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Present: Wood Renton C.J. and De Sampayo J.

In the Matter of an Application of A. K. CHELLAPPA, Notary Public, under Section 30 of the Stamp Ordinance, 1909.

Stamp Ordinance, 1909—Settlement—No recitals in the deed—Stamp duty—Deed of gift.

A deed if it is to be stamped as a "settlement" should by way of recitals or otherwise disclose one or other of the purposes mentioned in the definition of "settlement" in section 3 (24) of the Stamp Ordinance, 1909. The mere use of the word "settlement" cannot make it one. An instrument cannot be changed from a deed of gift into a settlement by extrinsic evidence. The facts and circumstances affecting the chargeability of an instrument with duty or the amount of the duty with which it is chargeable should appear in the instrument itself. By a deed A and B (husband and wife) purported to "assure as settlement by way of *mudusam*" certain lands to their daughter S. But the deed contained no recitals, and did not disclose the purpose of the gift. S did not sign the deed.

Held, that the deed should be stamped as a deed of gift not accepted on the face of it under clause 30 (*b*) of Schedule B, Part I., of the Stamp Ordinance.

THE deed in question was in these terms:—

Settlement. Lands 4. Rs. 750.

No. 10,456.

Know all men by these presents that we, Kanthar Chinnatampy and wife Valliamma, of Vathirayan, do hereby assure as settlement by way of *mudusam* unto our daughter Sinnatangam (daughter of Chinnatampy) the following properties, worth Rs. 750, subject to our following life interest. [*Properties described.*]

[1] *10 & 11 Vict. c. 14.*

[2] *(1914) 1 K. B. 38.*

We do hereby assure unto her as settlement by way of *mudusam* the above-mentioned properties, and declare that they are neither encumbered nor alienated, and that she will be entitled to the right of enjoying the produce of the share of the first land only after our death; and deliver over possession, get endorsement made in the said deed, and execute this deed of *mudusam*, *i.e.*, settlement.

Witnesses hereto are David Ponner Mootatampy of Uduthurai and Velvo Sinnakkudy of Vathirayan. These being witnesses this deed was executed in our house at Vathirayan.

The 6th day of April, 1915.

(Signed) K. Chinnatampy.
S. Valliamma.

Witnesses:

(Signed) D. P. Mootatampy.
V. Sinnakkudy.

(Signed) A. K. Chellappa,
Notary Public.

The Commissioner of Stamps (the Hon. Mr. Bernard Senior) held that the instrument was a deed of gift not accepted by the donee on the face of the deed, and that the instrument should bear stamps of Rs. 11.25 as falling under item 30 (*b*) in the Schedule B, Part I., of the Stamp Ordinance, 1909.

The notary appealed against the ruling of the Commissioner of Stamps.

A. St. V. Jayewardene, for the appellant.

Schneider, Acting S. G., for the Crown.

Cur. adv. vult.

May 25, 1916. Wood Renton C.J.—

This is an appeal by a notary against a ruling of the Commissioner of Stamps under section 30 of the Stamp Ordinance, 1909.[1] The question involved is whether a deed prepared and attested by the notary should be stamped as a "deed of gift" under clause 30 (*b*), or as a "settlement" under clause 49 of Schedule B, Part I., of the Stamp Ordinance.[1] The Commissioner of Stamps has held that the instrument in question is a "deed of gift". The notary contends that it is a "settlement." The deed in question is, on the face of it, merely a voluntary conveyance of certain property by Kanthar Chinnatampy and his wife Valliamma to their daughter Sinnatangam. There is nothing in the deed to connect it with any other instrument. It is contended, however, on behalf of the notary, that the words which appear at the commencement of the deed—"do hereby assure as settlement by way of *mudusam*"—and an affidavit by the grantor Kanthar Chinnatampy to the effect that it formed part of a series of deeds by

[1] *No. 22 of 1909.*

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which he and his wife, who was seriously ill at the time, intended to dispose of their property, are sufficient to convert it into a " settlement " within the meaning of the Stamp Ordinance, 1909.[1] At the close of the argument we gave formal judgment dismissing the appeal, and stated that we would give the grounds for our decision subsequently.

The case, in my opinion, presents no real difficulty. We are not concerned here with the meaning of the term " settlement " in the numerous English enactments in which the word occurs. The Stamp Ordinance, 1909[1], has itself defined " settlement " for its own purposes in the following language:— " ' Settlement' means any non-testamentary disposition, in writing, of movable or immovable property made. . . . .(*c*) for the purpose of distributing the property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him."[2]

We are here concerned only with the above clause (*c*). Counsel for the appellant referred us to an Indian case,[3] in consequence of the decision in which, viz., that the term " settlement " suggests the creation of separate interests in favour of several persons who may have a legal or moral claim on the settlor, or for whom he may desire to make provision, the Indian enactment was amended by the addition to the clause corresponding to section 3 (24) of such words as " or for the purpose of providing for some person dependent on him." That may well be so. But the point does not help the present appellant. There must, I think, be something in the instrument itself to show that it is a settlement within the meaning of the statutory definition. The mere use of the term " settlement " cannot make it one. Nor can any inference in favour of the appellant's contention properly be drawn from the employment of the term *mudusam*. I am inclined to think that the notary had inserted the word " settlement " in the deed with a view to evade the stamp duty with which the instrument was properly chargeable. But, be that as it may, the instrument itself is simply a deed of donation. No authority was cited to us in support of the proposition, and in the absence of authority, I decline to hold that an instrument of this nature can be changed from a deed of gift into a settlement by extrinsic evidence, seeking to connect it with other dispositions of property. The provisions of section 30, sub-section (2), of the Stamp Ordinance[1] clearly show that the facts and circumstances affecting the chargeability of an instrument with duty, or the amount of the duty with which it is chargeable, should appear in the instrument itself.

The decision of the Commissioner of Stamps was, in my opinion, perfectly correct.

[1] *No. 22 of 1909.*
[2] *Section 3 (24).*
[3] *See In re A Reference in Indian Stamp Act, 1879, Section 46 (1884), I. L. R. 7 Mad. 349.*

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I am of the same opinion. By the deed under consideration the donors (to quote from the translation submitted to us) " assure as settlement by way of *mudusam* (certain lands) to their daughter Sinnatangam ". There appears to be no Tamil equivalent of the English word " settlement ". The notary has simply introduced the English word into the Tamil deed by transliteration, and has apparently thereby made an ingenious attempt to give a character to the deed which it does not really bear. Moreover, the full expression is " settlement by way of *mudusam*," so that the import of the word " settlement " as used in the deed must be considered in the light of the word *mudusam*. Now *mudusam* property in Jaffna law is, as I understand it, distinguished on the one hand from dowry and on the other hand from acquired property. It signifies inherited property, and the word can only be regarded as employed here to indicate that the donee was to hold the subject of the gift as inherited property, and not as dowry or acquired property. It does not by any means satisfy the definition of " settlement " in the Stamp Ordinance. The language of the deed, which was emphasized at the argument, does not therefore help the appellant in the determination of the true character of the deed. In order to satisfy the definition, however, the appellant has submitted two affidavits, in which it is stated that the deed was executed during the illness and shortly before the death of the donor Valliamma, who was the wife of the other donor Kanthar Chinnatampy; that two other deeds of gift were executed on the same day in favour of two other children; and that all were executed for the purpose of " settling " their property on the children. If I had to form a judgment from these affidavits on the nature of the transaction, I should not have said that they did furnish definite evidence as to the intention of the donors, the affirmants having merely contented themselves with saying that the deeds were executed for the purpose of " settling " which is the very point to be considered. Be that as it may, the more serious question is whether a person applying to the Commissioner of Stamps under section 30 of the Ordinance for his opinion can ask him to embark upon an inquiry and consider evidence *aliunde* as to the nature and purpose of a deed. I am of opinion that he cannot. I think that a notary or party who wishes to bring an instrument within a particular description for the purpose of regulating the stamps must see that the instrument itself discloses its nature. Mr. A. St. V. Jayewardene, for the appellant, however, referred us to sub-section (2) of section 30 of the Ordinance as to the admissibility of such evidence, but that sub-section, so far from supporting the contention, appears to me quite opposed to it. What it provides is that the Commissioner may require evidence to prove " that all the facts and circumstances affecting the chargeability of the instrument with duty . . . . are

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fully and truly set forth therein." That is to say, such evidence may be required for the purpose of further verifying " the facts and circumstances " already stated in the deed itself, and not for the purpose of proving new facts and circumstances. This leads me to the remark that, in my opinion, this deed, if it is to be a " settlement " should by way of recitals or otherwise have disclosed one or other of the purposes mentioned in the definition of "settlement " in section 3 (24) of the Stamp Ordinance. But the deed contains no recitals whatever, nor does it in any way disclose the purpose of the gift. Mr. Jayewardene, however, contended that, the donee being a daughter of the donors and being so described in the deed, the disposition must be taken to be one " for the purpose of providing for some person dependent on (the settlor) " within the meaning of the definition. I do not think that this contention is sound, for in that case there can be no conceivable gift in favour of a child which may not be a settlement.

I think that the deed is a simple gift, however much the notary may have attempted to give it a different or special character by the use of strange and grotesque phraseology, and that the Commissioner's opinion, which is brought up for review, is clearly right.