

Karnataka High Court

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Chief Controlling Revenue ... vs M.V. Chandrashekar And Ors. on 14 September, 1984

Equivalent citations: AIR 1985 Kant 61, ILR 1984 KAR 1003, 1985 (1) KarLJ 99

Author: R Murthy

Bench: G Sabhahit, A Laxmeshwar, S R Murthy

JUDGMENT

Rajasekhara Murthy, J.

1. This is a reference under S. 54(1) of the Karnataka Stamp Act, 1957 (Act No. 34 of 1957) (hereinafter referred to as the Act) by the Chief Controlling Revenue Authority. The reference relates to the stamp duty payable on the three lease deeds which have been impounded by the Sub-Registrar, Koppa, when they were presented for registration.

2. The lease deeds were presented by one M. V. Chandrasekhar on 21-4-1980 as the lessor, representing his minor son, M. C. Indumouli. The documents in question are the lease deeds in respect of three portions of coffee estates known as "Chandra Estate" belonging to the minor. All the lease deeds are similar in nature and are executed for the same purpose on stamp paper of Rs. 5/-.

3. The Sub-Registrar, Koppa, impounded the documents and called upon the presenter to pay the deficit stamp duty of Rs. 750/-; Rs. 750/- and Rs. 600/- on the three lease deeds respectively. Being aggrieved by the notice issued by the Sub-Registrar, the presenter filed an appeal before the Chief Controlling Revenue Authority, who has referred the matter for our opinion under S. 54(1) of the Act, on the following questions :

"(a) Whether the "Security Deposit" is 'premium' or 'fine' as per S. 105 of the Transfer of Property Act and whether it is liable to duty under Art. 30(c) of the Schedule to the Karnataka Stamp Act, 1957

(b) If not whether it is a 'Bond' as defined in S. 2(1)(a) of the Karnataka Stamp Act, 1957 and whether liable to stamp duty under Art. 12 of the Schedule to the Karnataka Stamp. Act, 1957.

(c) If the document does not fall under any of the categories aforesaid, then what is the correct nature of the deed and what stamp duty is payable thereon".

4. We find from the reference papers that the controversy before the Sub-Registrar and before the Appellate Authority was in respect of the stamp duty sought to be levied on the annual rent reserved under each lease deed and the exemption claimed in respect thereof, on the ground that it is an agricultural lease and eligible for exemption under the exemption clause in Art. 30.

5. The Chief Controlling Revenue Authority has not sought our opinion on this aspect in the reference. However, the learned Government Advocate and the Advocate for the Presenter have advanced arguments on this aspect also before us. But, we do not like to express any opinion on this question, since there is no reference on this point.

6. Let us now examine one sample lease deed for the purpose of offering our opinion on the questions referred to above. The lease deed is executed at Bangalore on 1st January 1980 between M. V. Chandrasekhar as father and natural guardian of his minor son in favour of Mrs. M. C. Swarnalakshmi his wife, in her capacity as the trustee of the Manjunatheswara Trust under which she claims that she is authorised to take estate on lease. The lease is for one year. The yearly rent reserved is Rs. 25,000/-. (Lease Deed in CRC No. 4 of 1981), The object of the lease as is set-out in Clause (2) of the document is :

"(a) To harvest and market the Coffee Crops as well as any other crops whether plantation crops, commercial crops, agricultural crops, or otherwise and to retain the sale proceeds thereof for the Lessee's benefit and also to otherwise deal with the harvested crop in such manner as the Lessee may deem fit, and to do so to the Lessee's advantage and benefit and to the exclusion of any benefit therefrom to the Lessor, Provided, however, the Lessee shall not cut any trees or remove any plants to the detriment of the Demised Coffee Estate without the consent of the Lessor;

(b) To erect, construct and maintain such engines, machinery, buildings, structures, cottages and other things necessary for the purpose of maintaining, running and improving the Demised Coffee Estate or otherwise in the interest and to the benefit of the said Estate, Provided, however, the Lessee shall erect or construct any permanent structure only after giving prior notice to the Lessor and he may on receipt of such notice prohibit any such erection or construction if the same would not be to the benefit of the Demised Coffee Estate :

(c) To use any water in or under the Demised Coffee estate and to divert the same and to make, construct or maintain any water-courses, ponds or reservoirs, in the interest of and to the benefit of the Demised Coffee Estate; and

(c) To do generally all things which shall be convenient, necessary and in the interest of or to the benefit of the Demised Coffee Estate.

7. Under Clause-4, the lessee is to deposit a sum of Rs. 1,25,000/- on or before May 31, 1980 with the lessor by way of security deposit. This is insisted upon by the lessor in order to ensure proper maintenance of the demised coffee estate during the lease period. The lessor has reserved his right to appropriate from the said deposit, such sum of money which he may have to incur in case of any loss caused by the mismanagement of the estate by the lessee. On the other hand, if the lessee performs his obligations satisfactorily during the period of lease, the lessee is entitled to the repayment of the amount deposited, in two instalments, Rs. 50,000/- in the first week of October 1980 and the balance, if any, before the expiry of the lease period, namely, by the end of December 1980.

8. The first question referred is:

"Whether the security deposit could be treated as premium or fine within the meaning of the said term under S. 105 of the T. P. Act, and hence, exigible to duty as premium under Art. 39(c) of the Schedule".

Alternatively,

"Whether the instrument is a 'bond' as defined under S. 2(1)(a) of the Stamp Act and liable to be taxed as a 'bond' under Art. 12 of the Schedule".

9. In substance, the question that arises for our consideration is :

"What is the stamp duty to be levied on the security deposit under Cl. 4 of the lease deed"?

10. Security deposit is not the same thing as premium or fine, as explained under S. 105 of the T. P., Act, or any money advanced in addition to the rent reserved. We had occasion to deal with the connotation of the terms - "Premitia" or "fine" in a reference under the Karnataka Stamp Act in CRC No. 11 of 1981 disposed of by us on 17-8-1984 : (Reported in AIR 1985 Kant 56) (SB) wherein this Court held, relying upon several rulings of the Supreme Court. in para 13 of the Judgment as follows :

"The provisions contained in S. 105 of the Transfer of Property Act read in the light of the decisions of the Supreme Court cited above, bring about the distinction between a price paid for a transfer of right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a

price, the price paid is the premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. There may be circumstances where the parties may camouflage the real nature of the transfer by using clever phraseology. In some cases the so called premium is in fact advance rent and in others rent is deferred price. It is not the form but the substance of a transaction that matters. The nomenclature used may not be decisive or conclusive. But it helps the Court having regard to the other circumstances to ascertain the intention of the parties. Vide :- Commr of Income-Tax, Assam v. Panbari Tea Co. Ltd. .

11. We have, therefore, to examine whether the security deposit answers the description of the 'premium' or fine as understood and provided in S. 105 of the T. P. Act. Cl. 4 of the Lease Deed which is common to all the three documents in question, reads :

"The Lessee shall deposit on or before May 31, 1980, a sum of Rs. 1, 25,000/- (Rupees one lakh twentyfive thousand only) with the Lessor by way of a security Deposit for the proper looking after and maintenance of the Demised Coffee Estate until the end of the term of this lease. In the event of any delay in making such deposit, the Lessee shall be liable to pay interest to the Lessor at the rate of eighteen per cent (18%) per annum on the amount of security Deposit remaining unpaid. In the event of the Lessee failing to look after or maintain the Demised Coffee Estate properly, the Lessor shall be entitled to incur expenditure himself for the proper looking after and maintenance of the Demised Coffee Estate and the Lessor may reimburse himself from the said security deposit in respect of expenses so incurred by him during the term of this lease, In the event of the Lessor incurring during the term of this lease, for the proper looking after and maintenance of the Demised Coffee Estate, an expenditure for a sum exceeding the amount of the Security Deposit with him he shall be further entitled to recover from the Lessee the amount of such expenditure incurred by him in excess of the amount of the Security Deposit with him. If the Lessee has not during the term of this lease properly looked after or maintained the Demised Coffee Estate, the Lessor shall, in addition to the right to incur and recover expenditure as conferred above, be entitled to receive from the Lessee a reasonable compensation for the loss thereby caused to the Demised Coffee Estate and such amount may be recovered from the balance of the Security Deposit with the Lessor and if such security Deposit Balance is insufficient the amount of such insufficiency may be otherwise recovered from the Lessee. The Lessor shall release to the Lessee a sum of Rs. 50,000/- (Rupees Fifty thousand only) from the Security Deposit, in the first week of October, 1980, if the lessee has looked after and maintained the Coffee Estates properly up to September 30, 1980. In the event of the Lessor having any balance of the Security Deposit at the end of the term of this lease and if the Lessee has looked after and maintained the Coffee Estates properly during the term of the lease, the balance of the Security Deposit with the Lessor, if any, shall be refundable to the Lessee at the end of the term of this lease".

12. Under this Clause the lessee is called upon to make the said deposit with the lessor to ensure due performance of his obligations under the lease deed, namely, proper maintenance of the estate, etc., during the lease period. In substance, the management of the estate is entrusted to the lessee, the details of which are specified in Cl. 2. There is complete surrender of all the rights of the lessor in favour of the lessee during the lease period and the lessee is to make a deposit of Rs. 1,25,000/- with the lessor, as a security for the proper management of the estate and to indemnify the lessor in case of any loss or expenditure which the lessor may incur on account of the laches on the part of the lessee. The deposit amount is liable to be returned to the lessee in two instalments on a satisfactory discharge of his obligations under the lease deed.

13. In our considered view, this security deposit does not bear the characteristics of a 'premium' or a 'fine' to fall within Cl. (c) of Art. 30 of the Act, namely, lease granted for a fine or premium or for money advanced in addition to the rent reserved.

14. This takes us to question No. 2 in the reference, viz.,

(i) Whether the security deposit made by the lessee as per Cl. 4 of the lease deed, is a 'bond' as defined in Sec. 2(1)(a) of the Karnataka Stamp Act, 1957, and liable to stamp duty under Art. 12 of the Schedule.

15. 'Bond' is defined In Section 2(1)(a) of the Act as follows : -

(a) "bond" includes-

(i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed or is not performed, as the case may be;

(ii) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another, and

(iii) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another".

16. 'Bond' as defined above, is generally chargeable to duty at the rates mentioned in Art. 12 of the Schedule, except for certain categories specially provided for.

Art. 12 is reproduced below:

" 12. Bond defined by section 2(1)(a), not beign otherwise provided for by this Act, or by the Karnataka Court-fees and Suits Valuation Act, 1958.

Rs.P.

Where the amount or value secured does not exceed Rs. 100 3-00

Where it exceeds Rs.100 and does not exceed Rs. 200 6-00

Where it exceeds Rs. 200 and does not exceed Rs. 300 9-00

Where it exceeds Rs. 300 and does not exceed Rs. 400 12-00

Where it exceeds Rs. 400 and does not exceed Rs. 500 15-00

Where it exceeds Rs.500 and does not exceed Rs. 600 18-00

Where it exceeds Rs. 600 and does not exceed Rs. 700 21-00

Where it exceeds Rs. 700 and does not exceed Rs. 800 24-00

Where it exceeds Rs. 800 and does not exceed Rs. 900 27-00

Where it exceeds Rs. 900 and does not exceed Rs. 1,000 30-00

and for every Rs.500 or part thereof in excess of Rs.1000 15-00

See Administration Bond (No. 2). Bottomry Bond (No. 13), Customs Bond (No. 23), Indemnity Bond (No. 29). Respondentia Bond (No. 40), Security Bond (No. 47).

17. This Article, thus expressly excludes the other kinds of bonds referred to in the above note which are chargeable to duty, under the specific articles mentioned.

18. What follows from the above is that the category of bonds mentioned in the Note, are not exigible to duty as a 'bond' in the generic sense as defined in Section 2(1)(a) under Art. 12.

19. 'Bond' is a generic term. A Bond is an obligation, a contract, an agreement to pay money or to do some other thing. No precise form of words is necessary to create a bond. Bond is an instrument in writing by which a person binds himself or commits legally to pay a certain sum of money to another on certain conditions. Generally accepted, definition of bond is that it is a certificate or evidence of a debt, more fully described in Sec. 2(1)(a).

20. Now, let us see whether Cl. 4 of the Instrument in question satisfies the description of a bond. We have already expressed that the recitals of the deed contained in Cl. 4 indicate that the deposit is to be made by the lessee as a security for the due performance of his obligations under the lease deed. We have also stated that the said deposit cannot be treated as a 'premium' or 'fine' as provided in Sec. 105 of the T. P. Act. The reasons given for our conclusion that the said deposit does not answer the description of a premium or a fine, also hold good for our conclusion that it is not a bond in the generic sense.

21. Moreover, under CL.4 no obligation is created against the lessee to pay any sum of money as contemplated in the case of a bond. On the other hand, the lessee is called upon to make a deposit in terms of Cl. 4 and for the purpose mentioned therein which amount is also refundable to him by the end of the year and as provided in that clause.

22. Having expressed our opinion that the document is not exigible to the levy of stamp duty either as a permium or as a bond, in the generic sense we will now examine under which other article, the instrument in question (Cl. 4 in the lease deed) is liable to stamp duty. This aspect is covered by question No. 3 in the reference. Security Bond is described in Article 47 as follows :

"47. Security bond or mortgage-deed, executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or execution by a surety to secure the due performance of a contract."

23. Having regard to the purpose for which the deposit is required to be made as per Cl.4 and having regard to the other recitals in that clause. we may safely conclude that the instrument falls under the category of 'security bond'. The stamp duty leviabale on a security bond is provided under Art. 47 of the Schedule. 'Security bond' normally applies to any instrument executed by an executant of the bond for the due performance of his obligation under the instrument. A security bond executed under different circumstances and purposes may amount to a mortgage deed as described in Art. 34. Art. 34 reads:

"34. Mortgage deed not being an agreement relating to Deposit of title deeds, pawn or pledge (No. 6), Bottomry Bond (No. 13) Mortgage of a crop (No. 35), Respondential Bond (No. 46), or Security Bond (No. 47)."

(a) & (b) .....

24. As could be seen from this Article a mortgage deed referred to in the Article excludes all other types of instruments, including a security bond from the purview of the duty leviabale on a mortgage deed. When we come to Art. 47, it refers to 'security bond' or a mortgage deed which bears the characteristics of a security bond. Therefore, an instrument under which the executant thereof binds himself to perform an obligation or a covenant under the said instrument, may be construed as a security bond falling under Art. 47. Instruments executed for the due accounting of money or other property received by virtue of an office, also fall under a 'security bond'.

25. We are, therefore, of the opinion that the instrument (with reference to Cl.4) is to be construed as a security bond failing under Art. 47 of the Schedule and the stamp duty payable as per the Schedule to the Article.

26. In the view we have taken, we record our opinion as follows:

(1) that the security deposit referred to in Cl. 4 of the lease deed (lease deeds) in question, is not fine or premium within the meaning of the said terms occurring in Sec. 105 of the T. P. Act;

(ii) that the instrument is not chargeable to stamp duty as a bond under Art. 12 of the Schedule to the Karnataka Stamp Act;

(iii) that the instrument is chargeable to stamp duty as 'Security Bond' under the Act and is exigible to duty as provided under Art.

47.

27. The reference is answered accordingly.

28. Return the original papers (documents) to the Chief Controlling Revenue Authority.

29. Order accordingly.