

APPELLATE CIVIL—FULL BENCH.

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

REFERENCE UNDER STAMP ACT, s. 46.*

1894.
December 17.

Stamp Act—Act I of 1879, s. 3, cl. (11), sched. I, art. 54—Partition-deed—Release.

A Hindu executed in favour of his father, as representing the interests of the other members of his family, an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. The instrument further provided that the lands allotted to the executant for life should go towards the shares of his sons at any partition effected after his death :

Held, that the instrument was not a deed of partition, but a release and should be stamped accordingly.

CASE referred for the opinion of the High Court under Stamp Act, 1879, section 46, by the Board of Revenue.

The case was stated as follows :—

The document is termed a deed of release and purports to be executed by a son in favour of his father who is treated as representing the interests of himself, another son, and the executant's minor sons. It sets forth that, in consideration of certain lands being allotted to the executant for life out of the joint family property, and of certain debts incurred by him being discharged by his father, he relinquishes all claim on the other properties held by the joint family ; that he has no power to alienate the said lands allotted to him so as to affect the reversionary right thereto ; that the relinquishment made by him will not affect his son's right to a share in the family property, but that such right will be subject to a deduction of the value of the life estate allotted to him ; and lastly, that on his death the reversionary right in the said estate will be allotted to his sons at any future division.

The first question is whether the document should be charged as deed of release under article 54, schedule I of the Stamp Act, or whether it should be charged as a deed of partition under article 37 of the same schedule. As the document secures to the executant

* Referred Case No. 10 of 1894.

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the enjoyment for life of a portion of the joint family property with a reversion to his sons at any subsequent division of the property and does not merely renounce the executant's claim against any or all of the property, the Board is of opinion that the document must be stamped as a deed of partition.

If the document is to be stamped as a deed of partition, the further question arises is whether the stamp duty should be calculated on the value of the entire family property or only on the value of the share assigned to the executant. The Collector of Madras is of opinion that the decision of the Allahabad High Court on this point (*Reference by Board of Revenue, N.-W.P., under Act I of 1879(1)*) is at variance with that of the Madras High Court (*Reference under Stamp Act, s. 46(2)*). This, however, does not appear to be the case. The Allahabad High Court held that the stamp duty on an instrument of partition is chargeable on the value of the entire property to be divided and not on the portion allotted in partition. The Madras High Court merely decided that the stamp duty payable on partition should be apportioned with reference to section 29 (e) of the Stamp Act. The Board presumes that the decision of the Allahabad High Court should be followed in calculating the stamp duty, but desires to receive the ruling of the Madras High Court on this point also.

The *Government Pleader and Public Prosecutor* (Mr. Powell) the Crown.

Krishnasami Ayyar for the executant of the deed.

JUDGMENT.—We are of opinion that the deed is not an instrument of partition within the meaning of section 3, clause 11 of the Stamp Act since it is not a deed by which co-owners agree to divide the property in severalty. It is a deed by which one co-owner renounces his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of certain lands over which he has no power of alienation. The case is similar to *Ekmath S. Gownde v. Jagannath S. Gownde*(3).

We are of opinion that the deed is a release and should be stamped under schedule I, article 54 of the Stamp Act.

(1) I.L.R., 2 All., 664. (2) I.L.R., 15 Mad., 164. (3) I.L.R., 9 Bom., 417.