

In Re: Reference Under Stamp Act, Section 57

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Court : Chennai

Decided On : Sep-27-1900

Reported in : (1901)ILR24Mad176

Judge : Arnold White, C.J. ;Shephard, ;Subrahmania Ayyar, ;Davies and ;Benson, JJ.

Appellant : In Re: Reference Under Stamp Act, Section 57

Judgement :

1. The principal question referred to U8 for. decision is whether the instrument presented to the Collector comprises or relates to several distinct matters so as to be chargeable accordingly under Section 5 of the Indian Stamp Act. The instrument; is not complete, inasmuch as only one landholder is named, whereas the case shows, and it is admitted by counsel on behalf of Messrs. Best & Co., that the intention is to have it executed by several landholders, each severally interested in the piece of land mentioned against his name in the schedule.

2. This mere statement of the facts is almost sufficient to show that the instrument is chargeable with the aggregate amount of the duties with which separate instruments relating to the same matters would be chargeable, for it is plain that agreements which two or more raiyats not jointly interested in the same land for the purchase or lease of their lands are distinct agreements which may give rise to different rights of action by or against the several raiyats. It was argued, however, on the strength of some English cases, that there is a community of interest

between the several land-holders of a village who, as it is proposed, are to be made parties and that therefore only one stamp is required. The strongest case cited was *Deod. Croft v. Tidbury* [1854] 14 C.B. 304 where it was held that a deed executed by several encroachers in respect of their several encroachment did not need to be impressed with several stamps. In effect it was considered that because the parties conveying joined in conveying all the encroachments community of interest was established between them as to the same subject-matter. In *Wills v. Bridge* [1849] 18 L.J. Ex. 384 there was a deed of transfer executed by three persons jointly in respect of sixty shares in a company, of which thirty shares belonged to one person, twenty to another, and ten to the third. It was held that although the deed conveyed the separate interest of three persons, three stamps were not required. *Wills v. Bridge* [1849] 18 L.J. Ex. 384 is cited by Kelly, C.B., with apparent approval in *Freeman v. Commissioners of Inland Revenue* L.R. 6 Ex. 101.

3. The latter case has no direct bearing on the question now before us. It is probably the last reported case decided under the Stamp Law as it stood before the Consolidated Act, 33 & 34 Vict., cap. 97, was passed. In considering such cases it has to be borne in mind that the law was then expressed with much less distinctness than it has been since 1870. In the statute of Anne the provision on which the case above cited turns was as follows: 'Where more than one of the matters or things (i.e., indentures, leases, bonds or deeds) thereby charged with any stamp duty 'should be engrossed on one piece of vellum, the duties should 'be charged on every one of such matters.' This provision as was observed by Coltman, J. *Bushbrook v. Hood* 17 L.J. C.P. 58 referred to different deeds having different objects inserted in the same parchment.

4. A provision of that sort is obviously very different from the provision which was first introduced in the Statute, 33 & 34 Vict. There Section 7, Sub-section 2, provides as follows: If more 'than one instrument be written upon the same piece of material, 'everyone of such instruments is to be separately and distinctly 'stamped with the duty with which it is chargeable'--that is practically a reproduction of Section 24 of the Statute of Anne (12 Anne, Section 2, chapter 9). Then comes the section which is in effect identical with Section 5 of the Act now in

force in India. This section introduces an entirely new provision and therefore renders the cases on the Statute of Anne of comparatively small importance. The fact that in 1854 the Court held a conveyance such as had been executed by the incroachers spoken of in *Deo d. Croft v. Tidbury* [1854] 14 C.B. 304 required only one stamp affords really no ground for arguing that the same conclusion would be arrived at on a similar instrument at the present day.

5. The learned Counsel for Messrs. Best & Co., did not cite any case decided with reference to the modern Stamp Acts which he could claim as having any direct bearing on the question now before us. In both the recent cases cited by him as giving some-indirect support to his argument, *John Foster & Sons v. Commissioners of Inland Revenue* [1894] 1 Q.B. 516 *Chesterfield Brewery Company v. Inland Revenue Commissioners* [1899] 2 Q.B. 7 the instrument under consideration was a transfer and not a contract such as we have before us and the transferors as partners or members of a company were persons jointly interested in the property with which they were dealing. It could not possibly have been said in either case that the deed related to distinct matters.

6. In order to decide what stamp should be impressed on a document we have to see what, upon the face of it, it is according to its true and proper effect *Martin, B.*, in *Freeman v. Commissioners of Inland Revenue* L.R. 6 Ex. 101. Looking at the instrument before us in this way we have no hesitation in saying that it deals with several distinct matters, that is to say, with agreements with several persons with regard to their separate property, and that to that extent the opinion expressed by the Board of Revenue is right.

7. In our judgment the proper stamp to be affixed is an eight-anna stamp or as many such stamps as there are separate raiyats who are made parties to the agreement. We do not consider that the instrument contains distinct agreements with any one raiyat.

8. Messrs. Barclay, Orr & David--Attorneys for Messrs, Best & Co.