

“lands with all rights and with powers of disposition over them, such as gift, sale, &c. I have this day delivered possession of the said lands to you.”

KANAKAMMAL  
v.  
RANGA-  
CHARIAR.

Defendants appealed.

*Krishnasami Ayyar* for appellants.

*Seshagiri Ayyar* for respondents.

JUDGMENT.—We think that the District Munsif did decide the suit on a preliminary point within the meaning of section 562, Civil Procedure Code (*Ramachandra Joishi v. Hazi Kassim*(1)). The order of remand was therefore legal.

As to the merits of the remand order, it is urged that exhibit I is merely a transfer of the life interest of the first defendant so as to accelerate the succession of the next heir. We observe that there is no statement in exhibit I, that a life interest merely is transferred, and the concluding words in which she speaks of the donee possessing henceforth full powers of sale, &c., indicate that the woman purported to transfer such absolute interest. We observe further that the donee at once proceeded to exercise the rights of an absolute owner and transferred the property to the defendants Nos. 3 to 5. In those circumstances, we think that the view taken by the Subordinate Judge is correct, and that plaintiffs had a cause of action.

We therefore dismiss this appeal with costs.

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## APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Subramania Ayyar, and Mr. Justice Davies.*

### REFERENCE UNDER STAMP ACT, SECTION 46.\*

1895.  
September 5.

*Stamp Act*—Act I of 1879, s. 46, Sched. I, Art. 21—*Conveyance*.

The amount payable on a conveyance under Stamp Act, Sched. I, Art. 21, is properly calculated on the consideration set forth therein; and not on the intrinsic value of the property conveyed.

THIS was a case stated for the opinion of the High Court by the Board of Revenue under section 46 of the Indian Stamp Act, 1879, on the 16th August 1895.

(1) I.L.R., 16 Mad., 207.

\* Referred Case No. 16 of 1895.

REFERENCE  
UNDER STAMP  
ACT, SECTION  
46.

The Acting Collector of Kistna referred the case to the Board of Revenue as follows :—

“Two persons—Pitchayya and Venkannah--executed a conveyance on 3rd July 1893 on a 30-rupees stamp, transferring their title and interest in a certain estate to one Korrapati Paupiah. In this document Rs. 3,000 was stated to be the amount of consideration for the transaction.

“When the document was presented for registration before the Sub-Registrar of Isallapalli, a petition was presented to this office by one Purnayya of Isallapalli, stating that the document was undervalued for the purpose of evading the payment of stamp duty.

“This petition was forwarded to the District Registrar. In reply, he requested me in his letter No. 1141, dated 25th May 1893, to get the property valued by the Tahsildar of Bandar. It appears also that the District Registrar instructed the Sub-Registrar not to return the document pending inquiry.

“A Revenue Inspector of Bandar taluk, deputed for the purpose, valued the property with the aid of two arbitrators and assessed the value at Rs. 10,041-5-6.

“While the process of valuation was going on, the Registrar and the Sub-Registrar received similar complaints of under valuation. The Registrar in his letter No. 1239, dated 6th August 1893, informed me that he asked the Sub-Registrar to impound the document and send it to me for adjudication of stamp duty, and the Sub-Registrar accordingly forwarded it to me with his letter No. 216, dated 17th August 1893.

“On this it was ordered that the deficient stamp duty of Rs. 70 plus a penalty of Rs. 350 should be paid, and it was remarked the case did not call for prosecution. The Tahsildar of Bandar was directed to intimate the fact to the parties and report at the end of a month whether this amount had been collected.

“The Tahsildar in his arzi No. 403, dated 12th December 1893, reported that the stamp duty and penalty had been collected.”

The Board of Revenue in referring the matter to the High Court said :—

“The Board ruled that, under article 21 of schedule I of the Stamp Act, the stamp duty must be levied on the amount of the consideration for the conveyance as set forth in the deed, viz., Rs. 3,000; and that if the Collector had reason to believe

“that the amount of the consideration was falsely stated in the deed, he should take action with a view to prosecute the offenders under section 63.

REFERENCE  
UNDER STAMP  
ACT, SECTION  
46.

“The penalty levied in the case was ordered to be refunded.

“The Collector now reports that the parties concerned in the above case were prosecuted, but were acquitted, as it was very doubtful that there was an undervaluation fraudulently made for the purpose of depriving Government of stamp duty; that although the property was worth about Rs. 10,000, the vendor had not possession of it, and it had been sold to the vendee for the small sum of Rs. 3,000, as it was probable that protracted litigation with a certain individual who held possession of the lands would be necessary before the vendee could get possession of them.

“Under the circumstances the Board considers that the petitioners are entitled to a refund of the deficient stamp duty erroneously levied, and solicits the orders of the Honourable the Judges of the High Court, as the Board has no power to sanction it.”

*Venkatarama Surma* for vendors.

OPINION.—We are of opinion that the proper stamp duty leviable on the conveyance was Rs. 30, that being the amount payable on the consideration as set forth therein.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Benson.*

SAMINATHA AYYAN (DEFENDANT), APPELLANT,

v.

MANGALATHAMMAL (PLAINTIFF), RESPONDENT.\*

*Provincial Small Cause Courts Act—Act IX of 1887, Sched. II, Art. 38—  
Suit for arrears of maintenance.*

A suit for arrears of maintenance payable under a written agreement does not lie in a Provincial Small Cause Court.

1896.  
September  
28.