

section 147 of the Criminal Procedure Code. Proviso No. 1 to section 18 of the Mámlatdárs' Act permits the unsuccessful party to sue for mesne profits in a Civil Court, and Proviso No. 2 directs that the Mámlatdár's decision shall not be held conclusive in civil disputes. The decision of the Mámlatdár under Bombay Act III of 1876 was, therefore, never intended to operate as a bar to a suit for possession in the Civil Court. The order of dismissal must be upheld, and the application for review rejected.

Rule discharged with costs.

ORIGINAL CIVIL.

*Before Sir L. H. Jenkins, Chief Justice, Mr. Justice Tyabji, and
Mr. Justice Russell.*

IN THE MATTER OF THE INDIAN STAMP ACT, 1899, SECTION 57.*

Stamp—Sale of leasehold property—Rent reserved not liable to ad valorem duty—Stamp duty leviable only on the actual consideration money—Stamp Act (II of 1899), Secs. 24, 25, and Sch. I, Art. 63.

Certain leasehold property demised by the Secretary of State for India to the original lessee for a term of 999 years, at the yearly rent of Rs. 39-11-0, was assigned to the trustees of a charity for the sum of Rs. 1,02,000, the trustees consenting on their part to pay the rent reserved by the original lease. The deed bore a stamp of the value of Rs. 1,020;—Rs. 1,02,000 having been assumed to be the consideration for the transfer. The Collector of Bombay referred to the High Court the question whether under section 24 of the Stamp Act (II of 1899) the payment of the rent reserved by the deed should not be taken as part of the 'consideration' in respect whereof the transfer was chargeable with *ad valorem* duty.

Held, that the *ad valorem* duty was only payable on the money consideration actually mentioned in the conveyance, (*viz.*, the amount of the purchase-money).

REFERENCE by the Collector and Superintendent of Stamps, Bombay.

The reference was in the following terms:—

"1. By deed of transfer of leasehold property entered into on the 6th day of December, 1899, between Beramji Navrosji Darabsett of the one part and Lakhmidas Khimji, Goverdhandas Goualdas Tejpal, and Naranji Dwarkadas, officiating trustees of the Goculdas Tejpal Charities, of the other part, after reciting

* Reference, No. 4 of 1899.

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that by an indenture of lease dated the 2nd day of December, 1871, and expressed to be made between the Secretary of State for India in Council of the one part and Cooverji Ludha of the other part, certain premises therein mentioned, with their rights, easements and appurtenances, were demised by the said Secretary of State unto the said Cooverji Ludha, his executors, administrators and assigns, for the term of 999 years from the 26th day of August, 1867, at the yearly rent of Rs. 39-11-0, and subject to the covenants and conditions by the lessee to be observed and performed, and reciting that under an indenture dated the 16th day of October, 1888, and made between Kesserbai of Bombay, widow of Cooverji Ludha, of the one part and the said Beramji Navrosji Darabsett of the other part, the said premises comprised in the hereinbefore recited indenture of lease had become vested in the said Beramji Navrosji Darabsett for the then residue of the said term of 999 years, and reciting that the said Lakhmidas Khimji, Goverdhandas Goculdas Tejpal, and Naranji Dwarkadas were the officiating trustees of the Goculdas Tejpal Charities, and reciting (*inter alia*) an agreement dated the 24th day of October, 1899, and made between the parties to those presents whereby the said Beramji Navrosji Darabsett agreed with the said officiating trustees for the sale to them of the said premises comprised in the hereinbefore recited indenture of lease with their appurtenances for the residue then unexpired of the said term of 999 years free from all incumbrances except the rent reserved by and the covenants on the part of the lessee contained in the said recited indenture of lease subject to all existing tenancies at or for the price or sum of Rs. 1,02,000, of which the sum of Rs. 7,000 was then paid to the said Beramji Navrosji Darabsett as a deposit. It was witnessed that in pursuance of the said agreement, and in consideration of the sum of Rs. 7,000 so paid as a deposit as aforesaid, and of the further sum of Rs. 95,000 upon the execution of those presents paid by the said Lakhmidas Khimji, Goverdhandas Goculdas Tejpal, and Naranji Dwarkadas as such officiating trustees as aforesaid, making together the sum of Rs. 1,02,000, he, the said Beramji Navrosji Darabsett, did thereby assign unto the said officiating trustees, their heirs, executors, administrators, and assigns all the

premises comprised in and demised by the hereinbefore recited indenture of lease or expressed so to be, with their rights, easements and appurtenances to have and hold the said premises thereinbefore expressed to be thereby assigned or expressed so to be unto the said officiating trustees, their heirs, executors administrators and assigns for all the residue then unexpired of the said term of 999 years at and under the rent reserved by the said indenture of lease and under and subject to the covenants and conditions in the same indenture contained and which thenceforth on the part of the lessees, their executors, administrators or assigns ought to be observed and performed and subject also to the existing tenancies; and in the deed were set out

Covenants on the part of the said Beramji Navrosji Darabsett that the therein recited indenture of lease was a good, valid and subsisting lease and had not been forfeited or surrendered, &c. And that he had good right to assign, &c., for the residue of the said term, for quiet enjoyment, and that the premises were free from incumbrances made by the said Beramji Navrosji Darabsett and for further assurance.

And the deed also set out a

Covenant on the part of the said officiating trustees that they would pay the rent reserved by the said recited lease and observe and perform all the covenants and conditions contained therein.

"2. A full copy of the deed which has been executed by the parties thereto, is hereto annexed and marked A. The deed bears stamp to the value of Rs. 1,020.

"3. This amount of stamp duty has been estimated by the parties to the deed under article 63 of Schedule I to the Indian Stamp Act, 1899, the Rs. 1,02,000 paid by the trustees as mentioned in the deed having been assumed by them to be the "consideration for the transfer" referred to in that article.

"4. I, however, have some doubt whether, having regard to the wording of section 24 of the Act, the payment of the rent reserved by the deed should not be taken as part of the "consideration" in respect whereof the transfer is chargeable with

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ad valorem duty. If section 24 has application in this matter, I am further in some doubt whether the stamp duty payable should be assessed under section 25 or how it should be assessed. I, therefore, beg to refer these questions for the opinion of this Honourable Court."

Lang (Advocate General) for the Crown.

JENKINS, C. J. :—Having regard to the terms of article 63 of the first schedule to the Indian Stamp Act, 1899, I am of opinion that *ad valorem* duty is only payable on the consideration money actually mentioned in the conveyance (*viz.*, the amount of the purchase-money), and that the rent reserved by the deed should not be taken as part of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

Attorney for Government :—*Government Solicitor.*

FULL BENCH.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Candy, Ranade, Tyabji and Russell, JJ.

1899.

September 29;
October 9, 11.

SHRINIVAS MURAR, A MINOR, BY HIS NEXT FRIEND AND ADOPTIVE MOTHER MAINABAI (ORIGINAL PLAINTIFF), APPELLANT, v. HANMANT CHAVDO DESHAPANDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Adoption by widow—Suit for a declaration that adoption was invalid and for recovery of possession—Reversioner—Bar of limitation to claim for declaration—Limitation Act (XV of 1877), Sch. II, Arts. 118, 119 and 141—Limitation Act (IX of 1871), Sch. II, Art. 129—Limitation Act (XIV of 1859), Sec. 1, Cls. 6 and 12—Specific Relief Act (I of 1877), Sec. 42.

Shrinivasrao and Konherraao were two divided brothers. They were members of a vatandār family. Konherraao died leaving two sons Swamirao and Timaji. Swamirao was given in adoption to Shrinivasrao. Timaji died leaving a widow and three daughters. In 1872 Timaji's widow, Gangabai, adopted defendant No. 1, and she died in the year 1890. In 1894 Shrinivasrao's grandson by adoption, the present plaintiff, a minor represented by his adoptive mother, sued for a declaration that the adoption of defendant No. 1 was invalid, for a declaration of ownership and possession of property with mesue profits, and for an injunction.

* Appeal, No. 53 of 1898.