

In Re: Gajraj Singh

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All585

Judge : Robert Stuart, Kt., C.J., ;Straight, ;Oldfield, ;Brodhurst and ;Tyrrell, JJ.

Appellant : In Re: Gajraj Singh

Judgement :

Robert Stuart, Kt., C.J.

1. The stamp-duty chargeable on the instrument submitted to us in this reference is, in my opinion, four annas. The instrument itself, although really one and the same contract or agreement, is of a double character: it is a bond within the meaning of that word as given in Section 3, Sub-section 4 (c), because it is an 'instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another,' the consideration for which in the present case is that mentioned in the Board's letter, namely, Rs. 25, and the profits which the Board states to be Rs. 11-3. As to the sum which could not have been ascertained, that appears to fall within the provisions of Section 26 of the Stamp Act, and cannot therefore have the effect of adding to the stamp duty.

2. The instrument is also, in respect to the hypothecation it provides, a 'mortgage-deed' within the meaning of Nos. 44 and 13 of Schedule I of the Stamp Act, inasmuch as it is a mortgage-deed 'when at the time of execution possession is

not given or agreed to be given by the mortgagor.'

3. And being of this double character, the instrument for the purpose of the stamp duty appears to me to fall within the principle recognized by Section 7 of the Stamp Act, whereby it is provided that an instrument of such a description 'shall, when the duties chargeable thereunder are different, be chargeable only with the highest of such duties.' Here the stamp-duty in regard to both descriptions of the instrument is the same, but it is the highest that can be charged in either view of the instrument, the contract made by it being obviously one and the same.

4. The result is, that having regard to the provisions of the Stamp Act to which I have referred, namely, the definition of 'bond' in Section 3, Subsection 4 (c), Nos. 44 and 13 of Schedule I, and Sections 7 and 26, the stamp duty chargeable on the instrument before us is the highest duty chargeable on a bond the amount or value of which exceeds Rs. 10, but does not exceed Rs. 50, as provided by No. 13 of Schedule I.

5. I have only to add that the stipulation in the instrument in the event of the supply of rab being less than the fixed quantity, and the money still remaining due, with the condition that in such a contingency the money and the profits shall be paid at the rate of Re. 1 per maund, and also as to the rab not being supplied at all or sold at some other place,--are all provisions of an essentially penal character, and also merely contingent, as they may or may not come into operation, and are therefore not to be taken into account in estimating the stamp duty.

Straight, J.

6. Looking to the terms of the document to which this reference relates, and construing them in their ordinary legal sense, it would appear to fall within two definitions. First, it is an agreement for the delivery of rab with a provision for damages in case of breach of the contract to deliver, and next it is an hypothecation bond of certain moveable property, to wit, the produce of a sugar-cane field, as security for the payment of any damages that might become recoverable by way of compensation for non-delivery. But clause (c) of Section 3

of Act I of 1879, declares that 'any instrument whereby a person obliges himself to deliver grain or other agricultural produce to another' is a bond, and if rab can properly be regarded as 'agricultural produce,' which I think it may, the instrument now before us exactly falls within the above definition, and should bear a stamp of the value of four annas. As regards the provision in it for a penalty, I have present to my mind the Pull Bench ruling reported in I. L. R., 2 All., 654, in respect of which Garth, C.J., has made some remarks in *Gisborne v. Subal Bowri* I. L. R., 8 Cal., 286, which I may note related to Act XVIII of 1869, where there was no provision such as that to be found in Clause (c) of the present law. Upon further consideration I am disposed to doubt the correctness of the ruling of this Court to which I was a party, and to concur in the views expressed by Garth, C. J., upon the subject of a penalty clause, The sum named in a contract to be paid in case of breach is not necessarily recoverable in toto. On the contrary, it only fixes the extreme amount beyond which compensation cannot be assessed. In the present case, upon failure to deliver the rab, the plaintiff was entitled under the contract to recover damages for such on delivery; but it by no means followed as a matter of course that a Court would give him the full amount provided in the instrument. I do not think that it was ever intended to impose stamp duty upon an item of this fluctuating character. Under these circumstances it seems to me that the document should, in advertence to Clause (c) of Section 3 of the Stamp Act, and Section 7, be dealt with solely as a bond under Article 13 of the 1st schedule, and should be stamped with a stamp of four annas.

Oldfield, J.

7. The instrument to which this reference refers is in the following terms. (His Lordship read the instrument, and continued):

8. The effect of this deed is that the obligor borrows Rs. 25 from the obligor, and covenants to deliver to him 21 maunds of rab at a certain price on a certain date, and, if delivery is not made in part or in whole, to pay to the obligor the sum borrowed, or as much of it as may be due, together with a sum of Re. 1 per maund on the 21 maunds which he covenants to deliver and fails to deliver; and property is mortgaged to secure the payment of the money advanced and to be paid on

failure to deliver the rab.

9. This instrument is, in my opinion, a mortgage-deed, which, for the purposes of the Stamp Act, is defined to 'include every instrument whereby, for the purpose of securing money advanced or to be advanced by way of loan or an existing or future debt, or the performance of an engagement, one person transfers or creates to or in favour of another a right over specified property.'

10. The duty therefore will be leviable under No. 44 of Schedule I, that is, the same duty as a bond (No. 13) for the amount secured by the deed.

11. The amount secured, or, in other words, the amount limited to be ultimately recoverable under this deed, is, in my opinion, Rs. 25, the sum borrowed, plus Rs. 21, which is the sum recoverable at; Re. 1 per maund on the 21 maunds of rab the obligor engaged to del. vet; in the event of non-delivery.

12. The sums taken together are the limit of what is ultimately recoverable or secured by the deed, and are ascertainable from the deed, and are sums on which duty is capable of being fixed, and the duty is payable on this amount, and is not affected by the question whether the obligor may or may not fulfil his engagement and thereby render void his obligation of payment, or whether the amount secured may or may not be ultimately recovered.

Brodhurst, J.

13. The document that is the subject of this reference is, I consider, a 'bond' as defined in Clause (c), Sub-section 4, Section 3 of Act I of 1879, and also a 'mortgage deed' as defined in sub-section 13 of the same section. The stamp duty in either case is, with reference to Articles 13 and 144 of Schedule I, respectively, four annas, and four annas only is, I think, the amount of stamp duty that is, with regard to the provisions of Section 7, chargeable on the instrument.

Tyrrell, J.

14. Without going into the question whether rab or saccharine liquor comes within the definition of 'agricultural produce,' it seems clear that this instrument is a mortgage, and therefore I concur in the answer recorded by the learned Chief Justice.

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