

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Wadsworth and Mr. Justice Krishnaswami Ayyangar.

SAMUEL KOILPILLAI SKINNER, PLAINTIFF,

1939,
January 9.

v.

ARUNACHALAM PANDARAM AND TWO OTHERS,
DEFENDANTS.*

Indian Stamp Act (II of 1899), arts. 30 (a) (viii) and 30 (a) (i) of Sch. I-A, as amended by Madras Stamp Act (Amendment) Act (VI of 1922)—Applicability—Lease for an indefinite term—Proper stamp to be affixed.

The material portion of a document embodying the terms of a tenancy was as follows : “ As I reside in the scheduled properties (house, shop and site) in your possession (as usufructuary mortgagee) from to-day agreeing to pay rent at Rs. 5 per mensem, I shall pay the said rent of Rs. 5 by the 30th of each month and obtain your receipt. In default of payment as aforesaid, I shall pay the arrear of a month’s rent with interest at 4 pies per rupee per mensem together with the next month’s rent. Any plea of payment without receipt shall not prevail. In case of default of even this, you shall evict me from the house at your pleasure and let in other persons as tenants.”

Held that the document was a lease for an indefinite period which should be stamped under article 30 (a) (viii) of the Stamp Act of 1899 as amended by the Madras Stamp Act of 1922 and not a lease for a term of less than one year and therefore stampable under article 30 (a) (i) of Schedule I-A of the Stamp Act.

It does not follow that because a document is a monthly tenancy within the meaning of section 106 of the Transfer of Property Act it is a lease for less than one year. A lease for less than one year means a lease for some specified period which is less than twelve months.

* Referred Case No. 1 of 1938.

Reference under Stamp Act(1), *In the matter of Burmah Shell Oil Storage and Distributing Company of India, Limited*(2) and *Mangal Puri v. Baldeo Puri*(3) approved. SKINNER
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Amolia v. Ibrahim Ishak, In re(4) disapproved.

CASE stated under section 60 of Act II of 1899 by the District Munsif of Srivaikuntam in Small Cause Suit No. 712 of 1937.

Government Pleader (B. Sitarama Rao) for Government.—The point for decision in this case is what is the proper value of the stamp that should be affixed to the lease in question. [Mulla's Commentary on the Stamp Act, Article 35, was referred to.] If the lease is to be construed as one for a term of less than one year then it falls under article 30 (a) (i) of Schedule I-A of the Madras Stamp (Amendment) Act, 1922, and the stamp already affixed, viz., twelve annas, is sufficient. *Amolia v Ibrahim Ishak, In re*(4) is an authority for that view, but no reasons are assigned for the decision. On the other hand, there is a Full Bench decision of the Madras High Court, *Reference Under Stamp Act*(1), which supports the view that the lease in question should be interpreted as one for an indefinite period. The third lease mentioned in that case is on all fours with the present one. But that case was decided before the amendment was made. [*In the matter of Burmah Shell Oil Storage and Distributing Company of India, Limited*(2) and *Mangal Puri v. Baldeo Puri*(3) were referred to.] The first case does not give any reasons. The second one sets out the reasons for the decision, and the Calcutta case was considered and disapproved. The lease in this case cannot be one for less than a year as no specified term within one year is mentioned. Hence the proper construction would be that the lease is one for an indefinite period. If so, article 30 (a) (viii) of Schedule I-A of the Madras Stamp (Amendment) Act, 1922, applies and the proper value of the stamp should be Rs. 3 and not annas twelve.

The parties were not represented.

The JUDGMENT of the Court was delivered by LEACH C.J.—This reference arises out of a small cause LEACH C.J.

(1) (1902) I.L.R. 26 Mad. 473.

(2) (1933) I.L.R. 55 All. 874 (F.B.).

(3) I.L.R. [1938] All. 481.

(4) (1919) I.L.R. 46 Cal. 804.

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suit filed in the Court of the District Munsif of Sri-vaikuntam in which the plaintiff seeks to recover Rs. 35 as arrears of house and shop rent for a period of seven months. The terms of the tenancy are embodied in a document which is stamped with a stamp of the value of twelve annas, the appropriate amount if the document falls under clause (a) (i) of article 30 of Schedule I-A of the Stamp Act. Schedule I-A was added to the Stamp Act by the Madras Stamp (Amendment) Act, 1922. The question is whether it should be stamped under the provisions of article 30 (a) (viii) of the amended Act. Article 30 (a) (viii) requires the same duty to be paid as on a conveyance for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long. If article 30 (a) (viii) applies the appropriate stamp will be three rupees, not twelve annas.

The material portion of the instrument reads as follows :

“ As I reside in the scheduled properties (house, shop and site) in your possession (as usufructuary mortgagee) from to-day agreeing to pay rent at Rs. 5 per mensem, I shall pay the said rent of Rs. 5 by the 30th of each month and obtain your receipt. In default of payment as aforesaid, I shall pay the arrear of a month's rent with interest at 4 pies per rupee per mensem together with the next month's rent. Any plea of payment without receipt shall not prevail. In case of default of even this, you shall evict me from the house at your pleasure and let in other persons as tenants.”

In our opinion this is clearly a lease for an indefinite term and not one for a term of less than one year. The matter has, however, been referred to this Court as the result of the decision of the Calcutta High Court in *Amolia v. Ibrahim Ishak, In re*(1) where it was held

that a lease of this description is a lease which purports to be for a term of less than one year and is therefore stampable under the article which now corresponds to article 30 (a) (i). The judgment in the Calcutta case is a short one and no reason is given for the decision. It is directly opposed to the decision of a Full Bench of this Court in *Reference under Stamp Act*(1) where it was held that an instrument of much the same nature should be stamped under article 35 (a) (iv), the article corresponding to article 30 (a) (viii) of the amended Stamp Act. The Calcutta decision is also in conflict with two decisions of the Allahabad High Court: *In the matter of Burmah Shell Oil Storage and Distributing Company of India, Limited*(2) and *Mangal Puri v. Baldeo Puri*(3). In the latter case the Court considered the Calcutta decision and gave its reasons for disagreeing with it. It was pointed out that it did not follow that because a document was a monthly tenancy within the meaning of section 106 of the Transfer of Property Act it was a lease for less than one year. A lease for less than one year meant a lease for some specified period which was less than twelve months. With these observations we are in entire agreement. Consequently we hold that the lease now under consideration was improperly stamped and should have been stamped under article 30 (a) (viii) with a stamp of the value of three rupees.

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V.V.C.

(1) (1902) I.L.R. 26 Mad. 473. (2) (1933) I.L.R. 55 All. 874 (F.B.).
(3) I.L.R. [1938] All. 481.
