

to Anundmoyee for her life, it reverted on her death to the legal heirs of the testator, and therefore the applicant being an heir of the testator under the Hindu law, and there being nobody else who is shown to have a better claim, the applicant is entitled to administration.

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Upon all these considerations, we are of opinion that the order passed by the District Judge is right, and ought to be affirmed with costs.

H. T. H.

Appeals dismissed.

CIVIL REFERENCE.

*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter
and Mr. Justice Cunningham.*

*In re THE MENGLAS TEA ESTATE.**

*Stamp Act, I of 1879, Arts. 21, 60, (cl. b.)—Transfer of lease—Transfer of
a share of a partnership.*

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June 19.

Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, the transaction should be regarded not as the transfer of a lease, but as the sale of a share in a partnership, and the duty payable in respect thereof should be that falling under Sch. I, Art. 21 of Act I of 1879.

THIS was a reference under s. 46 of the Stamp Act.

It appeared that one G. W. Hewitt had entered into partnership with five other persons for the purpose of working a certain Tea Estate, called the "Menglas Tea Garden," and that under the deed of partnership, dated the 1st January 1885, it was open to any one of the partners to sell his share in the estate. The share of G. W. Hewitt in the abovementioned estate was a 3-16th share; the land composing the Menglas Tea Estate was leased to the members of the partnership by Government under three separate leases, each lease being for a term of six years, with option of renewal on certain terms. G. W. Hewitt had, in accordance with certain powers given under this deed of partnership, entered into an arrangement with one A. T. Paterson for the sale

* Civil Reference No. 835 of 1885, made by C. A. Samuella, Esq., Officiating Secretary to the Board of Revenue, L. P., dated the 4th. of May 1885.

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to him, for a sum of Rs. 10,000, of a one-sixteenth share in the estate, and for this purpose had executed a conveyance to which his partners were also parties, the contents of which (so far as are necessary for this report) were as follows :—

“And whereas the vendor has already delivered over to, and placed the purchaser in possession of, the said one-sixteenth part or share of, and in all the machinery, plant, implements, carts, bullocks, horses, boats, elephants, and other live and dead stock, whatsoever in or upon the said tea garden or estate, or belonging or appurtenant thereto, and also of and in all tea manufactured and in process of manufacture, and tea seed; and whereas the like one-sixteenth part or share of and in all unadjusted profits, balances, and debts, and sums of money (if any) which have accrued, or become due and owing to the owners for the time being of the estate in respect of the premises since 1st January 1885, and the rents, issues and profits thereof, have already been passed to the purchaser's credit. *Now this Indenture Witnesseth* that, in pursuance of the said agreement, and in consideration of the sum of Rs. 10,000 before the execution hereof paid by the purchaser to the vendor, (the receipt whereof he doth hereby acknowledge, and therefor release the purchaser, his heirs, executors, administrators, and assigns for ever), he, the vendor, doth hereby assign and transfer unto the purchaser, his executors, administrators and assigns, all that one equal and undivided one-sixteenth part or share of and in all those three several pieces or parcels of land in the schedule hereto described, &c., &c., subject to the payment of the rents and the performance and observance of the covenants and conditions in and by the hereinbefore recited leases reserved and contained, and under which the same are held from Government, together with the like part or share of and in the tea garden formed thereon, and known as the Menglas Tea Estate, &c., &c., together with the like part or share of and in all and every the lands and landed property in any way attached to or considered to be part or parcel thereof, and also of and in all bungalows, tea-houses, godowns, out-offices, and other erections and buildings in or upon or any wise appertaining to the said lands, tea estate, hereditaments and premises, and also of and in all tea trees and seedlings, planted and growing thereon, with full power

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and authority to the purchaser, his heirs, executors, administrators and assigns, &c., &c., to call in, sue for, recover, and receive the said balances, debts, or sums of money which have already been passed to the purchaser's credit, and to give discharges for the same, &c., &c., and of and in all and all manner of rights, including the benefit of contracts with coolies and others, and application for land and other advantages, easements, privileges, profits and appurtenances whatsoever to the said lands, tea estate, hereditaments, and premises or any part thereof, and all the estate, right, title, and interest, property, claim and demand whatsoever of the vendor of, into, out of, or upon the same premises, to have and to hold the said one-sixteenth part or share of and in the said lands, tea estate, hereditaments, and others premises unto the purchaser, his executors, administrators and assigns for the terms at the yearly rents and under and subject to the conditions under which the same, for the time being, be held from Government, and on the part of the lessees to be paid, performed and observed. *And this Indenture doth further witness that he the purchaser doth, shall and will hereafter become, continue, and be a partner with the other persons forming the partnership for the purpose of working, carrying on, and extending the said tea estate under the deed of partnership of the 1st January 1882, &c., &c.*"

The schedule in which the properties purporting to pass under the conveyance were set out, contained mention only of three distinct parcels of land. This deed was stamped under Art. 60 (b) of the Stamp Act of 1879, as a transfer of interests secured by three leases, and bore, therefore, a stamp of Rs. 15.

The Collector of Stamp Revenue was of opinion that the conveyance was insufficiently stamped; and that the instrument was intended by the parties as a conveyance on sale to the purchaser of the one-sixteenth share of the property *as a whole*, and as a receipt and acquittance for the entire purchase money; and that, therefore, the instrument was liable to a stamp duty *ad valorem* on the entire consideration, and not with a stamp of Rs. 15 as a transfer of interests secured by three leases.

The Board of Revenue was of opinion that the very utmost the deed, taken as one of transfer, could cover, would be the land and the legal incidents thereof, which would include the easements

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attached to the land and all things attached to the earth inclusive of the buildings; and that from the recitals in the deed the terms went beyond those of a mere transfer of a lease; the Board, therefore, referred the case to the High Court for an opinion on the question of the proper stamp duty chargeable on the instrument.

Mr. *Pugh*, for the Mengleas Tea Company.

The *Advocate General* (Mr. *Paul*) for the Board of Revenue.

The opinion of the Court was as follows:—

GARTH, C.J. (MITTER and CUNNINGHAM, JJ., concurring).—
In this and in all other similar cases, which are referred to us by the Board of Revenue, as to the proper amount of stamp duty chargeable upon a deed of conveyance, I consider that we are bound to look at the substance of the transaction as disclosed by the whole of the deed, and not merely to the language of the operative part or parts of the instrument.

In that view it seems to me very clear that the subject-matter of the sale in question to Mr. Paterson was not a mere transfer of the leases of the 22nd of July 1884, but the sale of a one-sixteenth share of the partnership, called the "Mengleas Tea Association," including all of the property and effects belonging to that partnership.

It is recited in the deed that the vendor, who is one of the members of the Association, had contracted with the purchaser for the sale to him of a one-sixteenth part or share in the Association for the sum of Rs. 10,000.

It has been argued by Mr. *Pugh*, on behalf of the purchaser, that although this may have been the general nature of the arrangement, and although the share in the partnership itself as well as of the personalty, debts, and other assets of the partnership, may have formed part of the consideration for the Rs. 10,000, the only property which the deed itself professes to convey is the one-sixteenth share of the vendor's interest in the grants from the Deputy Commissioner.

There is no doubt that the deed has been framed with a view

to give colour to that argument. It is recited amongst other things that the one-sixteenth share of the personalty, including machinery, plant, bullocks, and other live and dead stock, &c., had been delivered over to the purchaser before the execution of the deed.

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But we cannot shut our eyes to the fact that *any actual delivery of a one-sixteenth undivided share of and in the live or dead stock*, or in fact of any other part of the subject-matter of the sale, was practically impossible; and if after the execution of such a deed a question was raised in any Court of law as to whether the one-sixteenth share of the personalty was conveyed by the deed, or independently of it, I cannot doubt that the proper answer would be that the one-sixteenth share in the whole property was intended to pass, and did pass, by the deed itself.

But then it was further argued by Mr. Pugh that, even assuming that a one-sixteenth share of the entire property of the partnership was intended to pass by the deed, that property would be divisible for purposes of stamp duty; and that, as the one-sixteenth share of the grants of the land constituted a very considerable part of the partnership assets, the transfer of the vendor's share in each of those grants would be chargeable with Rs. 5, and that an *ad valorem* duty would be chargeable upon the remainder of the property only.

No doubt this is a plausible argument, and it would seem to be in accordance with an unreported judgment of this Court in a reference from the Board of Revenue, *in re* a deed of assignment of the Mohargunj Tea Estate, decided on the 12th of September 1884.

But here again I think we must be guided by what we find to be the true nature of the transaction.

If the transaction is in substance "*the transfer of a lease*" properly so called, but accompanied by a conveyance of some other property, which has been enjoyed with the lease, or is incidental to it, then I think it would be right to treat the instrument (as we did in the Mohargunj case) as coming under Art. 60 of the Stamp Act, but to impose also an *ad valorem* duty upon the conveyance of the other property.

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On the other hand, if the transaction is in substance a sale of a share in a partnership, and the transfer of a share in the lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, then I think the transaction should be regarded, not as "*the transfer of a lease*," but "*as the sale of a share in a partnership*."

Suppose that a firm of tradesmen were to sell a share of their business to a new partner, and that in the deed, by which that share was conveyed, there was included a share of the lease of the shop, in which the business of the firm was carried on, could such a deed be properly called "the transfer of a lease" within the meaning of Art. 60? I think not. I think that in construing the Stamp Acts we are bound, as we are on other occasions, to call things by their right names; and that in such a case no reasonable man in common parlance would call the transaction a "*transfer of an interest in the lease*." The transfer of the interest in the lease would only be incidental to the sale of the share in the partnership.

I think that the same principle applies here. The subject-matter of the sale for which the Rs. 10,000 were payable was the one-sixteenth share in the Association; and although, having regard to the objects of the concern, the interest in the land formed undoubtedly a very important element in the sale, I think the transaction was a "*conveyance*," within the meaning of the Stamp Act, and not "*the transfer of a lease*" within the meaning of Art. 60.

The proper, stamp, therefore, in my opinion, is an *ad valorem* duty upon the Rs. 10,000.

I should add that the case entitled a "reference under the Stamp Act, s. 46," decided by the Madras High Court and reported in I. L. R., 5 Mad., p. 15, does not seem applicable to this case. The transfers there, so far as I can gather from the report and also from the record of the proceedings which has been furnished to us by Mr. Pugh, embraced only the subject-matter of the original leases, and not any additional property.

T. A. P.