1985. This amendment was brought into force on 10-12-1985. The unamended definitions of the words 'conveyance' and 'instrument' under the Act are as under:----

'2(g) 'Conveyance' includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1;'

'2(1) 'Instrument' includes every document by which any right or liability is, or, purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt'.

The definition of 'conveyance' under section 2(g) came to be amended by Maharashtra Act No. 27 of 1985. However the definition of 'instrument' remained unchanged. The amended definition of the word conveyance under section 2(g) reads as under:

'Conveyance' includes,

(i) a conveyance on sale,

(ii) every instrument, and

iii) every decree or final order of any Civil Court, by which property, whether moveable or immoveable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I.'

From this amended definition of word 'conveyance' it is clear that the Legislature has by inserting sub-clause (iii) to Clause (g) of section 2 covered every decree or final order of any Civil Court by which property whether moveable or immoveable,

or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos. Since the consent decrees passed in all these matters are prior to Amendment Act (Maharashtra Act No. 27 of 1985), a serious argument was advanced before us on behalf of writ petitioners that this amendment has introduced a new provisions by substitution and, therefore, it is not by way of clarification. In the light of the above provisions and contentions raised before us we will have to find out as to whether consent decree falls within the definition of 'conveyance' on sale or 'instrument' as defined under the Stamp Act.

7. Mr. Chogle urged that the consent decree is a conveyance within the meaning of section 2(g) of the Act even prior to its amendment on 10-12-1985 by Maharashtra Act No. 27 of 1985. Consent decree falls within the definition of conveyance even prior to 10-12-1985, as well as within the definition of instrument which has remained unchanged even after Maharashtra Act No. 27 of 1985. Mr. Chogle sought to draw support from the recitals in the decree. According to the learned Counsel it was a suit for specific performance of an agreement for sale. In the said suit the plaintiff prayed that defendants be ordered and decreed to specifically perform the said agreement to sell and execute the conveyance. In this suit the defendants who were the vendors consented to sell, convey, assign, transfer, release the title in favour of the plaintiffs of the immoveable property (the subject matter of the suit). The very intrinsic terms in the consent decree provide, inter alia, that the decree shall operate as a conveyance and that the defendants declare that the plaintiffs are the sole owners. the decree also recorded an acknowledgment on the part of the defendant of payment of full consideration of Rs. 9,55,000/- and handed over the complete vacant possession of immoveable property. He further urged that since all the ingredients of transfer are provided in the consent decree and more particularly as the consent decree itself provided that it shall operate as a conveyance such a decree cannot be construed otherwise than a conveyance in view of plain meaning and intentment of the words in the consent decree. It will not be open to either party to contend that the consent decree does not operate as a conveyance. Parties approached the Court to put its imprimatur and seal on the consent terms. Thus having accepted the consent decree as a document of conveyance the definition of conveyance under section 2(g) of the Act would cover such decrees as conveyance even prior to

amended provisions (Maharashtra Act No. 27 of 1985).

8. It was then submitted by Mr. Chogle that definition of the words 'conveyance' as well as 'instrument' are inclusive definitions and the word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases as occurring in the body of the statute. When it is used those words and phrases must be construed as comprehending not only such thing as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include such document which has positive effect of conveying the immoveable property as absolute owners. Miss Ankalesaria, the learned Government Counsel strongly emphasised the object of inclusive definition to include the consent decrees in question. She relied upon the decision of the Supreme Court in *C.I.T.A.P. v. M/s. Taj Hotel, Secunderabad*, : [1971]82ITR44(SC) . The definition of the word 'conveyance' is an inclusive definition and it opens with the word, 'includes a conveyance'. In this reported decision section 10(5) of the Income-tax Act, 1922 fell for consideration. Section 10(5) provides, inter alia, that in sub-section (2), 'plant' includes 'vehicles, books, scientific apparatus and surgical equipment purchased for the purpose of the business, profession or vocation.'

While construing true meaning and scope of the word 'includes' used in the statute, the Supreme Court in paragraph 6 has observed as under:-

'In the present case, section 10(5) enlarges the definition of the word 'plant' by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to 'plant' is wide. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word 'include' is also susceptible of other constructions which it is unnecessary to go into.'

Relying upon those observations Miss Ankalesaria urged that in some of the statutes the word 'include' is not used and the statutes use the phrase, 'that is to say'. The object in using such phrase is to make clear and fix the meaning of what is to be explained or defined. Such words are not used as a rule to amplify a meaning while removing a possible doubt for which purpose the word 'include' is generally employed. The Supreme Court in *C.I.T.A.P. v. M/s. Taj Hotel*, (supra) has clearly observed that the word 'includes' is used to amplify meaning while removing a possible doubt.

Miss Ankalesaria also drew our attention to another decision of the Supreme Court in *State of Tamil Nadu v. M/s. Pyare Lal Malhotra* : 1983(13)ELT1582(SC) , where the Supreme Court was construing the ambit of expression 'that is to say'. The case arose under the Sale Tax Act and section 14 of the Central Sales Tax Act, 1956 fell for consideration which used the phraseology in section 14(4) to define 'iron and steel' 'that is to say' pig iron and iron scrap etc. The Supreme Court reproduced the meaning of the word, 'that is to say' as defined in Stroud's Judicial Dictionary, 4th Edition, Volume 5 at page 27 as under:---

'That is to say - (1) 'That is to say' is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties:

(1) it must not be contrary to the principal clause;

(2) it must neither increase nor diminish it;

(3) but where the principal clause is general in term it may restrict it; see this explained with many examples, *Stukeley v. Butler*, Hob, 1971.

The Supreme Court then observed, 'The quotation, given above, from Stroud's Judicial Dictionary shows that ordinarily, the expression 'that is to say' is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word 'includes' is generally employed. In unusual cases, depending upon the context of the words 'that is to say' this expression may be followed by illustrative instances.'

Relying upon these observations of the Supreme Court Counsel urged that the amendment incorporated by Mah. Act No. 27 of 1985 to the definition of 'conveyance' is by way of clarification and in order to clarify what was implicit in the provisions as it existed prior to amendment. The amendment therefore, is by way of clarification of an ambiguous provision. By reading the amended provision Court can construe the unamended provision. To support this submission Miss Ankalesaria relied upon the decision of the Supreme Court in Thiru Manickam and Co. v. The State of Tamil Nadu : [1977]1SCR950 . It is sufficient to reproduce the last headnote which reads as under :

'An amendment which is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision, even though such amendment is not given retrospective effect. (See para 10 of the judgment).

9. In view of the law laid down by the Supreme Court as regards the interpretation of word 'include', Government pleader urged that inclusive definition of word conveyance in section 2(g) prior to the Amendment Act, (Maharashtra Act No. 27 of 1985) was wide enough to cover the case of consent decree under which property was transferred or conveyed and particularly when the decree like the present ones themselves provided that 'decree do operate as the conveyance from defendants in favour of plaintiffs'. Maharashtra Act No. 27 of 1985 was enacted with a view to set as naught any doubt and to clarify and make more clear and explicit what was already included in the unamended definition of conveyance. Government pleader therefore, urged that the unamended definition of conveyance covered all cases of sale and transfer of immoveable property whether by decree of Court or by instrument inter vivos executed outside the Court proceedings.

Alternatively it was urged by Government pleader that the consent decree must fall within the meaning of 'instrument' defined under section 2(1) of the Act. This definition is again an inclusive definition opening with the words, 'instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded but does not include a bill of exchange, cheque, promissory note, bill of lading etc. 'Learned

Government pleader urged that if one looks at the consent decree it is clear that the right in the immoveable property is transferred in favour of the plaintiffs and by the very same document ownership rights of the defendants were extinguished and if this be so the consent decree is an instrument within the definition of 'instrument'.

10. Miss Ankalesaria while expanding this argument relied upon the definition of the word 'instrument' given in Stroud's Judicial Dictionary of Words and Phrases and it reads as under:-

'An instrument is a writing and generally imports a document of a formal legal kind, semble, the word may include an Act of Parliament...Conveyancing Act 1891 (44 and 45 Vict.c.41), 3.2(xiii), instrument includes deed, will inclosure, award and Act of Parliament...'

In support of this submission Miss Ankalesaria drew our attention to the decision of the Supreme Court in Mohan Chaudhari v. Chief Commissioner of Union Territory of Tripura, : 1964 CriLJ132 . The Supreme Court ruled that the order passed by the President on 3rd November, 1962 suspending the petitioners right to move the Court is an instrument.

In this reported decision the Supreme Court was considering the expression 'instrument' used in section 8 of General Clauses Act and in that context it was held that President's order is an instrument issued in exercise of constitutional powers. Applying the same analogy Miss Ankalesaria urged that definition of 'instrument' under the Bombay Stamp Act is an inclusive definition and is wide enough to include all such documents. She further urged that the word 'instrument' used in the Stamp Act needs to be given wide meaning to include even award made by Industrial Court. See Purshottam v. V.E. Potdar, A.I.R. 1996 S.C. 856 Government Pleader therefore, urged that the word 'instrument' under the Stamp Act is used in a wide sense and, therefore, comprehensive interpretation must be given to the said word.

11. Mr. Khambatta learned Counsel appearing for the respondents (writ petitioners) while supporting the impugned judgment firstly urged that the definition

of the word 'conveyance' in section 2(g) of the Act as it stood prior to the amendment is no doubt an inclusive definition but it is applicable to a conveyance of sale and every instrument by which property whether moveable or immoveable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. Therefore, a conveyance of sale and every instrument by which immoveable property is transferred is referable to a transfer inter vivos. The decree or an order of a Court is not an instrument within the meaning of term 'instrument' under section 2(1) of the Act in so far as it is a determination and/or adjudication of the legal rights or status of parties appearing. Decree in question therefore, does not create or transfer any rights or obligation. It recognises and given legal in section 2(2) of the Code of Civil Procedure, which defines decree as under:

'the formal expression of an adjudication which, so far as regards the Court making it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.'

He, therefore, urged that a decree or final order of a Civil Court by itself does not inter alia create or transfer any right or liability. It determines and decides the legal status, juridical relations and position at law of the parties before the Court by adjudicating upon the lis between them. The rights and liabilities of the parties are dependent upon and created/transferred by the legal incidents attaching to the parties, their actions and the transactions between them. The decree or final order determines there legal incidents, accords to them their attendant legal consequences and formally expresses the result. Alternatively, he urged that the decree in question vested full ownership and title in the respondents (writ petitioners) by adjudicating upon and expressing the legal result inter alia of the fact that the respondents had made payment of the full purchase price and had received possession of the property. The decree adjudicated and determined the legal effect of these factors which, by their operation, entitled the respondents to full and complete title and ownership. The decree formally expresses such rights. The decree did not create or transfer this legal right to the respondents. All that the decree has done is that the respondents-writ petitioners, were in law deemed to be the owners of the property by virtue of the aforesaid factors. The decree put a seal

of the Court on the position existing in law as to the legal status of the respondents. If, under the Stamp Act, the label has to be ignored, then merely because the decree used the words 'do operate as a conveyance', by itself did not in any way detract from or alter the aforesaid position in law. The decree gave effect to the consequential position in law, and it is a formal order of the Court. Wherever the Legislature intended to include a final order of the Civil Court to be covered by the provisions of the Act they have provided so and in this behalf he drew our attention to the definition of the word 'instrument of partition' in section 2(m) of the Act. He also urged that under the Stamp Act the tax is on the instrument and not on the transaction. Mr. Khambatta also urged that the decree in question cannot be termed as a conveyance because the definition of the word 'conveyance' presupposes a transfer inter vivos. The decree is therefore, not a conveyance since there is no transfer inter vivos and, therefore, consent decree would fall outside the scope of conveyance defined in section 2(g) of the Act. The consent decree also cannot be an instrument since there is no reference to a consent decree in the said definition. Legislature in its wisdom has not covered consent decree by the definition of the word 'instrument' and whenever they intended to cover such decrees or orders of the Civil Court they have made express provision; for instance 'instrument of partition' in section 2(m) of the Act. He therefore, urged that the consent decree is neither an instrument nor a conveyance.

12. In order to be covered by definition of 'instrument' under section 2(1) of the Act, rights and liabilities must flow from the documents and such instrument must be an inter vivos. Since no instrument as such is executed a consent decree is therefore, not a conveyance under section 2(g) or an instrument under section 2(1) of the Act.

13. Mr. Khambatta then urged that a decree of the Court is not a conveyance and for this proposition he relied upon the decision of this Court in I.L.R. (1881) Bom. 554, Dhondiba Krishnaji Patel v. Ramchandra Bhagvat. It was a case where suit for specific performance of moveable and immoveable property was filed and a decree for specific performance was made. The Division Bench observed:

'Without any conveyance the vendee is deemed to be, under the decree and the payment or tender of the purchase-money, full owner, and, as such, entitled to possession, and to maintain an action in the nature of ejectment against all persons bound by the decree and obstructing his right to possession.'

Defendants-vendors contested the suit. The Court held that since the vendor had refused to execute the conveyance a suit came to be filed for specific performance and it was decreed. The plaintiff-vendee got title to the moveable and immoveable property under the decree and not on consent. The Division Bench had no occasion to consider the provisions of the Stamp Act and in particular the definition of 'conveyance' and 'instrument'. These observations, in our opinion, are restricted to the facts of that case and there was no occasion for Their Lordships to consider the provisions of the Stamp Act. This judgment, in our opinion, therefore, does not take the respondents' contention any further.

14. Mr. Khambatta also urged that words used in the decree, 'as it amounts to conveyance' are re-fondant and that full title vests in the vendee on the basis of adjudication in the decree. Full title is not vested because of the words 'it amounts to conveyance'. Decree only recognises the plaintiffs as full owners. Mr. Khambatta also urged that the word 'includes' is not always and invariably used as a word of extension. It can also be used to signify exhaustiveness in definition. In this connection he drew our attention to the decision of the Supreme Court in *S.G.R. Tiles Manufacturers v. State of Gujarat*, : [1977]1SCR878 . He also drew our attention to various other authorities and in particular the decision of this Court in *Sharanbasappa Tippanna Indi v. Sanqanbasappa Sidramppa Shahapur and others*, A.I.R. 1935 Bom 256 which will be discussed little latter.

15. After going through the various authorities cited before us we are of the opinion that the amendment introduced by Maharashtra Act No. 27 of 1985 is merely a declaratory and not a remedial one. The interpretation to the word 'includes' given by the Supreme Court in *CIT.A.P. v. M/s. Taj Hotel (supra)*, more appropriately applies which gives the interpretation of word 'includes' and we accept the same. We are in agreement with the interpretation sought to be placed by the learned Government Pleader. In our opinion, having regard to the recitals in

the consent decrees that the consent decree do operate as a conveyance, such consent is covered by the definition of 'conveyance' under the Act and at any rate a consent decree which fulfils all the requisites of transferring right, title and interest under the consent decree in favour of the respondents - writ petitioners - (vendees) in an instrument under section 2(g) of the Act. Such a consent decree would therefore, be liable to stamp duty under Entry 25 of Schedule I of the Act.

16. At this stage it would be appropriate to refer to the decision of this Court in *Sharanbasappa Tippanna Indi (supra)*. The learned Single Judge has heavily relied upon this judgment to come to the conclusion that consent decree in question is not an instrument and, therefore, exempt from the stamp duty under the Act. It was a reference made by the First Class Subordinate Judge of Bijapur under section 60 of the Stamp Act. This reference was heard by the Full Bench. The question that arose before the Full Bench was as to whether a consent decree creating a charge on the immoveable property which was not the subject matter of the suit requires a stamp. The suit was filed for recovery of loan advanced. The suit was compromised in terms of the compromise and the defendants agreed that certain sum was to be paid by them and that sum was charged on immoveable property belonging to the defendants and consequently a charge was created by consent of defendants. The immoveable properties were not the subject matter of the suit. The question that fell for consideration was as to whether consent decree is an instrument whereby for the purpose of securing existing or future debt one person creates in favour of another a right in respect of specified property. Under the decree charge was created and this was by reason of agreement between the parties. On these facts the Full Bench observed as under :---

'It is argued that the consent decree is an instrument whereby for the purpose of securing an existing or future debt one person creates in favour of another a right in respect of specified property. No doubt if that definition stood alone there would be some force in the contention because the decree is only passed by reason of the agreement of the parties, and it may be argued that the inclusion of that agreement in a decree of the Court is a mere matter of machinery; but at the same time taking the language literally, it is the decree of the Court, and not the agreement of the parties, which actually creates the charge. There are, however,

certain other provisions in the Act which throw some light on the question. Reliance is placed by the learned advocate for the applicant on the fact that in sub-section (15) of section 2 of the Act, it contained a definition of 'instrument of partition', and that definition includes, not only the case of a partition out of Court, but also a final order for effecting a partition passed by any Civil Court. It is said that if the definition of 'mortgage-deed' had been intended to include a decree of a Civil Court, the definition would have so provided as it does in the case of definition of an 'instrument of partition'. I do not think there is much force in that contention because the order of the Court for effecting a partition referred to in sub-section (15) may or may not be consent order, and a special provision would clearly be required to include an order for partition made in invitum. In the case of a consent decree creating a charge, if the definition of 'mortgage-deed' is wide enough to include such a decree, then there is no object in having a special definition dealing with such decrees--- That no doubt is true, and if the definition of a 'mortgage-deed' included in clear terms a decree creating a charge, I should agree that the fact that such a decree is not included in section 29, would be irrelevant; but in as much as the definition of 'mortgage-deed' is certainly not clear in including a consent decree, the fact that such a consent decree is not contemplated in section 29 as being a 'mortgage-deed' is, I think a material circumstance which goes to show that such a decree was not intended to be included in the definition of as mortgage deed. There are no other provisions in the Act which are relevant. An Act imposing taxation always has to be construed strictly, that is to say, the Crown has to show that the tax in question is imposed upon a fair construction of the language used, and having regard to the fact that the schedule does not expressly refer to any decree of a Court except a decree for partition, and to the fact that the definition of 'mortgage-deed' does not in terms clearly include a consent decree creating a charge, coupled with the fact that section 29 seems to indicate that such a consent decree was not intended to be included in such definition, I think we must hold that decrees of this nature are not liable to stamp duty and we must therefore, answer the question in the negative.'

17. Miss Ankalesaria submitted that this decision of Full Bench may not hold the field now in view of the development of law over the years particularly in view of the decision of the Supreme Court in *Madhav Rao Scindia v. Union of India*, :

[1971]3SCR9 . She urged that legal rights secured by a party by enforcement of law (by approaching a Court and obtaining decree) are now recognised as a species of property for the purposes of Article 31 of the Constitution. She drew support to this proposition from the judgement of the Supreme Court in Delhi Cloth and General Mills Co. Ltd. v. Rajasthan State Electricity Board, : [1986]1SCR633 . Relying upon these decisions Miss Ankalesaria urged that the age old concept appearing in the judgement of the Full Bench Sharanbasappa v. Sanganasappa, (supra) that even consent decree is nothing more than adjudication of the rights of the parties does no longer survive. In the present matters plaintiffs approached the Court and obtained a decree in their favour by virtue of which they secured title in immoveable property and by reason of such a decree they got an absolute title. In these circumstances such consent decree must amount to a conveyance of such property covered by the decree and, therefore, there is a transfer of property from the vendors defendants to the plaintiffs under a decree which must operate as a conveyance. She also tried to distinguish the Full Bench judgment Sharanbasappa v. Sanganasappa, (supra) on the ground that the definition of 'mortgage-deed' in section 2(17) now section 2(p) of the Act does not mention the inclusion of a decree or final order of a Civil Court, unlike a deed of partition in section 2(15) now section 2(m) of the Act, and, therefore, the Legislature did not intend to include a decree or a final order in the definition of a 'mortgage-deed', for purposes of stamp.

Instrument of partition has been defined in section 2(m) and it specifically refers to the rights of the parties to effect partition, by approaching a Court of law and obtaining a decree, by an award made in arbitration or by execution an instrument recording the terms. In other words parties can create or bring about a partition of property, inter alia, by approaching a Court of law and obtaining a decree. There is a clear distinction from the 'instrument of partition' and 'mortgage-deed' as defined in section 2(p) of the Act, and section 2(l) does not contain in its definition the inclusion of a final order or decree of a Court. Partition can be created through a Court of law but mortgage cannot be created through a Court. Reference to section 58 of the Transfer of Property Act in this behalf is material. For a document of mortgage it has to be inter vivos and no Court can create a mortgage unlike a deed of partition. The Full Bench rightly held that a Civil Court creating a mortgage

was out of the purview of the Stamp Act and no stamp duty was possible on such decree. She therefore, urged that the law laid down by the Full Bench in *Sharanbasappa v. Sangarbasappa* (supra) in view of the objects in the Stamp Act and the property under Article 31 of the Constitution is no more a good law and on the consent decree in question stamp duty must be paid in terms of Entry 25 of Schedule I of the Act.

18. As against this Mr. Khambatta urged that the decision of the Full Bench A.I.R. 1935 Bom 256 still holds the field and the said decision is binding upon the Bench of two Judges. From the impugned judgment it appears to us that various angles of law were not presented before him and consequently the learned Single Judge based his judgment on the observations contained in A.I.R. 1935 Bom 256 (supra), that a consent decree is outside the purview of the Stamp Act.

19. Mr. Chogle while distinguishing the decision of the Full Bench A.I.R. 1935 Bom. 256 of this Court urged that the consent decree creating a charge of immoveable property which was not the subject matter of the suit does not amount to mortgage-deed within the meaning of Indian Stamp Act. It is, therefore, not an authority for the proposition that where immoveable property is transferred under consent decree does not amount to conveyance within the meaning of the Bombay Stamp Act. Mr. Chogle further urged that what weighed with the Full Bench was that in the decree creating a charge no person can draw or make or execute such instrument. On the other hand the Bombay Stamp Act makes a distinction between those instruments which are mentioned in section 30(a) and the conveyance and lease which are mentioned in Clause (b) of section 30. Section 30 provides that in the absence of agreement to the contrary the expense of providing proper stamp shall be borne in the case of instruments falling under certain articles of Schedule I namely Administration Bond, Indemnity Bond. Mortgage deed, Release, Security Bond, Settlement etc. The expenses of providing the stamp shall be borne by the person drawing or making such instrument. The case of conveyance falls in Clause (b) and not in Clause (a), which provides that expense in the case of conveyance shall be borne by the grants.

20. After giving our careful thought to the vexed question, we are of the opinion that the decision of the Full Bench of this Court in Sharanbasappa v. Sangarbasappa (supra) is clearly distinguishable and at any rate the Full Bench had no occasion to consider consent decrees like present ones whether such decrees were to operate as a conveyance. We are, therefore, of the opinion that the judgment of Full Bench is clearly distinguishable on facts.

21. Mr. Khambatta alternatively urged that assuming on demurrer that vesting of title is by decree of Court but it is not by inter vivos. The word 'inter vivos' used in section 2(g), which defines the conveyance has got a definite meaning and it means during lifetime. He also drew our attention to the definition of 'inter vivos' contained in Black's Law Dictionary, 6th Edition, page 821. Mr. Khambatta in support of his contention that the consent decree is not a conveyance inter vivos sought to rely upon the decision of the Madras High Court in T.A.K. Mohideen Pichai Taraqanar v. Tinnevely Mills Co. Ltd., A.I.R. 1928 Mad 572 and New Central Jute Mills Co. Ltd. v. Rivers Steam Navigation Co. Ltd. : AIR1959 Cal352 . Both these decisions are rendered under the Companies Act and the provisions thereof are distinct and clearly distinguishable. Both these decisions therefore, would not advance the case of the respondents. Mr. Khambatta also relied upon the decision of the Supreme Court in Girdharilal v. Hukam Singh : AIR 1977 SC129 , and urged that terms of compromise operating as transfer and not providing for execution of deed of transfer under decree in terms of compromise- Unless terms of compromise decree necessarily involved execution of deed of conveyance, registered deed not necessary for its enforcement. This decision is rendered under the Rajasthan Premises (Control of Rent and Eviction) Act and this decision, in our opinion, is clearly distinguishable and does not apply to the facts of the present case.

22. As regards the contention of Mr. Khambatta that consent decree in question is not an instrument, we do not see any force in this submission. What label attached to it is not germane but the description contained in the instrument is a decisive factor. In the consent decree in question parties agreed that the consent decree do operate as a conveyance as if this be so such a consent decree is an instrument and liable for stamp duty under Entry 25(a) of Scheduled 1 of the Act. Mr. Chogle

rightly drew our attention to the decision of the Full Bench of the Madras High Court in Chief Controlling Revenue Authority, Board of Revenue, Madras v. R. Thirthalu : AIR1973 Mad1 . The Full Bench of the Madras High Court held that the affidavits which were intended to convey a property amount to instrument under section 2(10) of the Stamp Act, 1899. The Madras High Court observed:

'...Though it is an inclusive definition, it is clear that the essence of a conveyance is transfer of property or an interest therein, whether moveable or immoveable, and the transfer should be inter vivos. That the recital in the two documents amounted to a transfer is apparent. No doubt, it is mentioned in the document that possession of the properties has been delivered earlier, but that would not by itself be enough to vest title in the company. The intention of the deponents of the two affidavits was to declare that the company was the owner and that the deponents divested themselves of any title to the properties. It is not necessary that a document should use always the word 'transfer' or 'assign' in order to constitute such transaction...'.

The Madras High Court in its conclusion held that the two documents together constitute a transfer and a conveyance within the meaning of section 2(10) and are chargeable to duty under Entry 23 of the Schedule I to the Stamp Act.

23. Mr. Chogle also drew our attention to the judgment of the Calcutta High Court in Nazar Ali v. Indra Kumar Sutar : AIR1929 Cal462 wherein it was held that the lease which was embodied in a decree is compulsorily registerable under section 17(2) of the Registration Act.

24. From these decision it is clear that for determining the real character of the instrument label is not the only decisive factor but contents thereof would be more relevant. If one looks at the consent decree in question, it is clear that it is an instrument under which title has been passed over to the respondents writ petitioners (plaintiffs) and if this be so such a document would be covered under the definition of instrument under section 2(1) of the Act.

25. Mr. Khambatta then urged that the particular construction of a statute or section by the officers of the Stamp Department has been followed till 1985 and

the same may be accepted as true construction. In support of this submission drew our attention to Short Notes by Mr. V.T. Athavale, Superintendent of Stamps (retired) on Instrument, which recites:

'only a decree directing partition is made expressly liable to stamp duty but other decrees are not liable to stamp because they are orders of the Court and do not come into existence by an act, execution or consent of the parties...'

This contention was not taken up before the learned Single Judge as well as in the writ petition. Despite this fact we are of the opinion that the interpretation of the statutory provision given by V.T. Athavale in his book - Bombay Stamp Manual - when tested in Court of law and found to be not correct, the said opinion notwithstanding held by the department would not bind the Court as well as the State of Maharashtra. The interpretation of the word 'instrument' has been raised before the Court and if the Court does not agree with the interpretation given by Mr. V.T. Athavale, the interpretation given by the Court must prevail.

26. The last question that requires consideration is as regards amendment by Maharashtra Act No. 27 of 1985. Mr. Chogle urged that amendment is merely a declaratory and by way of clarification and it is not a new provision. In fact we are really not concerned with the amended provision because the decrees in all these cases were passed prior to 10th December, 1985. The learned Government Pleader relied upon the amendment only to impress upon the Court with reference to the statement of objects that such a clarification was needed because of some ambiguity, in the definition of words 'conveyance' and 'instrument'. We were taken through the Statement of Objects and Reasons of the amending Act. It appears that this was necessitated because of the judgment of the Supreme Court in *Narandas Karandas v. S.A. Kamatam*, : [1977]2SCR341 . The Supreme Court held that a conveyance on sale meant an absolute transfer of ownership and not limited interest in the property. The substantive part of the definition of 'conveyance' is substituted by new section 2(g) and it lays down the even transfer of limited interest in property inter vivos would be a conveyance on sale or an instrument as the case may be.

27. Mr. Khambatta urged that Indian Stamp Act is a Central Legislation. Despite the judgment of the Supreme Court in the year 1977, although the Indian Stamp Act and amended in 1980, but no such amendment was suggested to the definition of conveyance in section 2(g) of the Act. He also urged that the State of Maharashtra amended section 2(g) of the Act only in the year 1985 and this only shows that they wanted to remedy the loopholes in section 2(g) of the Act and consistent with that Maharashtra Act No. 27 of 1985 used the word 'substitute' and by reason of amendment, section 2(g) of the Act has been totally recasted. Mr. Khambatta therefore, urged that this substitution amounts to remedial and it is prospective and not retrospective. Since the consent decrees were prior to the amendment, they are not covered by the amended provision and, therefore, such consent decrees are not liable for stamp duty under the Act.

28. As indicated earlier we have already said that the Maharashtra Act No. 27 of 1985 (Amendment) is not remedial one, but way of clarification and hence it cannot be said that it will be applicable prospectively and will not cover a consent decree prior to the date of 10th of December, 1985 (date of amendment).

All contentions raised by Mr. Khambatta do not appeal to us and the same are rejected for the reason recorded hereinabove.

29. Learned Counsel appearing in the connected matters for writ petitioners and/or respondents adopted the arguments of Mr. Khambatta. In addition to this Mr. Zaiwala, appearing in Writ Petition No. 1720 of 1985 for the petitioners sought to rely upon the doctrine of stare decisis. The submission of Mr. Zaiwala was that the decision of the Full Bench in A.I.R. 1935 Bom 256 (supra) was holding the field for more than five decades and if that be so there is no reason to take any other view in the matter of construction of section 2(g) and section 2(1) of the Act. This submission does not appeal to us because we have indicated earlier the decision of the Full Bench A.I.R. 1935 Bom. 256 is clearly distinguishable and the ratio of the said judgment does not hold the field in view of the various decisions of the Supreme Court giving different angles to the property rights under Article 311 of the Constitution. If we accept the doctrine of stare decisis propounded by Mr. Zaiwala, the result is grave in a sense that the transactions involving transfer of

immoveable properties of lacs and lacs of rupees covered by such consent decrees would fall outside the purview of the Stamp Act and consequently the State would lose a substantial revenue. It is therefore, not in the public interest to apply the doctrine of stare decisis. There will be encouragement to the parties not to convey the property by document of conveyance or an instrument but instead to approach the Court by a collusive suit and obtain a consent decree to operate as a conveyance for sale. This would clearly frustrate the object of the Stamp Act. It will also encourage collusive litigation which may be against public policy.

30. It is well settled that construction of the statute must be to advance the object and suppress the mischief, *S. Raghubir Singh Gill v. S. Gurcharan Singh Tohra* : [1980]3SCR1302 . It is also well settled that Court should not be deterred from changing a decision which is wrong or not in public interest. *Distributors (Baroda) Pvt. Ltd. v. Union of India*, : [1985]155ITR120(SC) .

31. Dr. D. Y. Chandrachud learned Counsel appearing in Writ Petition No. 1031 of 1990 urged that the Maharashtra Act No. 27 of 1985 clearly states that section 2(g) of the Act has been substituted. Substitution must operate prospectively. Whenever Legislature wanted to operate such amendment provision retrospectively they have so provided under the Act itself. He drew our attention to section 19 of the Amending Act. We are unable to subscribe to this contention.

32. In view of our conclusions recorded hereinabove impugned orders made by the learned Single Judge in respective appeals cannot be sustained. All these appeals are allowed with costs. Impugned orders therein are set aside. Rule granted in each of the writ petition to stand discharged with costs.

Rule in each writ petition shown in title of this judgment to stand discharged with costs.

It is however made clear that all these matters are disposed of on question of law relating to coverage of such consent decrees under the Act. This judgment does not preclude the remedy of an aggrieved party of internal appeal or appeals or revisions under the Act.

S.P. Kurdukar, J.

I concur with the judgment of my learned Brother Kurdukar, J.

2. The core question has been highlighted in the judgment. The factual details have been paraded elaborately; the contentions have been catalogued concisely; the legal positions and the judicial decisions have been dealt with exhaustively; the reasoning with its drive and direction has been given clearly; and the ultimate conclusion indicated cogently;

3. The importance of the question, and deference to Counsel's labour, prompt me to add some words of my own.

4. We are confronted with a consent decree, whose essential contents and prominent features have been already elaborated in the judgment of Kurdukar, J. In the pre 1985 situation does that document come within the net of Stamp Act, is the straight and simple question. The question is as clear as a pebble in the sea shore. All that is necessary is to examination closely and carefully not straying into the mires and marshes of unclear, unnecessary, and irrelevant areas of legal disquisition.

5. The enactment which we have to examine is, one which replaced an earlier Act made by the Parliament, just before the dawn of the country. A new world, a new environment, a new atmosphere was emerging into the industrial revolution. The winds of change blew over India. For a variety of historic reasons, those winds caused much of precipitation, in the Indian soul as well. An alien Government, eager to expand its revenue source, till then almost confined to the lands and the ryots, translated that idea into the Indian Stamp Act, 1899.

6. Fast changes took place in the political and administrative areas thereafter. Another half of a century, and India was free. Soon came the Constitution. It delineated clearly the legislative lists, and described in detail the legislative exercises permissible for the Central and the State. The State-Re-organization came about in 1956.

7. Stamp duty by and large fell into State field. (Entry of List of Schedule VII). Centre was in control of the sophisticated Commercial instruments, the promissory note, the Bill of Exchange and the like (vide Entry II in State List). Soon thereafter was enacted the [Bombay Stamp Act, 1958](#). The frontiers of the State were again altered later and many amendments were made to the Act. One substantial amendment was in the year 1985. We are not concerned with such post- 1985 cases.

8. Section 3 of the Act could be treated as the 'charging section'. Thereunder, instruments are made with chargeable with duty of the amounts indicated in Schedule I.

9. Schedule I contains the enumeration of instruments starting from 'acknowledgement' (Item I) and ending with 'warrant for goods' (Item 62). After Item 11, is given the term 'assignment. but without any assignment of a number.

'See Conveyance (No. 25), Transfer (No. 59) and

Transfer of Lease (No. 10) as the case may be.'

This is the direction contained therein. That takes us to the nearest of the indicated entries, 'conveyance' covered by Item 25. From the main category coming under Item 25, some exceptions have been carved out. One is 'conveyance specified in Clause (b)' of that entry; the other is 'transfer charged or exempted under Article No. 59'. We are not troubled by any overlapping of any of the entries there.

10. Does the document in question fall under that entry 'Conveyance' should then be the query. That would take us back to the definition term, section 2(g) already extracted in the Judgement of Kurdukar. J. The definition is an inclusive one. The legal literature on the interpretational exercise in relation to an inclusive definition has been exhaustively surveyed in the judgment. Nothing can be profitably added thereto.

11. The generality of the meaning of the word 'conveyance' is thus unaffected by the expansion of the term as attempted by the 'inclusive process'. Those specifically and expressly brought within its purview are :

(i) a conveyance on sale;

(ii) every instrument by which property is transferred inter vivos.

(In as much as , there is no argument about the document coming within any of the items 'otherwise specifically provided for by Schedule I', the latter part of the definition need not be specifically indicated in the present context. That explains for the omission of the concept in the immediately preceding sentence.)

12. All ingredients necessary to constitute a conveyance, as generally understood, prominently appear in the consent decree. To demonstrate :

The parties between whom the transaction has taken place; the essence of the agreement which had been reached between them; the specification of the consideration; the mode in which consideration is satisfied; the operative ness of the instrument, which on its own force, has transferred the title from one party to the other; the manner in which divestiture of title in the earlier order has been accomplished. These would be sufficient any ample, for postulating a chargeability of the instrument to Stamp duty under the enactment.

There is no escape route, even if the above premises, turns out to be wrong. It is not possible to wriggle out of the stronger and close grip made by words :

'Instrument by which property is transferred inter vivos'.

What is an 'instrument', in the context of commercial transactions and legal treatments.? There have been numerous occasions where that question has been asked, and answered. A century back, many aspects of that concept had been analysed and annotated upon. An 'award', for example, was acknowledged as coming within its amptitude. That view is a hint about the width of the term.

13. An instrument is a document. When will you call something a document? Contentions have gone even to the extent that a painting on a fabric would also be within the general understanding of that term.

It is unnecessary to go along that line. The Statute itself would give its dictionary in relation to the term in section 2(1). It includes 'every document by which any right

or liability is or purported to be created transferred
.....or recorded.' A consent decree is a document, tested by the parameters of the authoritative pronouncement of the Apex Court. See *Madhav Rao Scindia v. Union of India*, : [1971]3SCR9 . The type of consent decree before us, doubtless creates, transfers, extinguishes or records rights and liabilities of parties. Consequently, a consent decree, processes every attribute of the term 'instrument'.

14. As an instrument, it acts and affects instantaneously. Its operation is not postponed to a later point of time. It is live document, and taking effect between persons - natural or artificial who are alive at the relevant time. It is therefore, *inter vivos*. That being so, it is well within the inclusive part of the definition of 'conveyance' and 'instrument', as they existed prior to 1985, are sufficient and substantial enough, to take in with firm and forceful grip the 'consent decree', albeit brought about by a use (or even abuse) of the process of law.

15. The above reasoning process, steers clear of the contentions about the intended implications or effect of 1985 amendment. The definitions of 'conveyance'.

16. Much emphasis understandably was made on the decision of the Full Bench of this Court in *Sharanbasappa v. Sangnbasappa & ors.*, A.I.R. 1935 Bom 256. The Full Bench was obliged to give its view when a reference is made under section 54 of the Stamp Act. Whether simple or complicated, the question has to be answered by a Full Bench. The question which came up before the High Court, was not that complex. At a time when the country was having comparative peace, and simpler transactions centered around the land primarily in the agricultural sector, the questions had their own simplicity. With due reference and respect to the Bench which decided that case, it has to be noted that very many matters in relation to the scheme of the Act, or even legal principles , which are now available in the succeeding sixty five years, were not presented to the Court at that time. It is therefore, improper on our part, and unfair to the learned Judge who decided this case, to expand the implications of that decision into areas which would not have been in the contemplation of the Court.

17. By way of illustration it is only illustrative and not exhaustive - the strands of reasoning based on substantial principles of law discriminable in the decision of the Madras High Court, Chief Controlling Revenue Authority v. R. Thirthalu, : AIR1973 Mad1 , were unavailable to the Full Bench of this Court. The Madras decision rightly took note of the emphasis to be placed on the essence of the transaction, the ignoring or a recital about an anterior delivery of possession of the property, as contained in the document in question. The recital notwithstanding, the title in the property had not been divested from the prior owner. It had not yet vested in the purchaser. It was by that affidavit, that the deponents divested themselves of their title. The propositions propounded by the Madras High Court, in the background of the factual matrix are clear : the substance is to be examined; one need not unnecessarily search for familiar term like 'transfer' or 'assign' in the document, if it is otherwise effective to operate as a conveyance. If that could be the position in relation to an affidavit, the stronger could be the position in the case of a consent decree.

18. It was contended that, when there is a decree, it delineated the rights of the parties, and consequently, the consent decree does not emerge as the document by which the property is transferred. The clauses and contents of the consent decree have already been examined in the main judgment. On the text in the context, the consent decree is the only document by which the right is transferred. The recitals, clear and unambiguous, in relation to the extensive role played by the document in divesting the title from one and vesting it on the other, is traceable only to the consent decree. The imprimatur given by the Court notwithstanding , it is the true repository of the bargain and the only vehicle which transported and transferred the title.

19. It is unnecessary to have an exhaustive enumeration of the guidelines indicated by the decisions, or to have an appraisal of the first principles on the interpretation exercises. Courts have been always guided by the intent of the legislature. Courts have always taken such intent according to the necessity of the matter, and according to that which is consonant to reason and good discretion. 'That is a summary as attempted by Lord Halsbury, way back in 1890. See 1890 (15) AC 605 . While referring to Sixteenth Century Case in Stradling v. Margaw,

1560 1 Plowd 199 : 75 F.C.R. 305. To us it appears that the view taken by us in accord with the necessity of the matter , and consonant to reason and good discretion.

20. The turbulent times of the evening of the 20th Century, cannot be left unnoticed while evaluating the arguments advanced by both sides . The transactions before us and the parties thereto , also make us alive to the necessity of close scrutiny of all aspects. Mac Dowell's case has given a new direction in relation to interpretation of taxing statutes. Decisions which have not gone thus far, have also discountenanced shady deals arrived defeating the Revenue. No doubt, planning is permissible in business activities. Corporate bodies ,from very ancient times, have attempted to avoid taxes or duties , but by lawful means and honest transactions. The provisions for compulsory appointment of a statutory chaplain in ships of 900 tons and above was thus successfully over-reached by having the ships with tonnage fixed at 499 tons. That may be permissible. But then, parties cannot take advantage of dishonest deeds to defeat Inland Revenue', is the echo in English Courts, atleast from 1935. See *Alexander v. Rayson*, 1935 All.E.R. 185; *Wyld & others v. Silver*, 1963 (1) K.B. 169; *Inland Revenue Commissioner and another v. Rossminster Ltd. & related appeals*, (1980)1 All.E.R. 80. We notice that in this and the connected batch of cases (Appeal No. 238 of 1991 in Writ Petition No. 198 of 1985; Appeal No. 224 of 1991 in Writ Petition No. 1568 of 1984; and Appeal No. 395 of 1991 in Writ Petition No. 3693 of 1990), the parties are mostly 'Builders'.

In its historic perspective, we do appreciate the role of the 'Builders' and their activities, The efficiency of their organisation, the economy they practice, in man power and materials, the swiftness with which they build up brick or block by block, all elicit appreciation due to a dynamic entrepreneur. 'The Bombay Builder' was a publication which started in late 1860's. It has highly critical about the P.W.D. and about architects like Wilkins and Stevens and even against a great administrator like Crawford, the Municipal Commissioner of Bombay. The following passage parades their perspectives and anger:

'Bombay has at the present moment a chance of becoming at least in part a splendid city, a second Indian City of Palaces... Who is there is in the public Works Department who has the smallest artistic power, Or who even knows anything at all about architecture,'

(See 'The City of Gold' The biography of Bombay - by Gillian Tindall - page 235).

Though the publication 'The Bombay Builder' stopped the activities of the Bombay builders proliferated. To the extent of their activities and actions are brisk and - brilliant, they may earn the laurels in addition to attractive profits. When they give the slip and tread on slushy paths, all statutory and other authorities the Court included, would chide or censure them. A manipulation of the type of consent decree', would not pass muster with a vigilant Court. The courts have necessarily to examine clearly and pronounce categorically as to whether here is a shady deal or a sinister manipulation. We regret the 'Consent decree' in this batch and the flat ownership agreements in the connected batch of cases, present a designed distortion of actual facts and an attempted - unsuccessful as it ultimately turned out - facade of a fragile make.

There is no scope at all for invoking the doctrine of stare decises, in the present case. The decision Sharanbasappa v. Sangabasappa, A.I.R. 1935 Bom. 256, is not one interpreting the term 'conveyance', instrument' or 'document', as is the position in the case before us. There is no case of an authoritative pronouncement on the interpretation of a 'consent decree', as in the present case. Obviously, therefore, there is no such case or such a decision standing for a very long period or unchallenged.

The compilation of the stamp attempted by Athavale was referred to support the contention of the writ petitioners. A crutch which is not of any effective held, when a total paralysis is the basic affliction. The prodigious industry of the compiler elicits admiration. Such a compilation is not substitute for the distilled proposition of law emerging from the expert processing made by the trained and talented hands. The compilation in that context loses its authority consequent on the attenuated competence of the compiler.

I have thus made this supplemental Judgment; 'a poor thing; yet my own'.

Per S.P. KURDUKAR, J.:---Mr. Nanavati orally applies for leave to appeal to the Supreme Court. Leave refused. Certificate copy if applied for to be furnished on payment of costs within two weeks.

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