

Present : Schneider J. and Jayewardene A.J.

1924.

In re the Application of J. J. WEINMAN, Notary Public.

Stamp Ordinance, 1909—Amendment, 1919—Administration—Land belonging to estate of deceased person sold by auction—Purchase by heir in part settlement of amount due to him under an award distributing the estate—Stamp duty—Item 22 (a) and (c).

It was recited in a deed of conveyance granted by the administrators of A's estate to B that under an award of an arbitrator appointed by the heirs of the estate to settle their disputes B (an heir) got Rs. 80,000 in property or cash, that a property belonging to the estate was sold by auction by leave of Court, that B purchased the same for Rs. 37,400 at the auction, and that he had been allowed credit for that sum. The deed then proceeded to convey the property to B in consideration of the premises.

Held, that the instrument was not a conveyance of property by the administrator without consideration to the person beneficially entitled to such property under item 22 (c) of the Stamp Ordinance of 1919; but that it was a sale falling under item 22 (a).

B was not a person "beneficially entitled," as he was entitled to only an undivided share of the property as heir.

THE deed in question was as follows :—

No. 270.

TO ALL TO WHOM THESE PRESENTS SHALL COME—

Neemath Umma of St. Joseph's street in Colombo, widow of the late Uduma Lebbe Marikar Ahamado Lebbe Marikar Alim of Colombo, deceased; Ahamado Lebbe Marikar Alim Abdul Majeed and Ahamado Lebbe Marikar Alim Mohamed Thassim, both of Colpetty in Colombo, as administratrix and administrators, respectively, of the estate and effects of the said Oduma Lebbe Marikar Ahamado Lebbe Marikar Alim, deceased (hereinafter sometimes called and referred to as the grantors).

Send Greeting—

Whereas under and by virtue of the deed in the schedule hereto mentioned, the said Oduma Lebbe Marikar Ahamado Lebbe Marikar Alim was the lawful owner and proprietor of, and otherwise well and sufficiently entitled to, the land and premises in the said schedule hereto fully described :

And whereas the said Uduma Lebbe Marikar Ahamado Lebbe Marikar Alim died intestate at Colombo on or about the 13th day of December, 1917, leaving him surviving as his heirs his widow, Neemath Umma, and several children, including Ahamado Lebbe Marikar Alim Uduma Lebbe Marikar Alim Abdul Majeed and Ahamado Lebbe Marikar Alim Mohamed Thassim :

And whereas disputes and differences having arisen among the heirs of the said deceased in respect of the estate and effects of the said deceased, such disputes and differences were referred by the heirs to

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the arbitration of Siēma Lebbe Naina Marikar Hadjiar of Colombo for the settlement of such disputes and differences:

And whereas by his award dated the 10th day of November, 1919, the said Siēma Lebbe Naina Marikar Hadjiar awarded, *inter alia*, that in respect of his share of the estate and effects of the said deceased, the said Ahamado Lebbe Marikar Alim Oduma Lebbe Marikar Hadjiar should get property to the value of Eighty thousand Rupees (Rs. 80,000), or a sum of Eighty thousand Rupees (Rs. 80,000) in cash:

And whereas the said Neemath Umma, Ahamado Lebbe Marikar Alim Abdul Majeed, and Ahamado Lebbe Marikar Alim Mohamed Thassim were appointed administratrix and administrators, respectively, of the estate and effects of the said Oduma Lebbe Marikar Ahamado Lebbe Marikar Alim, deceased, in testamentary proceedings No. 6,415 of the District Court of Colombo, and letters of administration were on the 4th day of November, 1919, accordingly issued to them in the said testamentary proceedings:

And whereas on an appeal preferred against the said order of the said District Court dated the 30th day of August, 1920, the Supreme Court by its order dated the 28th day of January, 1921, upheld the said award and directed the said grantors to administer the said estate in terms of the said award:

And whereas the said District Court by its order dated the 8th day of September, 1921, and entered of record in the said testamentary proceedings No. 6,415, authorized and empowered the said grantors to sell, *inter alia*, the said premises by public auction:

And whereas conditions of sale having been submitted to and approved by the said District Court, the said premises were put up for sale by public auction by Hettige Don John Pieris of Colombo, licensed auctioneer, on the 10th day of October, 1921, at which sale the said Ahamado Lebbe Marikar Alim Oduma Lebbe Marikar Hadjiar (hereinafter sometimes called and referred to as the grantee) did bid for the same, and as the highest bidder was declared the purchaser thereof at or for the price or sum of Rupees Thirty-seven thousand and Four hundred (Rs. 37,400) as will appear on reference to the conditions of sale No. 930 dated the 10th day of October, 1921, and attested by J. A. Perera of Colombo, Notary Public.

And whereas the said grantee having been allowed credit for the said purchase amount in part satisfaction of the amount awarded to him as one of the heirs of the said Oduma Lebbe Marikar Ahamado Lebbe Marikar Alim, deceased, under the said award has called upon the said grantors to execute a conveyance of the said premises in his favour:

And whereas the said District Court by its order dated the 26th day of February, 1923, and entered and record in the said testamentary proceedings No. 6,415, authorized and empowered the said grantors to execute a transfer, *inter alia*, of the said premises in favour of the said grantee.

Now know ye, these presents witness, that the said Neemath Umma, Ahamado Lebbe Marikar Abdul Majeed, and Ahamado Lebbe Marikar Mohamed Thassim, as administratrix and administrators, respectively, of the estate and effects of the said Oduma Lebbe Marikar Ahamado Lebbe Marikar Alim, deceased, in consideration of the premises, do hereby convey, transfer, assign, set over, and assure unto the said Ahamado Lebbe Marikar Alim Oduma Lebbe Marikar Hadjiar, his heirs, executors, administrators, and assigns all that the said land and premises in the said schedule hereto fully described, together with all and

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singular the rights, privileges, easements, servitudes, and appurtenances thereof or thereunto in anywise belonging or used or enjoyed therewith, or reputed to be or known as part or parcel thereof, and all the estate, right, title, interest, claim, and demand whatsoever of them, the said grantors and of the said Oduma Lebbe Marikar Ahamado Lebbe Marikar Alim, deceased, in, to, upon, or out of the said premises and every part thereof, and all deeds and writings relating thereto:

To have and to hold the said premises hereby transferred and assigned and every part thereof unto the said Ahamado Lebbe Marikar Alim Oduma Lebbe Marikar Hadjar and his aforewritten absolutely and for ever:

And the said grantors do hereby for themselves, their executors, and administrators covenant and declare with and to the said grantee, &c.

shall or may be necessary for the better or more perfectly assuring the same and every part thereof unto the said grantee and his aforewritten as by him, them, or any of them shall or may be reasonably required.

Signed, witnessed, and attested.

A. E. Keuneman, for appellant.

M. W. H. de Silva, C.C., for respondent.

Cur. adv. vult.

July 30, 1924. SCHNEIDER J.—

This is an appeal by a notary under the provisions of section 32 of the Stamp Ordinance, No. 22 of 1909, against the ruling of the Commissioner of Stamps under section 30 of that Ordinance. The question involved is whether a deed of transfer brought to the Commissioner of Stamps by the notary who had prepared and attested it should be stamped under item 22 (a) of schedule B of the Stamp Ordinance as amended by the Stamp (Amendment) Ordinance, No. 10 of 1919, as the Commissioner has ruled, or under 22 (c) as the notary submits. The ruling of the Commissioner of Stamps is that the instrument in question is a writing by way of conveyance of immovable property for the consideration mentioned in the instrument. The notary's submission is that it is a conveyance by an administrator of property without consideration to the person beneficially entitled to such property. The matter, in my opinion, presents no difficulty. The language of section 30, sub-section (2) of the Stamp Ordinance clearly shows that "all the facts and circumstances affecting the chargeability of the instrument with duty" should be fully and truly set out in the instrument. This view of the construction of that section was expressed by Wood Renton C.J. and De Sampayo J. "In the Matter of the Application by Chellappa, Notary Public."¹ Accordingly, in determining the question of the duty chargeable, the only material upon which this Court should proceed is that which is

¹ (1916) 19 N. L. R. 116.

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afforded by the instrument in question. It is a conveyance of an allotment of land with the buildings standing thereon by the administratrix and administrators of the estate of one Ahamado Lebbe Marikar Alim to one Alim Uduma Lebbe Marikar Hadjar. It is set out in the instrument that the deceased had died intestate leaving certain persons as his heirs ; that disputes had arisen among the heirs and were referred by the heirs to arbitration ; that an award was made that Alim Uduma Lebbe Marikar Hadjar, who was one of the heirs of the deceased, should get property to the value of Rs. 80,000, or that sum in cash, and that the administratrix and administrators were authorized and empowered by the District Court of Colombo to sell, *inter alia*, the premises described in the deed by public auction ; that the premises were put up for sale by public auction by a licensed auctioneer under certain conditions of sale which had been approved by the District Court ; and that at this sale the grantee, Alim Uduma Lebbe Marikar Hadjar, was declared the purchaser, as highest bidder, at or for the price of Rs. 37,400 ; and that as the grantee had been allowed credit for the purchase of the property in part satisfaction of the amount awarded to him as one of the heirs of the estate, he had called upon the grantors to execute a conveyance ; and that the District Court had by its order subsequent to the sale by auction authorized and empowered the grantors to convey the said property to the grantee. The deed then proceeds to convey and transfer the property " in consideration of the premises." I am unable to see how this instrument can be regarded as a conveyance of property by the administrator " without consideration to the person beneficially entitled to such property." (Item 22 (c)). The recitals in the deed show the true nature of the transaction, namely, that it was a purchase of a property belonging to the estate by a person when that property was put up for sale to the public by auction. The mere accident that the purchaser happened to be one of the heirs of the estate, or that instead of paying in money the sum for which the property had been purchased, he was allowed credit for that sum out of the money due to him from the estate makes no difference in the nature of the transaction. Mr. Keuneman, who appeared for the appellants, contended that " there was no consideration," except the fact that it was a transfer to the person beneficially entitled. It seems to me that this contention is unsound. As I have already pointed out, the real nature of the transaction was a sale of the property. The conveyance of title by deed was in consequence of that sale, and the consideration for the conveyance was the price which the purchaser was paying for the property. To bring the instrument within the purview of item 22 (c), it was not only necessary that the conveyance should be " without consideration," but it should be " to the person beneficially entitled to such property." It is not possible to say that the instrument

in question was a conveyance of property to the person beneficially entitled to that property. The recitals show that the deceased left several heirs to his estate besides the grantee. The grantee's interest, therefore, in the property in question, was an undivided share in it as one of the heirs. Furthermore, when the property was sold it ceased to be a part of the estate, and the interests of the heirs was converted into the money which represented the price for which the property was sold. It was also submitted by Mr. Keuneman that the essence of the transaction was a conveyance not by way of sale to the grantee, but as the result of an arrangement by which he agreed to accept the property in part satisfaction of his claim to the sum of Rs. 80,000 awarded to him. This argument, too, I am unable to accept. The property was put up for sale to the public at large, and the grantee became entitled to a conveyance of it to him, only because he was declared the purchaser of the property as a result of the sale by auction.

I would, therefore, uphold the ruling of the Commissioner, and dismiss the appeal, with costs.

JAYEWARDENE A.J.—I agree.

Appeal dismissed.

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