

In Re: the Menglas Tea Estate

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Court : Kolkata

Decided On : Jun-19-1885

Reported in : (1885)ILR12Cal383

Judge : Richard Garth, C.J.,; Mitter and; Cunningham, JJ.

Appellant : In Re: the Menglas Tea Estate

Judgement :

Richard Garth, C.J.

1. In this and in all other similar cases, which are referred to us by the Board of Revenue, as to the proper amount of stamp duty chargeable upon a deed of conveyance, I consider that we are bound to look at the substance of the transaction as disclosed by the whole of the deed, and not merely to the language of the operative part or parts of the instrument.

2. In that view it seems to me very clear that the subject-matter of the sale in question to Mr. Paterson was not a mere transfer of the leases of the 22nd of July 1884, but the sale of a one-sixteenth share of the partnership, called the 'Menglas Tea Association,' including all of the property and effects belonging to that partnership.

3. It is recited in the deed that the vendor, who is one of the members of the Association, had contracted with the purchaser for the sale to him of a one-sixteenth part or share in the Association for the sum of Rs. 10,000.

4. It has been argued by Mr. Pugh, on behalf of the purchaser, that although this may have been the general nature of the arrangement, and although the share in the partnership itself as well as of the personalty, debts, and other assets of the partnership, may have formed part of the consideration for the Rs. 10,000, the only property which the deed itself professes to convey is the one sixteenth share of the vendor's interest in the grants from the Deputy Commissioner.

5. There is no doubt that the deed has been framed with a view to give colour to that argument. It is recited amongst other things that the one-sixteenth share of the personalty, including machinery, plant, bullocks, and other live and dead stock, etc., had been delivered over to the purchaser before the execution of the deed.

6. But we cannot shut our eyes to the fact that any actual delivery of a one-sixteenth undivided share of and in the live or dead stock, or in fact of any other part of the subject-matter of the sale, was practically impossible; and if after the execution of such a deed a question was raised in any Court of law as to whether the one-sixteenth share of the personalty was conveyed by the deed or independently of it, I cannot doubt that the proper answer would be that the one-sixteenth share in the whole property was intended to pass, and did pass, by the deed itself.

7. But then it was further argued by Mr. Pugh that, even assuming that a one-sixteenth share of the entire property of the partnership was intended to pass by the deed, that property would be divisible for purposes of stamp duty; and that, as the one-sixteenth share of the grants of the land constituted a very considerable part of the partnership assets, the transfer of the vendor's share in each of those grants would be chargeable with Rs. 5, and that an ad valorem duty would be chargeable upon the remainder of the property only.

8. No doubt this is a plausible argument, and it would seem to be in accordance with an unreported judgment of this Court in a reference from the Board of Revenue, in re a deed of assignment of the Mohargunj Tea Estate, decided on the 12th of September 1884.

9. But here again I think we must be guided by what we find to be the true nature of the transaction.
10. If the transaction is in substance 'the transfer of a lease' properly so called, but accompanied by a conveyance of same other property, which has been enjoyed with the lease, or is incidental to it, then I think it would be right to treat the instrument (as we did in the Mohargunj case) as coming under Article 60 of the Stamp Act, but to impose also an ad valorem duty upon the conveyance of the other property.
11. On the other hand, if the transaction is in substance a sale of a share in a partnership, and the transfer of a share in the lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, then I think the transaction should be regarded, not as 'the transfer of a lease,' but 'as the sale of a share in a partnership.'
12. Suppose that a firm of tradesmen were to sell a share of their business to a new partner, and that in the deed, by which that share was conveyed, there was included a share of the lease of the shop, in which the business of the firm was carried on, could such a deed be properly called 'the transfer of a lease' within the meaning of Article 60? I think not. I think that in construing the Stamp Acts we are bound, as we are on other occasions, to call things by their right names; and that in such a case no reasonable man in common parlance would call the transaction a 'transfer of an interest in the lease.' The transfer of the interest in the lease would only be incidental to the sale of the share in the partnership.
13. I think that the same principle applies here. The subject-matter of the sale for which the Rs. 10,000 were payable was the one-sixteenth share in the Association; and although, having regard to the objects of the concern, the interest in the land formed undoubtedly a very important element in the sale, I think the transaction was a 'conveyance,' within the meaning of the Stamp Act, and not 'the transfer of a lease' within the meaning of Article 60.
14. The proper stamp, therefore, in my opinion, is an ad valorem duty upon Rs. 10,000.

15. I should add that the case entitled a 'reference under the Stamp Act, Section 46,' decided by the Madras High Court and reported in I.L.R. 5 Mad. p. 15, does not seem applicable to this case. The transfers there, so far as I can gather from the report and also from the record of the proceedings which has been furnished to us by Mr. Pugh, embraced only the subject-matter of the original leases, and not any additional property.

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