

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.

1889.
Feb. 5.

REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE
INDIAN STAMP ACT, 1879.*

Stamp Act—Act I of 1879, s. 3 (11)—Instrument professing to effect a partition ultra vires of the executants—Instrument of partition.

Persons incorrectly purporting to be co-owners of certain property agreed to divide it in severalty by written documents:

Held, that the arrangement fell within the definition of "instrument of partition" in the Stamp Act, 1879.

CASE stated by the Board of Revenue and referred to the High Court under s. 46 of the Stamp Act, 1879.

The documents upon which the case stated arose ran as follows:—

"Deed of relinquishment of right executed by Sree Panuganti Sesharayanim Garu in favor of Sree Ravu Venkayamma Garu, wife of Sree Ravu Gopalaurayanim Garu, and inhabitant of Katrenulapalle, Padmanayakavelama (by caste) and inamdar, dated 22nd June 1887.

"Of the property which was given to your sister (my wife) Sree Panuganti Lakshmi Venkayamma Garu and to you by your mother, which was lent out to people, which was jointly held by the late Sree Panuganti Lakshmi Venkayamma Garu and you, and which consists of the valuable securities specified in the schedule, viz., documents, bonds, notes, decrees and debts, I take the documents, bonds, notes, decrees and debts from No. 94 to No. 179 (both inclusive) shown in the list, and renouncing all rights I have through her to the remaining documents, bonds, notes, decrees and debts, amounting to (valued at) Rs. 17,290-6-11, from No. 1 to No. 93 (both inclusive), I execute this deed of release in your favor. In the proceedings you may adopt

* Referred Case No. 16 of 1889.

to recover the money on the documents, &c., so relinquished, neither I nor my heirs shall raise dispute of any description at any time.

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UNDER STAMP
ACT, s. 46.

“This deed of relinquishment of right is executed with my free will and consent.

“(Signed) SREE PANUGANTI SESHARAYANIM GARU.”

“Deed of relinquishment of right executed by Sree Ravu Venkayamma Garu in favor of Sree Panuganti Sesharayananim Garu, inhabitant of Katrenulapalle, Padmanayakavelama (by caste), inamdar and son of Sree Panuganti Butchiah Garu, dated 22nd June 1887.

“Of the property which was given to my sister (your wife) Sree Panuganti Lakshmi Venkayamma Garu, and to me by our mother, which was lent out to people, which was jointly held by me and the late Sree Panuganti Lakshmi Venkayamma Garu, and which consists of the valuable securities specified in the schedule, viz., documents, bonds, notes, decrees and debts, I take the documents, bonds, notes, decrees and debts from item No. 1 to item No. 93 (both inclusive) shown in the list, and renouncing all rights I have to the remaining documents, bonds, notes, decrees, debts, amounting to (valued at) Rs. 16,906-9-5, from item No. 94 to item No. 179 as per list, I execute this deed of release in your favor. In the proceedings you may adopt to recover the money on the documents, &c., so relinquished, neither I nor my heirs shall raise dispute of any description at any time.

“This deed of relinquishment of right is executed with my free will and consent.

“(Signed) SREE RAVU VENKAYAMMA GARU.”

The case was stated as follows :—

“The Board are not unanimous, and the case will, therefore, be submitted, under s. 46 of the General Stamp Act, to the Honorable the Judges of the High Court for decision.

“The facts are briefly as follows: a mother died leaving property to two daughters, who enjoyed it jointly; one daughter died and her husband quarrelled with the surviving daughter about the property; to stop such quarrelling, a division of the property was made between the surviving daughter and the deceased daughter's husband, which is evidenced by the two documents, the nature and liability of which to duty are the matters now under discussion.

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UNDER STAMP
ACT, s. 46.

“The documents are counterparts of each other and run as follows:—

“Deed of relinquishment of right of { my sister and me }
the property which was given to { my wife and you }

by { our } mother, which was held { my sister and me } I take from { 1-93 }
{ your } jointly by { my wife and you } No. { 94-179 }

on the accompanying list, and renouncing all rights I may have to the remainder, execute this deed of release in your favor.”

(Signed)

“The first question is, can the two documents be read together? The Board think not.

“The second is, individually, what are they? On the face of them, they are releases, and the Board think that it is only by what they purport outwardly to be that they can be judged for purposes of stamp-duty.

“If once the question of their legal validity is entered on, the matter becomes more complicated; for the husband having no right to the property can execute no valid ‘release,’ and the surviving daughter’s ‘relinquishment of right’ in his favor becomes a gift.

“At the same time each document contains an acceptance as well as release, and, *prima facie*, this is a partition; and it is only when the legality of the matter is gone into that it is seen that the two parties are not co-owners.

“Taken together, the two documents evidence a partition; taken singly, they evidence a release; legally, only one of them is of any effect, and that is as a gift.

“The point, therefore, upon which the Board are in doubt is as to the extent to which they are justified, for purposes of assessment to stamp-duty, in going behind the outward purport of a document, and considering its actual legal validity, whether by itself, or taken in connection with others, and they accordingly refer, for the decision of the High Court, the question how the documents ought to be stamped.”

The Acting Government Pleader (*Subramanya Ayyar*) for the Board of Revenue.

Subba Rau contra.

The Full Bench (Collins, C.J., Muttusami Ayyar, Parker and Wilkinson, JJ.) delivered the following

JUDGMENT :—Although the documents are styled releases, we are of opinion that they are really instruments of partition.

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UNDER STAMP
ACT, s. 46.

The parties purport to be co-owners of the property and in that capacity agree to divide the property in severalty.

This arrangement falls within the definition of “instrument of partition” in clause 11, s. 3 of the Stamp Act.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

v.

SOBHANADRI.*

1889.
Feb. 11.

Criminal Procedure Code, s. 195—Sanction to prosecute—Registration Act—Act III of 1877, ss. 34, 35, 41—Forged document—Registered by Sub-Registrar.

A mortgagor was charged with making a fraudulent alteration in his mortgage-deed which was then registered by a Sub-Registrar :

Held, that the sanction of the Sub-Registrar was not necessary for a prosecution on a charge of forgery.

Venkatachala in re (I.L.R., 10 Mad., 154), *Queen-Empress v. Subba* (I.L.R., 11 Mad., 3) explained.

CASE reported for the orders of the High Court by W. A. Happell, District Magistrate of Godávári, under s. 438 of the Code of Criminal Procedure.

Rallabhandi Sobhanadri was charged in the Court of the Sub-Magistrate of Kothapetta with committing forgery by fraudulently altering a mortgage-deed. The mortgage-deed was subsequently registered. The question arose whether the Magistrate had jurisdiction to take cognizance of the offence for want of sanction under s. 195 of the Code of Criminal Procedure.

The case was stated as follows :—

“The complainant, Tadigadapa Gopalakrishnamma, who attested a mortgage-deed executed by the accused Rallabhandi Sobhanadri, on 30th October 1888 in favor of Vogeti Ramakrishnayya, asserts that, after the deed was executed but before it was registered, the

* Criminal Revision Case No. 34 of 1889.