

Bhat v. Venkatesh Sanbhav⁽¹⁾ ; or, to borrow the language of the Privy Council used in reference to an attachment of a co-parcener's share, it creates a valid charge on the property to the extent of the parcener's undivided share and interest therein which cannot be defeated by the death of that parcener.

We must accordingly hold that the share of the deceased Timápá in this case is, by virtue of the mortgage made by him, liable in the hands of the first defendant for the debt due on the mortgage, which is ordered to be realized by the decree in Sn. No. 36 of 1879. The decree of the Court below must, therefore, be reversed, and the declaration prayed for in the plaint must be made in favour of the plaintiff. Defendant must pay the plaintiff his costs throughout.

Decree reversed.

(1) 10 Bom. H. C. Rep., 139, and compare 11 Bom. H. C. Rep. at p. 81 ; and I. L. R., 5 Calc., at pp. 173-4.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood, and Mr. Justice Candy.

SINA'PAYA BIN RA'MA'PAYA HARIDA'S, PLAINTIFF, *v.* SHIVA'PA BIN SHIDA'PA' BA'MNI, DEFENDANT.*

Instrument—Conveyance—Consideration—The General Stamp Act (I of 1879), Sec. 24—Agreement—Stamp—Construction.

Where under an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee and also agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee-purchaser in the Collector's books,

Held, that such an instrument was a conveyance of which the amount of the consideration calculated according to section 24 of the General Stamp Act (I of 1879) was the original mortgage amount *plus* the amount mentioned in the instrument.

Held, also, that the instrument was an agreement to pay assessment until the land conveyed was transferred in the Collector's books, and as such should bear the additional stamp for an agreement, namely annas eight.

THIS was a reference made to the High Court by Ráo Sáheb Vináyak Vithal Tilak, Subordinate Judge of Bijápur, under section 49 of the General Stamp Act (I of 1879).

The reference was made in the following terms :—

“As I feel doubt as to the amount of duty to be paid in respect of Exhibit A produced in Suit No. 380 of 1889, I have the honour,

r section 49 of the Stamp Act, to refer the questions herein-mentioned for the decision of the High Court.

The facts which give rise to this reference are :—

‘Sinapáya, the plaintiff in the above suit, sues to redeem land mortgaged by him with possession to the defendant for a term of four years. The mortgage-deed was executed on 5th November, 1879, and the land was mortgaged in lieu of interest on Rs. 125 borrowed by the plaintiff on that date.

“The defendant states that on 18th March, 1885, the equity of redemption was orally sold to him by the plaintiff for Rs. 50.

“Exhibit A is put in by the defendant for the purpose of proving payment of the purchase-money. The plaintiff denies execution of the document.

“The defendant alleges that Exhibit A is a receipt, and he adds that if it be held to be a conveyance, the amount of duty is 8 annas only, the amount of the consideration for the conveyance being Rs. 50.

“But I am of opinion that the document is either a deed of sale, or an agreement falling under article 5, clause (c), Schedule I of Act I of 1879. I am further of opinion that Rs. 125 (mortgage money) *plus* Rs. 50 (alleged to be paid on 18th March, 1885) formed the consideration for the document. *Vide* I. L. R., 5 Bom., 470 ; I. L. R., 10 Bom., 58.

“Hence the questions for consideration are :—

“(1) Whether Exhibit A is a receipt, or a deed of sale, or an agreement falling under article 5, clause (c), Schedule I of Act I of 1879 ?

“(2) If Exhibit A is a deed of sale, whether the amount of stamp duty is 8 annas or Rs. 2 ? ”

The following is the translation of Exhibit A referred to above :—

“*Memo.*

“To Shivápá bin Shidápá Bámni, inhabitant of Kakhandki.

“Sinápaya bin Rámápaya Haridás, inhabitant of Kakhandki, gives in writing as follows :—

“I have mortgaged my land No. 296, area 10 acres 32 gunthás, assessment Rs.

to you for Rs. 125; but being in want of money, I have this day relinquished title to the land in your favour, in consideration of an additional sum of Rs. 50, received from you. Hence you may enjoy the land without disturbance from one generation to generation. As I have, at this time, no stamp with me, and cannot execute a deed of sale, I have executed this memo. in your favour. I shall, at my leisure, transfer the *kháta* of the land to your name and then take back the memo. I shall not fail to do so. I have received the aforesaid sum of Rs. 175 in cash in the presence of the writer and the attesting witnesses. The aforesaid agreement binds me and my heirs. Until the land is transferred to your name, I shall pay the assessment, and you should keep the boundary-marks in good repair according to the Government rules. This is the memo. given in writing on 18 March, 1885, A. D. Written by Bháu Dattatraya Talghatti of Kakhandki.

“Witnesses—

Mártand Jiváji.

One anna receipt stamp.

Nágapa Bhojápa.

SINA'PA'YA BIN RA'MA'PAYA HARIDA'S.”

PER CURIAM:—We are of opinion that the instrument is a conveyance, of which the amount of the consideration, calculated according to section 24 of Act I of 1879, is Rs. 175, and that it is also an agreement to pay assessment until the land conveyed is transferred in the Collector's books to the purchaser. The stamp duty leviable in respect of the conveyance would be Rs. 2, and in respect of the agreement 8 annas.

Order accordingly.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood
and Mr. Justice Candy.*

VASANJI HARIBHA'I, PETITIONER.*

18.

February

Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award, effect of—Division of the property in severalty—Partition deed—Clause 11, Section 3 of the General Stamp Act (I of 1879).

The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators,

Held that the instrument was an agreement to divide the property in severalty, and was, therefore, a partition deed within the definition in clause 11 of section 3 of the General Stamp Act (I of 1879).

* Civil Reference, No. 1 of 1891.