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August, 6.

FULL BENCH

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

STAMP REFERENCE BY THE BOARD OF REVENUE *

Act No. II of 1899 (Indian Stamp Act), sections 40 and 57—Instrument certified by Collector to have been duly stamped—Reference by Chief Controlling Revenue Authority to High Court questioning correctness of Collector's decision—Jurisdiction.

Held that if a Collector has taken action under section 40, sub-section (1) (b) of the Indian Stamp Act, 1899, and, having received the deficient duty and the penalty imposed, has certified under sub-section (1) (a) that the instrument before him is duly stamped, the effect of sub-section (2) is that the jurisdiction of the Chief Controlling Revenue Authority to refer to the High Court, under section 57 of the Act, the question whether such instrument is in fact sufficiently stamped or not is ousted. *Reference under Stamp Act, section 57 (1) followed.*

THIS was a reference made under section 57 of the Indian Stamp Act, 1889, by the Chief Controlling Revenue Authority for the United Provinces. The facts of the case appear fully from the following statement made by the Board of Revenue.

“ (1) I am directed to refer the following case under section 37 (1) of the Stamp Act, for the decision of the Hon'ble High Court. The case came to the notice of the Board while scrutinizing the monthly statement of cases of the infringement of the stamp law in Agra submitted by the Collector under Rule 204 of the Stamp Manual.

“ (2) On the 13th of January, 1914, one Khub Chand and his sons executed a mortgage deed . . . in favour of one Shankar Lal for Rs. 20,500 on a stamp of Rs. 205 mortgaging their proprietary rights in land together with their mortgagee rights in certain other immovable property secured by a mortgage deed, dated the 1st of May, 1909, executed in their favour for Rs. 16,000 by one Ganga Prasad,

“ (3) On the 15th of February, 1916, Khub Chand and others sold a portion of the mortgaged property to the mortgagee, Shankar Lal, for Rs. 17,000 out of the mortgage debt of Rs. 20,500, the remaining property being left hypothecated with the mortgagee for the balance of the mortgage money, namely Rs. 5,500 and the

* Stamp Reference in Civil Miscellaneous No. 180 of 1917.

(1) (1901), I. L. R., 26 Mad., 752.

interest on that sum . . . This deed was executed on a stamp paper of Re. 1 only.

“(4) On the 2nd of April, 1916, another sale deed . . . being virtually in lieu of the former, was executed by the said vendors in favour of the same vendee in respect of the same property which had been sold by means of the sale deed, dated the 15th of February, 1916, for the same amount of consideration, viz. Rs. 17,000 and on the same terms, the only difference being that the sale of a house worth about Rs. 300, which house was mentioned only casually at the end of the body of the previous sale-deed, was in the new sale deed effected by means of express provisions made in the body of the deed itself. This second sale deed was also executed on a stamp of Re. 1 only. It was impounded by the Sub-Registrar of Agra and sent to the Collector of the district under section 30 (2) of the Stamp Act. The Collector held

Duty on Rs. 17,000, plus Rs. 300 on account of the house, or Rs. 17,300 under art. 23, schedule 1	Rs.	175
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Minus

Duty on Rs. 17,000 representing the proportionate amount of the mortgage money in respect of the whole of which stamp duty has already been paid under article 23, schedule I, read with section 24 of the Act	Rs.	170
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Net duty	Rs.	5
Duty paid	Rs.	1
Balance due	Rs.	4

that the sale-deed was not sufficiently stamped and that the deficient stamp duty payable amounted to Rs. 4 as noted on the margin. He levied this deficient duty and

penalty of Rs. 5 under section 40 (1) (b) of the Act.

“(5) In the first place no additional duty would appear to be due on account of the house worth Rs. 300, as its value is clearly included in the sale price of Rs. 17,000. The main question, however, is whether the Collector was right in holding that because the property sold (except the house) formed a part of the property previously mortgaged by the vendor to the vendee and on which duty had been paid already, the mortgagee was entitled to deduct from the duty payable on the sale-deed the amount of duty paid in respect of the mortgage under section 24 of the Stamp Act. It will be observed that only a portion and not the whole of the property mortgaged under the deed of the 13th of January, 1914, was transferred to the mortgagee, and it would appear therefore that

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the full duty of Rs. 170 in respect of Rs. 17,000 was payable on the sale deed (*In re Nirabai*, Indian Law Reports, 29 Bombay, 203) (1). If this view is correct, the Board are doubtful whether the realization of the additional duty can be ordered by them now.

“(6) The case is complicated and the decision of the Hon’ble High Court is solicited on the following two points.

(i) Whether the second instrument of sale is correctly stamped with a duty of Rs. 5 as assessed by the Collector or whether it should be assessed to a duty of Rs. 170 following the Bombay ruling.

(ii) Whether the Chief Controlling Revenue Authority has any powers of revision under section 56 (1) of the Act over the action of the Collector under section 40(1) (a) and (b) or over his action under section 40 (1) (b) either *before* or *after* he has given a certificate under 42 (1).

“(7) As regards the latter point attention is invited to Indian Law Reports, 25 Madras, 752 (2). It was held in that case that the Chief Controlling Revenue Authority has no such powers, though the learned Judges of the High Court constituting the Bench which disposed of the reference held divergent views in the matter.”

The Officiating Government Advocate (Mr. W. Wallach) for the Crown :—

The first point is, what is the amount of the stamp duty payable on the sale deed of the 2nd of April, 1916? But for the proviso to the explanation to section 24 of the Stamp Act there could be no room for doubt that the amount of duty payable would be 1 per cent on the sale consideration. That proviso and illustration (3) contemplate cases in which the property sold is identical with that mortgaged. They are inapplicable where only a portion of the mortgaged property is sold; *In re Nirabai* (1). Here, there is the further complication that another item of property which was never mortgaged has also been included in the sale.

The second point that arises is whether the Board of Revenue has any power to refer the matter after the Collector has decided

(1) (1904) I. L. R., 29 Bom., 203. (2) (1901) I. L. R., 25 Mad., 752.

it and taken action under section 40 (1) (b) of the Stamp Act. That section occurs in Chapter IV of the Act ; and under section 56 (1) the powers exercised by a Collector under Chapter IV shall in all cases be subject to the control of the Board. The words used are " in *all* cases." If in any case coming before him under section 40 the Collector feels doubt as to what the correct decision should be, he may refer the case to the Board under section 56 (2). If he does not feel any such doubt, he decides the matter himself and takes what he thinks to be the proper action. To hold that in the latter event the Board cannot, when the case comes to its notice, revise the action of the Collector would be to nullify the ' control ' conferred on the Board by section 56 (1). Under section 57 (1) the Board is entitled to refer to the High Court any case which has either been referred to the Board under section 56(2) or has " otherwise " *i.e.*, in any way, come to its notice. Further, section 40 (2) interposes no difficulty in this case ; sub-section (2) refers only to certificates endorsed under clause (a) of sub-section (1) of section 40. Here the action was taken under clause (b) of that sub-section and the certificate could only be under section 42 (1). Certificates endorsed under the last mentioned section are not mentioned in section 40 (2). The case of *Reference under Stamp Act, section 57(1)*, was one under section 40 (1) (a), and it was pointed out that in case of a certificate under section 42 (1) the Board has the power to revise ; vide page 766. It is for this Court to express an opinion as to what would be the correct stamp duty ; it would then be for the Board to take any action in the matter that it might think fit. The question whether the Board can now take any steps to overrule the Collector's decision and levy any additional duty does not call for a determination by this Court.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for Khub Chand :—

The present reference by the Board is *ultra vires*. There is no case pending before the Collector or the Board. The word " case " in section 57 is to be interpreted as meaning a pending case and not a case which has been decided by the Collector and in which a certificate has been endorsed by him. I rely on the cases

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of *Reference under Stamp Act, section 57 (1)* and *Reference under Stamp Act, section 57, (2)*. BHASHYAM AYYANGAR, J., at pages 758, *et seqq* of the report has, after an exhaustive treatment of the subject, shown that the Legislature did not intend to empower the Board of Revenue to revise the action of a Collector who has given a certificate under section 40 (1) (a) or section 42 (1), and that the right construction to be placed upon action 56 is that the Board can control the powers of the Collector exercisable under those provisions only before such powers have been actually exercised. Once they are actually exercised, the matter becomes final and there is no longer any "case" which may be referred under section 57. The power conferred on the Board by section 56 is that of "control" which implies a thing being done or to be done and not that which has already been done. The meaning of the word "control" given in Stroud's Judicial Dictionary, 2nd Edition, page 397, and the cases cited therein show that the application of the word is confined to proceedings so long as they are actually going on. The word signifies administrative control rather than judicial control. Section 59 (2) also shows that the reference under section 57 contemplates that there is a case to be disposed of, i.e., a *pending* case. Section 42 (2) shows that the action of the Collector under sub-section (1) *finally* disposes of the matter. In cases under the Stamp Act the Collector acts as the agent of the Government for the purpose of deciding upon and levying the correct amount of duty. He holds an exactly analogous position under the Land Acquisition Act. Under the latter Act the Government cannot question the correctness of an award made by the Collector, although a private party can do so. Similarly, under the Stamp Act there is no provision under which the decision of a Collector can be questioned if the Government thinks he has levied insufficient duty, although a private party can, under section 45, question such decisions. The decision of the High Court on this reference as to the correct amount of duty payable would be a mere *brutum fulmen*, for the Stamp Act provides no machinery under which the Board can now levy any additional duty or direct the Collector to do so, nor has the Collector any power under the Act to revise or review his own

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decision and levy more duty. On the question of what is the correct amount of stamp payable on the sale-deed it is submitted that by the sale-deed "property subject to a mortgage has been transferred to the mortgagee" and the case therefore comes within the proviso to section 24. The ruling in I. L. R., 29 Bom., 203, becomes unintelligible where the mortgagor sells a part of the mortgaged property in satisfaction of the whole mortgage money or for an amount larger than the mortgage money. The case of *Reference under the Stamp Act*, (1) held that the inclusion in the sale-deed of some property which was not included in the mortgage was no bar to the operation of the provision to section 24.

Mr. W. Wallach in reply:—

The interpretation put upon the word "control" in the two cases cited in Stroud's Judicial Dictionary is no guide to the interpretation to be put upon the word as it occurs in section 56 of the Stamp Act. Those cases were decided with special reference to the context in which the word was used in the particular and special Acts. "Stating a case," in section 57, means no more than stating a proposition which has arisen out of something which is already in existence. "In all cases", in section 56, does not mean something like "in all suits," but "in every instance." Sections 56 and 57 are independent of the subsequent sections and are not to be interpreted in the light of any expression contained in section 59. In the case in 4 Bom. L. R., 430, the whole and not a part of the mortgaged property was sold.

KNOX, A.O.J.—This is a reference made to this Court by the Chief Controlling Revenue Authority. It is said to be made under the provisions of section 57, sub-section (1) of the Indian Stamp Act, 1889. It is not a case that was referred to the Chief Controlling Revenue Authority under section 56, sub-section (2). Therefore if it falls at all under section 57, sub-section (1), it must be deemed to be a case otherwise coming to the notice of the Chief Controlling Revenue Authority. In its order of reference the Chief Controlling Revenue Authority states it as a case coming to the notice of the Board while scrutinizing the monthly statement of cases of the infringement of the Stamp Law of Agra.

(1) (1902) 4 Bom., L. R. 430.

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submitted by the Collector under Rule 204 of the Stamp Manual.

The point arises whether the record before us is the record of a case within the meaning of section 57, sub-section (1). The questions involved, so far as stamp duty is concerned, have been before the Collector of Agra under section 38 (2) of the Stamp Act. The Collector has held that the sale-deed in question was not sufficiently stamped, that the deficit stamp duty payable amounted to Rs. 4. This deficit duty he had levied, together with a penalty of Rs. 5, under section 40, sub-section (1), clause (b), of the Act. We understand that the deficit duty and the penalty have both been paid. This is in accordance with the statement made by the Chief Controlling Revenue Authority. Presumably, therefore, the Collector has certified by endorsement upon the deed that it is now duly stamped. Under section 40, sub-section (2), this certificate is for the purposes of the Indian Stamp Act conclusive evidence of the matter stated therein. The case before the Collector has been fully decided and there appears to be no room for any further disposal in accordance with section 59, sub-section (2) of the Indian Stamp Act. The very same point that is before us came before the Madras High Court. (See *Reference under Stamp Act section 57*, reported in I. L. R., 25 Mad., 752). The learned Judges before whom the reference came were divided in their opinion. Two of the learned Judges arrived at the opinion that section 57 of the Indian Stamp Act did not give the High Court jurisdiction, as there was nothing regarding which the High Court could be asked to pronounce judgement. The learned CHIEF JUSTICE took a contrary view. After the hearing of arguments addressed both by the learned vakil for Khub Chaud and the Government Advocate, I am of opinion that the view taken by the Madras High Court was the correct view and that this is not a case within the meaning of section 57. No definition of the word "case" has been cited in the argument on either side and I know of no definition by the Indian Courts upon the meaning of this word. I find on referring to Wharton's Law Lexicon, 11th Edition, page 147, that the word "case" is defined as (1) a trial, (2) a trial involving some point of law so important as to be published in the Law Reports as a precedent.

This confirms me in the view I have taken and I would return this reference to the Chief Controlling Revenue Authority with the opinion that the matters referred are, under the circumstances, not within the jurisdiction of this High Court.

RAFIQ, J.—I agree.

PIGGOTT, J.—I agree.

Reference answered accordingly.

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APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

ANT RAM (PLAINTIFF) v. MITHAN LAL AND ANOTHER (DEPENDANTS)*.
Act No IX of 1887 (Provincial Small Cause Courts Act), schedule II, article 41—Decree for maintenance against three persons, two of whom were made liable only in case of default by the third—Suit to recover proportionate amount of payments made—Suit cognizable by a Court of Small Causes.

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A decree was passed against three brothers for payment of a maintenance allowance to the widow of a fourth brother deceased. It was, however, provided by the decree that one of the three, Ant Ram, should alone be primarily liable for payment of the allowance, and the others only in case of default being made by Ant Ram. Ant Ram, having made certain payments, sued to recover a proportionate part thereof from the other brothers. *Held* that the suit was not one for contribution; but was a suit cognizable by a Court of Small Causes. *Mavula Ammal v. Mavula Maracoor* (1) and *Ramuswami Pantulu v. Narayanamoorthy Pantulu* (2) followed, *Fatima Bibi v. Hamida Bibi* (3) referred to.

IN this case a decree was passed in 1910, against three brothers for payment of a maintenance allowance at the rate of Rs. 10 per mensem to the widow of a fourth brother then deceased. But the court which passed the decree included in it an express direction that one of the brothers, Ant Ram, should alone be liable for the payment of the allowance, the liability of the others only arising in case of default being made by Ant Ram. Ant Ram, having paid the allowance decreed for some time, sued his brothers for recovery, as their proportionate share thereof, of a sum of Rs. 340. The court of first instance decreed the claim in full, but on appeal the amount decreed was considerably

* Second Appeal No. 149 of 1916, from a decree of B. C. Forbes, Subordinate Judge of Muttra, dated the 7th of December, 1915, modifying a decree of Gauri Prasad, Munsif of Mahaban, dated the 27th of January, 1915.

(1) (1906) I.L.R., 30 Mad., 212. (2) (1906) 14 M.L.J., 480.

(3) (1915) 13 A.L.J., 452.