

REFERENCE BY THE BOARD OF REVENUE.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Doss
and Mr. Justice Chatterjee.*

In re PARASEA COLLIERIES, *Ld.**

1910
June 2.

*Stamp-duty—Lease—Multifarious Document—One lease with several parties
concurring to it—Stamp Act (II of 1899) ss. 5, 28 (3), 35, 57 (1).*

The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of section 5 of the Stamp Act.

The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted.

REFERENCE by the Board of Revenue.

The material portion of the reference was as follows :—

“2. The parties to a deed, dated 30th April 1908, in respect of which adjudication of stamp duty is desired, are as follows :—

- (1) Mr. C. C. Kilburn, described as ‘the Trustee.’
- (2) The Raneeganj Coal Association, Limited, in liquidation, referred to as ‘the old Company,’ and Messrs. W. H. Cheetham and C. C. Kilburn, the Liquidators of that Company, referred to as ‘the Liquidators.’
- (3) The Raneeganj Coal Association, Limited, an apparently existing Company, referred to as ‘the Association.’
- (4) Messrs. C. W. Wallace and others, members of the firm of Shaw, Wallace and Company, together referred to as ‘the Firm.’
- (5) The Parasea Collieries, Limited, referred to as ‘the Company.’

“3. From the recitals it appears that a former Company, by a deed dated the 1st September 1891, granted and assigned to Messrs. C. C. Kilburn and S. Dignam, their executors, administrators and assigns, as security for the repayment of debentures to the amount of Rs. 3,00,000 issued by the former Company, certain lands including those forming the subject of the deed under consideration, to hold the same so far as such premises were rent-free and freehold, absolutely, and such of the premises as were not rent-free and freehold and were held perpetually or under *mokarrari* leases, for the term of 999 years, and such of the premises as were held for a fixed term or for a terminable period, for all the residue then to come of such term or period, and subject, as to all the said premises, to the trusts declared by the said deed of and concerning the same. Of the above trustees only one is now surviving, Mr. S. Dignam having died in the year 1893.

* Reference by the Board of Revenue under s. 57 (1) of the Indian Stamp Act, 1899.

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"4. Before the debentures secured by the above-mentioned deed were paid off, the old Company went into liquidation, and, by its winding up resolution, the liquidators were authorised to enter into an agreement with the Association (then about to be incorporated) for the sale to the Association of the old Company's undertaking, business and assets. An agreement was accordingly entered into on the 14th November 1899, between the old Company and the Liquidators of the one part and the Association of the other part, whereby it was agreed that the old Company should transfer, and the Association should take over, as a going concern, subject to the debentures, all and every the property of the old Company including the lands comprised in the trust deed of the 1st September 1891. It appears that no formal transfer was ever executed in terms of the agreement, but the Association was, at the time of the signature of the agreement, put into possession of the property agreed to be transferred, and thereafter remained in possession as owners thereof.

"5. Subsequently the debentures were discharged, presumably with the funds of the Association, though this fact is not stated in the deed. No reconveyance of the property comprised in the Trust Deed was, however, ever effected.

"6. The deed goes on to recite that the Association had lately agreed with the Firm for the transfer to them or their nominees of the coal and the coal mining rights in and under the lands described in the first and second schedules to the deed for the price of Rs. 5,04,702 for the period, and subject to the rent and royalties and the terms and conditions thereafter appearing in the deed. Further, that the Firm had since agreed with the Company to transfer to the Company all the mining rights, etc., so agreed to be granted to the Firm in manner and subject as aforesaid, for the sum of Rs. 5,50,000. It is further recited that the trustee and the old Company and the Liquidators had at the request of the Firm consented and agreed to join in the deed for the purpose of more effectually assuring the premises thereby demised and vesting the same in the Company.

"7. The operative part of the deed, which follows, is in these terms :—

'Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of Rs. 5,04,702 paid by the Company to the Association at the request of the Firm, and of the sum of Rs. 45,298 paid by the Company to the Firm on or before the execution of these presents (the receipt of which several sums of Rs. 5,04,702 and Rs. 45,298, they, the Association and the Firm, do hereby respectively admit and acknowledge) the Trustee at the request and by the direction of the Association hereby grants leases and demises and the old Company and the Liquidators at the like request and direction do and each of them doth hereby grant lease and confirm and the Association at the request and by the directions of the Firm doth and the Firm doth hereby grant lease and confirm unto the Company all and singular the mines, veins, seams or beds of coal lying or being in or under all those the lands, etc., To have and to hold the premises hereby demised unto the Company for the term of 999 years as from the 20th February last past from which date the Company entered into actual possession of the demised premises, subject nevertheless to determination as hereinafter is mentioned, and to the payment of the rents and royalty hereinafter reserved and also subject to the terms and stipulations and conditions hereinafter contained.'

"8. The deed comprises covenants on the part of the Company as lessee and on the part of the Association as lessor, and no covenant or stipulation is entered into by any other of the parties to the deed.

"9. The Company covenants with the Association, *inter alia*—

(i) to pay to the Association a fixed royalty of five annas on every ton of coal raised and despatched and on every ton of coke manufactured and despatched from the mines lying under the lands described in the first Schedule, and also, in the event of such royalty in any year not amounting to Rs. 15,000, to pay to the Association the amount by which the royalty may fall short of that sum.

(ii) in respect of the mines under the lands described in the second Schedule, and the surface and other rights therein demised by the deed to pay to the Association an annual rent of Rs. 2,000.

"10. The Board in their order of the 19th November 1908 (disagreeing with the Government Solicitor and agreeing with the Collector of Stamp Revenue, Calcutta, and with the Advocate-General) held that the document in question is a multifarious document within the meaning and application of section 5 of the Stamp Act. The document appeared to the Board to embody two simultaneous leases by the Association to the Firm and by the Firm to the Company. The Board could not accept the argument that that portion of the document which sets forth the lease by the Association to the Firm is a mere recital. On the contrary, they held that the lease by the Association is as definitely set forth as the lease by the Firm, and that is definitely set forth, also, that the sum of Rs. 5,04,702 is the price paid for this lease. The arrangement that the Company shall pay the sum to the Association, and that it shall pay to the Firm the difference only between this sum and a five and a half lacs, did not seem to the Board to make the two transactions one transaction; this mode of payment was merely an arrangement of convenience. In this view the Board decided that the document should be stamped as follows:—

As a lease between the Association and the Firm under Article	Rs.
35 (b)	5,050
As a lease between the Firm and the Company under Article	
35 (c) with inclusion of rent and royalty	5,720
TOTAL	10,770

"11. The Company having expressed a wish to be heard against this order, the Board gave a hearing to learned counsel on their behalf. Briefly stated, the argument used before the Board was that there is only one transaction in the operative portion of the deed of the 30th April 1908, *viz.*, the lease to the Company of a single property, and in this lease other persons join and confirm according to their respective interests. It is argued that mere recitals showing why consent of several parties was considered to be necessary cannot be held to be operative. The deed recites that there was an agreement between the Association and the Firm, but that agreement, it is argued, never matured. Only the Company, it is urged, has any cause of action in this deed.

"12. The Board were asked, if they do not see their way to reviewing their order of the 19th November 1908, to refer the case to the Hon'ble High Court under s. 57 (1) of the General Stamp Act of 1899. The Board adhere to their

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opinion that the deed comprises distinct matters, *viz.*, a transfer from the Association to the Firm and from the Firm to the Company, and they think therefore that it should be stamped as directed in their order of 19th November 1908.

"13. In consideration, however, of the importance of the case and the advantage of obtaining an authoritative decision, the Board decide to make this reference to the Hon'ble High Court."

The Advocate-General (Mr. Kenrick, K.C.), in support of the reference.

Mr. Buckland, for the Parasea Collieries, Limited, was not called upon.

JENKINS C.J. This reference under section 57 (1) of the Indian Stamp Act of 1899 has been placed before us by the learned Advocate-General, who has said all that could be legitimately urged on behalf of the view asserted by the Board of Revenue; but he has failed to convince us. The facts are simple. The document which has been placed before us for adjudication is a lease for 999 years, which recites at length the previous title and a succession of agreements in relation to the properties comprised in it. The leased properties were at one time vested in the Raneeegunge Coal Association, Ld., but to secure a debenture loan they were assured to trustees, of whom C. C. Kilburn alone is now alive. Though the debenture loan has been discharged, there has been no reconveyance. The Company went into liquidation in 1899, but merely for the purpose of reconstruction, and on this reconstruction an agreement was made for the transfer to another Company, bearing the same name, and in the reference called the Association. Then there was an agreement by the Association to transfer the coal mining rights in and under the properties to Messrs. Shaw, Wallace & Co. for the price of Rs. 5,04,702 for the period and subject to the payment of the rent and royalties expressed in the lease now under consideration. Finally, Messrs. Shaw, Wallace & Co. agreed with the Parasea Collieries, Ld., to transfer to it all these mining and other rights subject to the same conditions for the sum of rupees five lacs and fifty thousand. To carry this last agreement into effect, it was thought

desirable to have the concurrence in the lease (i) of Mr. C. C. Kilburn, the surviving trustee of the debenture loan in whom the property is still vested, (ii) of the old Company and its liquidators, (iii) of the Association, and (iv) of Messrs. Shaw, Wallace & Company; but this did not alter the character of the lease or the nature of the transaction. The view of the Board would appear to be that "The document is a multifarious document within the meaning and application of section 5 of the Stamp Act." Now, that section provides that "any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act." But here there is only one lease, and that is so, though the concurrence of several parties may in the circumstances have been proper; and (in my opinion) there is no justification for treating the instrument as a double lease, and this is so whether regard be paid to the ordinary principles of conveyancing or the terms of the Act.

This is expressly recognised in relation to a sub-purchase in section 28 (3). But it is said that this section does not apply, because here we are concerned with a lease and not with the conveyance. The Article that applies to the lease is the 35th, and so far as the payment of a fine or premium is concerned, it provides that the lease shall bear the same duty as a conveyance for a consideration equal to the amount or value of such fine or premium. But the fine or premium for which this lease is granted is the sum of Rs. 50,500 payable by the Parasea Collieries, Ltd., and that alone, therefore, is the premium on which stamp-duty is payable. I therefore hold that the claim made by the Board of Revenue for the stamp-duty on this instrument as a lease between the Association and Messrs. Shaw, Wallace and Company cannot be sustained, and I would so answer the reference. I have not considered or dealt with any matter beyond that referred.

DOSS AND CHATTERJEE JJ. concurred.

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