

1915

THE
MUNICIPAL
BOARD OF
ALLAHABAD
v.
TIKANDAR
JANG.

obtain from the defendant the deposit of 10 per cent. of the purchase money. This amount they were entitled to recover under clause 8, as soon as a breach of the conditions of the document was committed. They also acquired the right to resell the property; but under clause 8 the right to resale did not carry with it a right to recover damages sustained by reason of any deficiency arising in the amount of purchase money realized by the resale. The parties must be bound by the contract which they entered into, and we have to consider what their intention was when clause 8 was inserted in the document. If it had been intended that upon failure to perform any of the conditions of the sale, the vendee would be liable to pay damages arising upon a resale, one would have expected that such a condition would find place in the document. The absence of such a condition leads to the inference that the only penalty incurred by the vendee is the forfeiture of the 10 per cent. of the purchase money which he was bound to deposit. In this view the English cases and other authorities cited before us have no bearing on this case and need not be considered. In our opinion the decision of the lower appellate court is right and this appeal must fail. We accordingly dismiss it with costs.

Appeal dismissed.

FULL BENCH.

1915
November, 29.

Before Justice Sir George Knox, Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

JIBAN KUNWAR (PETITIONER) v. GOBIND DAS (OPPOSITE PARTY).
Act No. II of 1899 (Indian Stamp Act), schedule I, article 55—Stamp—Release—Partition deed.

Two persons, each of whom claimed the sole right to the property of a deceased relation, arrived at a compromise of their respective claims and gave effect thereto by means of two deeds of even date, by which deeds each relinquished in favour of the other his (or her) claim to a portion of the estate of the deceased.

Held that these deeds were releases, assessable to stamp duty under article 55 of the first schedule to the Indian Stamp Act, 1899. *Elknath S. Gownde v. Jagannath S. Gownde* (1) and *Reference under Stamp Act, section 46* (2) referred to, *Reference under Stamp Act, section 46* (3) distinguished.

* Civil Miscellaneous No. 183 of 1915.

(1) (1885) I. L. R., 9 Bom., 417. (2) (1894) I. L. R., 18 Mad., 233.

(3) (1899) I. L. R., 12 Mad., 198.

THIS was a reference made by the Board of Revenue under section 57 of the Indian Stamp Act, 1899. The following were the facts out of which the reference arose :—

On the 23rd of August, 1914, one Mathura Das died childless leaving property of the estimated value of Rs. 2,25,000. The sister of the deceased applied for letters of administration. Gobind Das, a collateral of Mathura Das, disputed her claim. Eventually the two claimants effected a compromise, and to give effect to this compromise both the parties executed separate instruments of even date on the 14th of September, 1914. Each instrument was treated as a deed of release and was stamped with a stamp of Rs. 5. The instrument executed by Gobind Das was presented for registration and was impounded by the Sub-Registrar, who considered it to be an instrument of partition chargeable with a duty of Rs. 375. The instrument was sent to the Collector, who considered it to be a release and referred the case to the Board of Revenue under section 56 (2) of the Act. The Chief Controlling Revenue Authority gave it as their opinion that the two deeds read together constitute an instrument of partition liable to a duty of Rs. 375 under article 45, schedule I, of the Stamp Act.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the petitioner.

Babu *Sital Prasad Ghosh*, for the opposite party.

KNOX, MUHAMMAD RAFIQ and PIGGOTT, JJ. :—The following case has been stated by the Chief Controlling Revenue Authority of these Provinces to this Court under section 57 of the Indian Stamp Act of 1899. The case stated runs as follows :— On the 23rd of August, 1914, one Mathura Das died childless leaving property of the estimated value of Rs. 2,25,000. The sister of the deceased applied for letters of administration. Gobind Das, a collateral of Mathura Das, disputed her claim. Eventually the two claimants effected a compromise, and to give effect to this compromise both the parties executed separate instruments of even date on the 14th of September, 1914. Each instrument was treated as a deed of release and was stamped with a stamp of Rs. 5. The instrument executed by Gobind Das was presented for registration and was impounded by the Sub-Registrar, who considered it to be an instrument of partition chargeable with a

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(1) (1889) I. L. R., 12 Mad., 198. (2) (1885) I. L. R., 9 Bom., 417.

(3) (1894) I. L. R., 18 Mad., 283.