

APPELLATE CIVIL.

*Before Mr. Justice Subrahmaniam Ayyar, Mr. Justice Benson and
Mr. Justice Bhashyam Ayyangar.*

REFERENCE UNDER STAMP ACT, SECTION 61 (1).²

1902.
November 4.

*Stamp Act—1 of 1879, s. 7—Instrument relating to “several distinct matters”—
Consideration for lease being rent payable each month and one month's rent
payable in advance to be repaid at end of term.*

Where the consideration for a lease consists partly of rent to be paid each month and partly of a sum equal to a month's rent paid in advance and repayable at the end of the lease, the instrument relates to only one matter, namely, the lease, and is not chargeable with duty as an instrument “dealing with two distinct matters.”

REFERENCE under section 61 (1) of the Stamp Act of 1899. Three documents were forwarded, under section 88 of the Act, by the Registrar of the Presidency Court of Small Causes to the Collector of Madras.

The documents were as follows :—

(1) “Rental agreement executed on 17th October 1896 corresponding to 3rd Arpici of Durmuki year to Neela Boyi Ammal, wife of Sukataka Ganesa Row, residing in Krishnasami temple street, Muthyalpet, Madras, by Muthiyalu Pattar residing in the said town. As I want one room upstairs in your house, door No. 219 in the eastern row of Lingi Chetty Street, Muthyalpet, the rent per mensem settled therefor is Rs. 1-8-0 (one rupee and eight annas). The advance paid for this is Rs. 1-8-0. This sum of Rs. 1-8-0 shall remain with you. The said rent shall be paid within the 5th of each month either to you or to your order by me or by my heirs. In case of your requiring the room, I shall, on receiving a month's previous notice, vacate your room and put you in possession of it and receive the advance of Rs. 1-8-0 paid by me. If I do not do so, you may take legal steps. To this effect have I executed the rental agreement with my free will and consent.”

* Referred Case No. 11 of 1902, stated under section 61 (1), Act II of 1899, by J. Twigg, Collector of Madras, and Commissioner of Income-tax, in his letter, dated 23rd July 1902. No. 310-G.L., referring for revision by the High Court of his decision regarding the insufficiency of stamps on the three documents forwarded to him by the Registrar of the Court of Small Causes, Madras, under section 88 of the said Act.

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(2) "Rental agreement executed on 23rd January 1893 to S. Ponnusami Pillai of Puduvai residing at door No. 33, eastern row of Strotten Muthia Mudali Street, 2nd Police Division, Peddu-naikenpet, Madras, by us two: 1. Scenivasalu Naidu, and 2. Venkatakrishna Aiyar residing at door No. 24, Solayappan Street, Sanjeeviroyen Pettai, attached to Police H. Division, Washermanpet, of the said town. Having settled at a monthly rent of Rs. 7 the house, door No. 24, eastern row of Solayappan Street, Sanjeeviroyen Pettai, attached to the said Washermanpet, the advance paid is Rs. 7. Within the 10th of every month, either we or our heirs shall pay (the rent) without default either to you or to your order, on the said date. If you should require the said house, we shall, on having one month's previous notice, vacate the said house, settle the arrears of rent, receive the said advance and deliver possession of the said house with the key to you. To this effect have we executed the rental agreement with our free will and consent."

(3) "Rental agreement, dated 12th December 1900, executed by M. Sadasiva Silet, residing in premises No. 445, Mint Street, Peddu Naick's Pottah, Madras, in favour of Kottela Venkatachela Chetti, residing in premises No. 87, Narayana Mudaly Street, Peddu Naick's Pottah, Madras. I have arranged to pay a rent of Rs. 5-8-0 (five rupees and eight annas) per mensem for my keeping carriage and horse in the stable bearing N. 2/12 E, situate to the north of the building bearing door No. 12 in Neeli Ponna Pillay Street *alias* Veerappen Street in Peddu Naick's Pottah, Madras, and I have paid for this to you Rs. 5-8-0 (five rupees and eight annas), as an advance for one month, and taken possession of the stable. I or my heirs shall therefore pay (rent therefor) to you or to your order or to your heirs within the 5th of each month from this date. In default, should the rent accrue for two months, you can take possession of the stable without giving notice and without going to the Court. Further, in case you require the stable or in case I do not require it, I shall pay to you the rent due up to the date of my occupancy within 30 days from the date of notice in writing issued by each other, vacate and deliver the stable to you and take back the amount advanced by me. To this effect, is this rental agreement executed and given with my consent." A case was stated for the opinion of the High Court as to the sufficiency of the stamps on these documents.

The reference came on in due course.

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C. Venkatasubaramiah for the plaintiff in the suit in the Small Cause Court.

The Court made the following

DECLARATION.—In the cases 1 and 2 referred to by the Collector we find that the duty levied by the Court of Small Causes is correct. We cannot accept the Collector's suggestion that the sum equal to one month's rent paid in advance is to be regarded as money lent on mortgage, and the instrument regarded as dealing with two distinct matters under section 7 of Act I of 1879.

The instrument in each of these cases relates only to one matter, viz., the lease, though the consideration consists partly of rent to be paid each month, and partly of a sum equal to a month's rent paid in advance and to be repaid at the end of the lease. See the decision in *Reference under Stamp Act*(1).

The instruments are chargeable under article 39 (b), schedule I of Act I of 1879.

In case 3 referred to by the Collector we declare that the instrument is chargeable under article 35 (a), IV and 35 (c), schedule I of Act II of 1899, with a duty of Rs. 1-8-0.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice.

ABDUL AZEEZ SAHIB (ACCUSED), PETITIONER,

v.

CUDDAPAH MUNICIPALITY (COMPLAINANT), RESPONDENT.*

1902.
December 8.

District Municipalities Act.—(Madras) Act IV of 1884 as amended by (Madras) Act III of 1897, s. 269—Money due as tax, fee, toll or other payment—Money due on toll-contract—Applicability of section.

Money due under a contract entered into with a Municipality for the right to collect tolls in consideration of a money payment does not fall within any of the provisions of section 269 of the District Municipalities Act, 1884, and a contractor

(1) I.L.R., 25 Mad., 3.

* Criminal Revision Case No. 423 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court, to revise the order of the Cuddapah Bench Magistrate's Court, dated 23rd October 1901, in Calendar Case No. 128 of 1900.