

APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Oldfield
and Mr. Justice Seshagiri Ayyar.*

AMIRTHAMMAL (PLAINTIFF),

v.

MADDALAKARUN ALIAS RAMALINGA GOUNDAN
(DEFENDANT).*

1920,
January 22.

Stamp Act (II of 1899), sec. 2 (5), articles 15 and 40 of Sch. I—Court Fees Act (IV of 1870), Sch. II, article 6—Security bond by receiver binding himself and his properties—Proper stamp—Whether liable under Stamp Act and Court Fees Act.

A security bond in favour of a Court, executed by a Receiver binding himself and his properties for the due discharge of his duties, must be stamped both under the Court Fees Act and under article 40 of Schedule I of the Stamp Act; *Kulwanta v. Mahabir Prasad*, (1889) I.L.R., 11 All., 16 (F.B.) and Referred Case No. 19 of 1911, followed.

CASE referred under section 60 of the Indian Stamp Act (II of 1899) by the District Munsif of Tiruvannāmalai in Execution Petition No. 220 of 1919, in Small Cause Suit No. 1275 of 1915, as to the proper stamp on an instrument by which a receiver binds himself and his properties.

This is a reference made to the High Court by the District Munsif of Tiruvannāmalai under section 60 of the Indian Stamp Act (II of 1899). The plaintiff in a small cause suit (Small Cause Suit No. 1275 of 1919, on the file of the Munsif's Court), having obtained a decree, attached in execution a registered mortgage bond for Rs. 75 executed by one T in favour of the defendant. The plaintiff was appointed Receiver to collect the said debt, and for the due performance of her duties as Receiver, she executed a security bond in favour of the District Munsif. The document was as follows:—

“ Security bond executed on 30th April 1919 by Amirtham-mal, daughter of Chinnu Pillai, Yadaya caste, Vishnu religion, cultivation (profession), aged about 40, in favour of the District Munsif of Tiruvannāmalai, showeth—

“ I am plaintiff in the suit and in execution of the decree by which defendant owes me Rs. 112-15-9, I attached the registered

* Referred Case No. 7 of 1919 (F.B.).

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mortgage debt of Rs. 75 executed by one Thandavaraya Goundan on 11th August 1917 to defendant. As it is necessary to collect the said mortgage, and to credit it towards my decree against defendant, and as I have petitioned the Court to appoint me as receiver for the said purpose of collecting the debt, I shall act with all possible diligence and care in the said task of collecting the debt. If it is necessary to file a suit to recover the mortgage debt, I shall defray the costs thereof from my own funds, and deduct the same from the sum that may be recovered. I shall render due and proper account (of any and every sum collected) then and there. I do not require any remuneration or commission for my labour. For the proper discharge of the aforesaid obligation I bind myself and my heirs in the sum of Rs. 150, and as security thereof I pledge undermentioned immoveable property which is mine and which is in my possession and enjoyment, and worth Rs. 200. Thus is the security bond written with my free will and consent."

The District Munsif held that the instrument was a bond chargeable only with a court-fee of eight annas and allowed it to be stamped as such. But the Sub-Registrar, to whom the Munsif forwarded the document for registration, returned it as he thought it was also liable to a general stamp duty of one rupee, and he quoted as authority for his position Referred Case No. 19 of 1911. The District Munsif thereupon made this reference to the High Court, through the District Judge of North Arcot. The District Munsif relied on the decision of the High Court in Referred Case No. 9 of 1908 and distinguished *Re The District Munsif of Viruwallur*(1) and Referred Case No. 19 of 1911.

The Government Pleader on behalf of Government.—The document was executed in favour of the Court by a Receiver appointed by the Court. It was executed in pursuance of an order of the Court directing the Receiver to furnish security under Order rule 3, Civil Procedure Code. The document falls under article 6, Schedule II, of the Court Fees Act. It also falls under article 57 as well as article 40 (b) of the Stamp Act. It is a security under article 57 of the Stamp Act. It is also a mortgage within the definition of section 2, sub-section 17 of

the Stamp Act. It therefore falls under article 40. In either case, it does not fall under article 15 of the Stamp Act, which is only a residuary article which will apply only when no other article applies. Hence stamp duty is payable both under Court Fees Act and Stamp Act. Reliance was placed on the decision in *Referred Case No. 19 of 1911(1)* and on the decision in *Kulwanta v. Mahabir Prasad(2)*. The decision in *Referred Case No. 9 of 1908(3)* and in *Re The District Munsif of Tiruvallur(4)*, support the contrary view.

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The JUDGMENT of the Court was delivered by

WALLIS, C.J.—Following *Kulwanta v. Mahabir Prasad(2)* WALLIS, C.J. and *Referred Case No. 19 of 1911(1)* we hold that the bond must be stamped both under the Court Fees Act and under article 40 of Schedule I of the Stamp Act, as it comes within the definition of a mortgage in section 2 (5) of the Indian Stamp Act, and article 15 is therefore inapplicable. In *Referred Case No. 9 of 1908(3)* the point that the bond in question was a mortgage within the meaning of the definition does not appear to have been taken. In *Re The District Munsif of Tiruvallur(4)* the bond, which was given by a judgment-debtor and two sureties, does not appear to have been a mortgage bond and consequently came within article 15.

K.R.

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Ollfield and Mr. Justice Seshagiri Ayyar.*

SECRETARY TO THE COMMISSIONER OF SALT,
ABKARI AND SEPARATE REVENUE, MADRAS
(REFERRING OFFICER).*

1920,
January,
19 and 22.

Stamp Act, Indian (II of 1899), sec. 5—Sale—Mortgage for due performance of covenants—Distinct matters, meaning of—Stamp payable.

A sale-deed, in which the vendor mortgages lands not included in the sale as security for the due performance of his covenants, need not be stamped both as a sale and a mortgage.

Govindan Nambudiri v. Moidin (1918) I.L.R., 41 Mad., 469 (F.B.) overruled.

(1) Unreported.
(3) Unreported.

(2) (1889) I.L.R., 11 All., 16 (F.B.).
(4) (1914) I.L.R., 37 Mad., 17.

* Referred Case No. 3 of 1919 (F.B.).