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**BOARD OF REVENUE, UTTAR PRADESH**

v.

**RAI SAHEB SIDHNATH MEHROTRA**

*November 26, 1964*

B

[P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH,  
J. C. SHAH, S. M. SIKRI AND R. S. BACHAWAT, JJ.]

*The Indian Stamp Act, s. 24, Explanation—Duty whether payable on mortgage—Money paid before conveyance of the property.*

C

Certain properties were sold by sale-deed dated 15th December 1952. The vendors, of whom the respondent was one, had equitably mortgaged these properties with the Chartered Bank of India. In order to pay off the mortgage debt to the Bank the vendors entered into a contract with M/s. Oil Corporation of India Ltd. for the sale of the mortgaged property consisting of lands, buildings, plants, machinery, shares, goodwill etc., for a sum of Rs. 5,55,000. The Chartered Bank agreed to release from its charge the properties to be conveyed to the vendees provided a sum of Rs. 500,000 was paid to it. The vendees agreed to pay the said Bank a sum of Rs. 4,89,000 while the vendors agreed to pay Rs. 11,000 to make up the balance. In pursuance of this agreement the vendors handed over the possession of the plant and machinery of the two factories to the vendees, who paid Rs. 3,89,000 to the said Bank before the date on which the sale-deed was executed, and Rs. 100,000 after the execution of the deed. The Stamp duty was paid only on the last mentioned sum. In a reference under s. 57 of the Indian Stamp Act the High Court held that the Stamp Duty was correctly paid. The Board of Revenue U.P. appealed to the Supreme Court by special leave.

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It was contended on behalf of the appellant, relying on the explanation to s. 24 of the Act that the duty was payable not only on Rs. 100,000 as actually paid but also on the rest of the sale price.

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HELD: (i) From the Explanation to s. 24 it is plain that it is only the unpaid mortgage money that it deemed to be part of the consideration. If the mortgage money has been paid off by the date of the conveyance the explanation does not require it to be added to the consideration. The phrase 'subject to the mortgage or other encumbrance' qualifies the word 'sale' and not the word 'property'. [274 B-E]

In the present case the sum of Rs. 3,89,000 having been paid before the conveyance was not liable to duty. [274 G]

G

(ii) If mortgage money has been paid off by the vendee before the date of the sale, as part of the consideration, it would be included in the amount leviable with stamp duty under Act 23. But in the present case Art. 23 did not apply because neither the sum of Rs. 3,89,000 paid by the vendee before the sale nor the sum of Rs. 11,000 paid by the vendor after the sale, was shown to be consideration for immovable property. [275 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 526 of 1962.

H

Appeal by special leave from the judgment and order, dated March 20, 1959 of the Allahabad High Court in Civil Miscellaneous Reference No. 213 of 1955.

*C. B. Agarwala and O. P. Rana*, for the appellant. A

*A. V. Viswanatha Sastri and J. P. Goyal*, for the respondent.

The Judgment of the Court was delivered by

**Sikri, J.** This is an appeal by special leave against the judgment of the High Court of Allahabad in a reference under s. 57 of the Indian Stamp Act, 1899. The Board of Revenue referred the following questions to the High Court : B

- (1) Whether the document is a sale-deed for a consideration of Rs. 1,00,000 as contended by the executants. C
- (2) Whether in view of the provisions of Section 24 of the Stamp Act, the sale consideration shall be deemed to be Rs. 5,55,000 and duty liable to be paid thereon as held by the Board. D
- (3) Whether the consideration of the sale will be deemed to be Rs. Ten Lakhs, *i.e.*, the entire amount due to the mortgagee Bank, and duty is payable thereon. E
- (4) On what amount is the additional stamp duty under section 107 of the Kanpur Development Act, 1945, leviable. F

The High Court gave the following answer to the first three questions :

“The document in question is a sale deed for a consideration of Rs. 1,00,000 only and that the Stamp duty payable in respect of it was to be calculated on the amount and not on any higher amount.” G

The appellant, the Board of Revenue, challenges the answer given by the High Court to the said three questions. We may mention that the answer to the fourth question is not the subject-matter of appeal before us. H

The relevant facts are as follows. The respondent is one of the executants of the deed dated December 15, 1952. The executants, hereinafter referred to as the vendors, were lessees of two plots of land and on these plots they had constructed an oil mill, known as Sri Govind Oil Mills, an Ice and Cold Storage Factory, and buildings in which the factories stood. The Ice and Cold Storage factory was being run by the vendors in partnership with Shyam Sunder Gupta and Satya Prakash Gupta. The vendors had equitably mortgaged these properties with the Chartered Bank of

- A India, and a sum of Rs. 10,00,000 was due to the Bank. In order to pay off the debt, the vendors entered into a contract with Messrs Oil Corporation of India Ltd., hereinafter referred to as the vendees, for the sale of the lands, buildings, plants, machinery and stores and goodwill of the Govind Oil Mills and Ice & Cold Storage Factory for a sum of Rs. 5,55,000, made up as follows;
- B Rs. 1,12,000 for the plant and machinery and goodwill of the Ice and Cold Storage Factory, Rs. 3,00,000 for the machinery of Sri Govind Oil Mills, Rs. 25,000 for stores, Rs. 18,000 for goodwill, and Rs. 1,00,000 for the buildings and the lessee rights in the plots. Out of this Rs. 66,000 was payable to Messrs Shyam Sunder Gupta and Satya Parkash Gupta in respect of their share in the
- C Kanpur Ice and Cold Storage Factory, and the remainder to the vendors.

- The Chartered Bank agreed to release from its charge the properties to be conveyed to the vendees provided a sum of Rs. 5,00,000 was paid to it. The vendees agreed to pay the said
- D Bank a sum of Rs. 4,89,000, while the vendors agreed to pay Rs. 11,000 to the Bank to make up the balance.

- In pursuance of this agreement, the vendors handed over the possession of plant and machinery of the two factories to the vendees, who paid before December 15, 1952, Rs. 3,89,000 to the said Bank. On December 15, 1952, the sale-deed in respect of the
- E buildings and the lessee rights was executed. Clause 2 of the deed provided that 'the vendees hereby declare that the properties hereby conveyed are free from all encumbrances except the charge in favour of the Chartered Bank of India, Australia and China, The Mall, Kanpur, which would be paid off so far as the properties
- F hereby conveyed are concerned in the manner set forth above.'

On these facts, Mr. C. B. Aggarwala, the learned counsel for the appellants, contends that on a true interpretation of s. 24 of the Indian Stamp Act, 1899, the consideration for the purpose of calculating *ad valorem* duty is either Rs. 10,00,000, or Rs. 5,55,000 or at least Rs. 1,11,000.

- G Section 24 reads thus :

- H "Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration

in respect whereof the transfer is chargeable with *ad valorem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

*Explanation.*—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale;

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage."

The charging article is Art. 23, which is as follows :

"Conveyance [as defined by section 2(10)], not being a transfer charged or exempted under No. 62,—

Where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50;

Where it exceeds Rs. 50 but does not exceed Rs. 100

The section has a history and it is set out in the judgment of Rankin, C.J., in *U.K. Janardhana Rao v. Secretary of State*<sup>(1)</sup>. We need not repeat it here, for we do not propose to rely on it for interpreting s. 24.

The first question which we may pose is : What is the underlying object of the section ? Illustration 2 to the section reads :

"A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700."

In this illustration the consideration set forth in the conveyance is Rs. 500, and under Art. 23, the amount on which the Stamp duty is leviable would be Rs. 500 only. There is no doubt that this is not the real value of the property for if the property was not the subject-matter of mortgage, A would not sell the property for Rs. 500 and B would pay more than Rs. 500. The legislature, therefore, adopted a simple test for valuing the property taken by

(1) (1931) I.L.R. 58 Cal. 33

A the vendees, and the test adopted was that any unpaid mortgage money or money charge, together with interest (if any) due on the sum shall be deemed to be part of the consideration for the sale. Therefore, in the illustration the sum of Rs. 1,000 and Rs. 200 are added to Rs. 500 and the sum on which the stamp duty is payable is determined at Rs. 1,700. The Lord President explained the underlying reason in the case of *Commissioners of Inland Revenue v. Liquidators of City of Glasgow Bank*,<sup>(1)</sup> as follows :

C "If any other rule was adopted, it is quite plain that the fair incidence of this tax would be altogether frustrated and defeated. A proprietor has an estate worth £ 20,000. There is a bond upon it for Rs. 10,000. He sells that estate, and the purchaser pays to him the difference between the amount of the bond and the value of the estate, so that the bond being for £ 10,000 he pays £ 10,000. The day after he obtains inferment he pays off the bond. Well, the practical result of that is D that he has paid £ 20,000 as the purchase money of this estate, and he has obtained a conveyance with an *ad valorem* stamp of the value of £ 10,000. That is a simple defeating of the purpose and intention of the Legislature as expressed in this clause, and therefore, I think, upon the plain meaning of this section, that there was no intention whatever to go back upon the enactment of the 16 and 17 Vict., and to restore the enactment of the 55 Geo. III, which is what the liquidators are contending for. On the contrary, it seems to me that the 73rd section plainly intended to continue the provision of the statute 16 and 17 Vict."

The next point that needs determination is : What does the phrase "sale of property subject to a mortgage" mean ? Does this phrase mean that whenever mortgaged property is sold the explanation applies or does it imply that if mortgaged property is sold subject to the mortgage then and then only the explanation applies ? In our view, the correct meaning is the latter meaning. Let us see what would be the position if A, instead of selling property as in illustration 2, adopts the following mode of selling. A sells property to B for Rs. 1,700, which is subject to mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. A agrees that Rs. 1,200 be paid to C and Rs. 500 to him. If the first meaning is adopted, the consideration on which the stamp duty would be leviable would be

(1) (1881) 8 Ct. of Sess. cases, 4th S. 389

Rs. 1,700 which is the consideration expressed in terms of Art. 23, and Rs. 1,200 deemed to be consideration within s. 24, the total amounting to Rs. 2,900. In our opinion this result could never have been intended. We agree with the decision of the Calcutta High Court in *U. K. Janardhan Rao v. Secretary of State*<sup>(1)</sup> and of the Bombay High Court in *Waman Martand Bhalerao v. The Commissioner Central Division*<sup>(2)</sup> that the phrase "subject to a mortgage or other encumbrance" in the explanation, to s. 24 qualifies the word 'sale' and not the word 'property'. We need hardly say that the Stamp Act is a taxing statute and must be construed strictly, and if two meanings are equally possible, the meaning in favour of the subject must be given effect to.

Before we consider the facts of this case, we may mention that it is plain from the explanation that it is only the unpaid mortgage money that is deemed to be part of the consideration. If the mortgage money has been paid off by the date of the conveyance the explanation does not require it to be added to the consideration. If the mortgage money has been paid off by the vendee before the date of the sale, as part of the consideration, it would be included in the amount leviable with stamp duty under Art. 23, but not under the explanation. The conveyance deed would, in the above eventuality, recite the fact that so much money has been paid to the mortgagee and it would be the consideration expressed in the deed.

Let us now apply the law as explained above to the facts of this case. On December 15, 1952, the date when the deed was executed, Rs. 3,89,000 had already been paid by the vendees to the Bank. Mr. Aggarwal contends that this amount should be included because it was consideration moving from the vendees. He says that stamp duty cannot be avoided by the simple device of paying money before a conveyance is executed. He is right in this but he must show that Rs. 3,89,000 was an advance payment for the immovable property conveyed by the deed, dated December 15, 1952. It is quite clear from the terms of the deed that Rs. 4,55,000 was to be paid for items other than the immovable property conveyed by the said deed, and the sum of Rs. 3,89,000 had nothing to do with the immovable property. The payment of Rs. 3,89,000 to the Bank left outstanding Rs. 1,11,000 as mortgage money. Rs. 1,00,000 is expressed to be the consideration for the conveyance of the immovable property, and, therefore, falls within Art. 23. This leaves Rs. 11,000, and the question

(1) [1931] I.L.R. 58 Cal. 33.

(2) (1925) I.L.R. 49 Bom. 73.

A arises whether this sum should be taken into consideration for the purpose of levying stamp duty. Regarding this item, the High Court held as follows :

B "It is true that till the date of sale the sum of Rs. 11,000 had not been paid and there was a charge on the property in respect of that amount. The vendors themselves had, however, taken liability for that amount and had agreed to pay it. It had been expressly provided in the sale deed that the property was being sold free from the charge. The vendees were in no way liable for the amount and had not undertaken to pay it. In these circumstances the property cannot be said to have been sold subject to the charge of Rs. 11,000, and if it was not being sold subject to that charge, the Explanation to section 24 becomes inapplicable."

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D It has already been noticed that this sum of Rs. 11,000 forms part of the price for items other than the immoveable property. Mr. Aggarwala has not seriously controverted the finding of the High Court on this point. Accordingly, we hold that this sum of Rs. 11,000 cannot be included for the purpose of levying stamp duty.

E In the result, we agree with the High Court that the stamp duty is to be calculated only on the sum of Rs. 1,00,000. The appeal is accordingly dismissed with costs.

*Appeal dismissed.*