

## STAMP REFERENCE.

Before D. N. Mitter and Rau J J.

DHEERENDRANATH PODDAR

v.

HEMANGINEE DASEE.\*

1935

June 5.

*Stamp Duty—Security bond executed by surety of a receiver—Indian Stamp Act (II of 1899), Sch. I, Art. 57.*

A security bond, executed by a receiver or by his surety for the due execution by the former of his office as receiver, is governed, as regards the stamp duty leviable on the instrument, by Article 57, Schedule I of the Indian Stamp Act.

The words in Article 57, Schedule I of the Stamp Act are wide enough to cover the case not only of the officer concerned, but also of the surety or sureties, who execute the security deed for the due execution of the office by him.

*Amirthammal v. Maddalakarun* (1) referred to.

REFERENCE on a question of court-fee by the Taxing Officer in an Appeal from Original Decree.

The facts of the case and arguments on the Reference are sufficiently stated in the judgment.

*The Senior Government Pleader, Saratchandra Basak*, for the Secretary of State.

*Rameshchandra Pal* for the receiver.

*Bijaykumar Bhattacharjya* for the appellants.

MITTER J. This is a matter relating to the sufficiency of the stamp with reference to the security bond which we directed should be executed by the receiver for a sum of Rs. 10,000 in a certain Appeal from Original Decree. A receiver was appointed by this Court and, according to the directions given, he filed the security bond stamping it with a stamp of Rs. 7-8. After the document had been filed in office, the Assistant Registrar, on a note from Mr. Ramtaran Chatterji, felt doubtful whether this particular instrument should come under Article 57 of the Indian Stamp

(1) (1920) I. L. R. 43 Mad. 363.

\*In the matter of Appeal from Original Decree, No. 169 of 1934.

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Act. If Article 57 do apply to the security bond, the stamp paid seems to be sufficient. On the other hand, Mr. Mohininath Basu, the Stamp Reporter, was of opinion that the stamp was insufficient and he relied on the decision of the Full Bench of the Madras High Court in the case of *Amirthammal v. Maddalkarun* (1), which held that when a receiver is appointed and furnishes security in immoveable property he is to stamp it as mortgage under Article 40 of Schedule I of the Indian Stamp Act. It was stated that, under the Indian Stamp Act, there is no distinction between moveable and immoveable properties with reference to the definition of the mortgage deed in section 2 (5) of the Indian Stamp Act. The Madras Full Bench in terms related to a case where the mortgage deed comprised immoveable property. It has been said, however, on behalf of the receiver that the proper Article applicable to this case is Article 57. Article 57 of the Stamp Act runs as follows:—

Security bond or mortgage deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—

(a) when the amount secured does not exceed Rs. 1,000—the same duty as a Bond for the amount secured ;

(b) in any other case—five rupees

(Rs. 7-8) as now amended. There can be no question that the security bond and the bond pledging Government securities of the value of Rs. 10,000 was executed by way of security for the due execution of the office of the receiver. It is contended, however, by the learned Senior Government Pleader, whose assistance was required in the present case as the matter concerns Government revenue, that, in so far as a receiver is concerned, Article 57 of the Indian Stamp Act does apply. But, as the sureties have also joined in the bond, Article 40 applies also, for, according to the contention of the Senior Government Pleader, the case of a surety is not contemplated by

Article 57. We are unable to agree in this contention. The language of Article 57, as appears in the opening lines of the Article,—

Security bond or mortgage deed executed by way of security for the due execution of an office. . . . .

does not suggest that the execution of the deed must be restricted to the case of the officer in question. On the other hand, the words there are wide enough to cover the case not only of the officer in question but also of the sureties who executed the security deed for the due execution of the office by the receiver. That this is the correct view would appear from an examination of the exemption clause in Article 57, namely, exemption (e). That exemption runs as follows:—

Executed by officers of Government or *their sureties* to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.

The exemption covers the case of officers of Government or their sureties. The original section cannot be read in any narrower sense than the exemption. The exemption in the case of officers of Government suggests that the original Article was intended to cover the case of the officer in question as well as his surety or sureties. We are, therefore, of opinion that the document in question was properly stamped. The matter has really come before us under section 33 of the Indian Stamp Act. It appears that the High Court has not yet delegated its power of examining and impounding any instrument under this section to any officer of the Court. Consequently, having regard to section 33 (1) and proviso (b) to section 33 (2), we are entitled to see if it is properly stamped. In our view it is properly stamped.

On an examination of the relevant provision of the Indian Stamp Act we think that the document is properly stamped and that Article 57 applies to the case.

RAY J. I agree.

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