

cannot be transferred. It has been argued that the grant is similar to an estate tail and therefore it cannot be transferred, but we agree with the learned Judges in the ruling cited, at page 176, in holding that there is no analogy to an estate tail and therefore no argument can be based upon any such analogy.

In our opinion the lower Court has correctly decided the suit and we dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

BASHIR AHMAD (DEFENDANT-APPELLANT) *v.* LAL NAR SINGH PARTAB BAHADUR SINGH (PLAINTIFF-RESPONDENT)*

1935
October 17

Weighment dues, whether rent—Jurisdiction of Civil and Revenue Courts—Suit for recovery of weighment dues, whether cognizable by Civil Courts—Stamp Act (II of 1899), Article 35—Lease including weighment dues, whether exempt from stamp duty under Article 35.

Weighment dues do not come under the definition of rent and the Civil Court has jurisdiction to try a suit for recovery of such dues. *Dulare v. Umrao Kuer* (1), relied on.

Though weighment dues do not constitute rent yet where there can be no doubt that the agreement for payment of these dues formed part of the consideration of the lease and is an integral part of it, the case is covered by the exemption contained in Article 35 of the Indian Stamp Act.

Mr. *Akhtar Husain*, for the appellant.

Messrs. *Haider Husain* and *H. H. Zaidi*, for the respondent.

SRIVASTAVA, J.:—This is an appeal by the defendant who has been unsuccessful in both the lower Courts. It arises out of a suit instituted in the Court of the

*Second Civil Appeal No. 355 of 1933, against the decree of Babu Avadh Behari Lal, Subordinate Judge of Rae Bareilly, dated the 18th of September, 1933, upholding the decree of Sheikh Iqbal Husain, Munsif, Dalmau, Rae Bareilly, dated the 13th of February, 1933.

(1) (1898) 1 O.C., 103.

1935

BASIM
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SINGH
PARTAB
BAHADUR
SINGH

Srivastava,
J.

Munsif of Dalmau for recovery of Rs.2-0-6 on account of weighment dues. The claim was based on an agricultural lease given by the plaintiff-respondent to the defendant in respect of eight plots of land. This lease is evidenced by the *qabuliat* exhibit 1 which purports to be for a period of one year namely 1338 Fasli. The entry in the column for rent in this *qabuliat* is Rs.65 + Rs.2-0-6 for weighment dues at the rate of six pies per rupee, total Rs.67-0-6.

It is contended on behalf of the appellant that the sum of Rs.2-0-6 payable for weighment dues must be treated as rent, and if so, the suit was not cognizable by the Civil Court. It may be mentioned that this plea about jurisdiction was not pressed before the lower appellate Court. It must also fail on the merits because in my opinion the sum of Rs.2-0-6 cannot strictly be treated as rent. In the column of remarks it is stated that the *qabuliat* was executed for 1338 Fasli at a rent of Rs.65 (*bajama mubligh paisath*). In the column for rent also the rent against the eight plots is given as Rs.65 but below this figure there is an entry of Rs.2-0-6 preceded by the words weighment dues at the rate of half anna per rupee. The use of these words clearly shows that this sum of Rs.2-0-6 was not rent but was on account of weighment dues. No doubt the entries of the two above-mentioned figures is followed by another entry of a sum of Rs.67-0-6 as total of them both. In the circumstances this can only imply that the total amount payable by the tenant was Rs.67-0-6 which was made up of Rs.65 for rent and Rs.2-0-6 for weighment dues. In *Dulare v. Musammatt Umrao Kuer* (1) it was held by the late Judicial Commissioner's Court that weighment dues do not come under the definition of rent and that the Civil Court had jurisdiction to try a suit for recovery of such dues. I would therefore overrule the contention.

(1) (1898) 1 O.C., 103.

Next it is contended that if the claim for Rs.2-0-6 on account of weighment dues is not treated as rent the *gabuliat* in so far as it relates to an agreement for payment of this amount was inadmissible in evidence for want of stamp. It is argued that the promise to pay Rs.2-0-6 as weighment dues is an agreement independent of the lease and in order to make the agreement admissible it must be stamped as an agreement. Article 35 of the Stamp Act relating to leases contains an exemption in the case of a lease executed for the purposes of cultivation without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees. Though the weighment dues do not constitute rent yet there can be no doubt that the agreement for payment of these dues formed part of the consideration of the lease and is an integral part of it. In the circumstances I am of opinion that the case is covered by the exemption contained in Article 35 of the Indian Stamp Act. This contention also must therefore fail.

The result is that I dismiss the appeal with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice E. M. Nanavutty and
Mr. Justice G. H. Thomas*

MUSAMMAT KARIM JEHAN BEGAM AND ANOTHER (APPLICANTS) *v.* GIRDHARI LAL AND OTHERS (OPPOSITE-PARTY)*

1935
October 29

*Civil Procedure Code (Act V of 1908), section 109(a) and (c)—
Appeal to His Majesty in Council—Limitation Act (IX of
1908), sections 3 and 5—Order rejecting an application for
extension of time under section 5, Limitation Act and refusing
to admit time-barred appeal—Order, whether appealable*

*Privy Council Appeal No. 13 of 1935, for leave to appeal to His Majesty in Council against the decree of a Bench of this Court, dated the 4th of March, 1935.

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*Srivastava,
J.*