

FULL BENCH.

1914
December, 18.

Before Justice Sir George Knox, Mr. Justice Muhammad Raftiq and Mr. Justice Figgott.

STAMP REFERENCE BY THE BOARD OF REVENUE*.

Act No. II of 1899 (Indian Stamp Act), section 4—Stamp—Settlement of family property effected by two deeds, one modifying the other—Full duty paid on the first.

Two brothers, having come to an agreement as to the settlement of their joint property, embodied this agreement in a deed which was duly stamped according to the value of the property dealt with thereby. Subsequently the parties to this deed executed a second deed of settlement which modified the provisions of the first in certain directions, but dealt with no property which was not covered by that deed. Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events.

Held that the transaction effected by the two deeds fell within the purview of section 4 of the Indian Stamp Act, 1899, and, the full duty having been paid on the first deed, the second required a stamp of one rupee only.

THIS was a reference by the Board of Revenue under section 57(b) of the Indian Stamp Act, 1899. The facts which gave rise to the reference were thus stated in the Board's order :—

“On the 2nd of July, 1912, Raja Shambhu Dial and his brother Babu Brij Kishore executed an instrument, setting forth a family arrangement regarding their joint property. The instrument was taken to the Collector of Cawnpore in accordance with the provisions of section 31 of the same Act and was held to be an instrument of partition chargeable with a duty of Rs. 925. This duty was paid. On the 23rd of August, 1912, the two brothers took another instrument before the same Collector for adjudication as to the proper stamp duty to be paid. This instrument provided, *inter alia*, that the original deed of agreement, namely, that of the 2nd of July, 1912, should remain in force after certain alterations entered into later on. Both deeds were to be equally binding. The alterations referred to were (1) some alterations on purely nominal matters which need not be considered; (2) instead of the sum of Rs. 1,600, fixed for travelling expenses in the deed of prior date the sum of Rs. 1,500 was to be substituted, out of which Rs. 1,000 was to go to Raja Shambhu Dial and Rs. 500, to Babu Brij Kishore; (3) the sum of Rs. 12,000, assessed value of the house,

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kothi and garden, was raised to Rs. 15,000. This was to be paid by Raja Shambhu Dial to Babu Brij Kishore. The period of payment which had been fixed as one year was extended to one and a half years; (4) the *ahata* was to be made over to Babu Brij Kishore without any compensation whatever, (5) Raja Shambhu Dial was to pay in any case the sum of Rs. 3,000 in the marriage ceremony of Babu Brij Kishore's daughter; (6) a garden out of the joint stock was to remain in the sole possession of Raja Shambhu Dial and Rs. 2,300, were to be given to Babu Brij Kishore. The original deed of agreement was to remain in force except so far as the above alterations were concerned.

Mr. A. E. Ryves, for the Crown.

KNOX, MUHAMMAD RAFIQ and PIGGOTT, JJ.—This is a reference by the Chief Controlling Revenue authority of these provinces made under section 57 of Act No. II of 1899. The facts out of which it arises are stated by the Board of Revenue to be that on the 2nd of July, 1912, Raja Shambhu Dial and his brother Babu Brij Kishore executed an instrument, setting forth a family arrangement regarding their joint property. The instrument was taken to the Collector of Cawnpore in accordance with the provisions of section 31 of the same Act and was held to be an instrument of partition chargeable with a duty of Rs. 925. This duty was paid. On the 23rd of August, 1912, the two brothers took another instrument before the same Collector for adjudication as to the proper stamp duty to be paid. This instrument provided, *inter alia*, that the original deed of agreement, namely, that of the 2nd of July, 1912, should remain in force after certain alterations entered into later on. Both deeds were to be equally binding. The alterations referred to were (1) some alterations on purely nominal matters which need not be considered; (2) instead of the sum of Rs. 1,600, fixed for travelling expenses in the deed of prior date the sum of Rs. 1,500 was to be substituted out of which Rs. 1,000 was to go to Raja Shambhu Dial and Rs. 500 to Babu Brij Kishore; (3) the sum of Rs. 12,000, assessed value of the house, kothi and garden, was raised to Rs. 15,000. This was to be paid by Raja Shambhu Dial to Babu Brij Kishore. The period of payment which had been fixed as one year was extended to one and a half years; (4) the *ahata* was to be

made over to Babu Brij Kishore without any compensation whatever ; (5) Raja Shambhu Dial was to pay in any case the sum of Rs. 3,000, in the marriage ceremony of Babu Brij Kishore's daughter ; (6) a garden out of the joint stock was to remain in the sole possession of Raja Shambhu Dial and Rs. 2,300 were to be given to Babu Brij Kishore. The original deed of agreement was to remain in force except so far as the above alterations were concerned. The Board of Revenue considered that the case fell within the principle laid down in the ruling of this Court in Civil Miscellaneous Case No. 79 of 1912 and were of opinion that the latter instrument was a fresh instrument of partition to be stamped ad valorem. We sent for the ruling cited by the Board of Revenue. We are agreed that it has no bearing whatever upon the case before us. The obvious intention of the contracting parties was that the settlement of certain moneys and properties covered by the deed of the 2nd of July, 1912, should be re-adjusted. No new property was introduced into the second deed. Both deeds were contingent upon the coming to pass of other events which were at the time of execution events in the future. The intention was that they were to form and to be regarded as one deed. After carefully considering the language used in both deeds, and remembering always that Act No. II of 1899 is a fiscal enactment and that its provisions should be construed in favour of the subject, we hold that the present case falls within the purview of section 4 of the Act. The principal instrument has been charged with the duty prescribed in schedule I for settlement of property. The latter instrument is chargeable with a duty of one rupee only. A copy of this our judgement under the seal of the court and the signature of the Registrar will be sent to the Chief Controlling Revenue Authority.

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