

1954

Present : Nagalingam S.P.J. and Fernando A.J.

M. N. M. SALAHUDEEN, Appellant, and COMMISSIONER  
OF STAMPS, Respondent*S. C. 241—Appeal under the Stamps Ordinance*

*Stamps—Trust in favour of Company which is not yet in existence—Conveyance by trustee to Company after grant of incorporation—Amount of stamp duty payable—Stamps Ordinance, Schedule, Part I, Items 23 (1) (b), 23 (4), 23 (8), 27 (Proviso)—Trusts Ordinance, 5.84.*

Property can be held by a person in trust to convey it to a Company which is to come into existence in the future. When immovable property thus held in trust is conveyed by the trustee to the Company when formed, the deed of transfer is a conveyance "by a trustee without consideration to the person beneficially entitled", and as such attracts only the duty chargeable under Item 23 (4) of Part I of the Schedule to the Stamps Ordinance.

**A**PPEAL against a determination of the Commissioner of Stamps

*H. W. Tambiah*, with *A. M. Ameen*, for the appellant.

*M. Tiruchelvam*, Crown Counsel, for the respondent.

*Cur. adv. vult.*

November 24, 1954. FERNANDO A.J.—

The appellant contests the correctness of the opinion of the Commissioner of Stamps that Deed No. 1,644 of July 15, 1943, is liable to stamp duty of Rs. 2,840 as a conveyance of property under Item 23 (1) (b) of Part I of the Schedule to the Stamps Ordinance read with the proviso to Item 27, or alternatively to duty of the like amount under Item 23 (8) as a conveyance not otherwise charged or excepted. He maintains that the deed is a conveyance "by a trustee without consideration to the person beneficially entitled", and as such attracts only the nominal duty of Rs. 10 under Item 23 (4).

The circumstances under which the deed came to be executed are not disputed by the Commissioner and have an important bearing on the question we have to decide. It would appear that one A. R. M. Mohamed in December 1942, made an offer of Rs. 177,500 for the purchase of two estates, and the offer being accepted, a conveyance in his favour was executed on March 15, 1943. The consideration for the purchase was provided by Mohamed himself and three other persons in varying proportions and by cheques drawn by or on behalf of each of those persons. The documents in the case make it clear that these four persons had decided (a) to float a private company which would own the two estates and (b) that

they would be allotted shares in the company in strict proportion to the amounts respectively contributed by them towards the total purchase price paid for the estates. The application for the incorporation of the proposed company was made in January 1943, but the grant of incorporation was delayed, for one reason because the law at that time required the sanction of the Governor for the formation of a company with a capital exceeding one lakh. The Controller of Exchange was informed by the Proctor for the parties of the purpose of the incorporation and of the fact that it was intended that the property would be purchased in trust for the company to be formed. As the sale had to be concluded before the certificate of incorporation could be granted, the proctor first tendered to the vendors a draft deed in favour of Mohamed "in trust for the proposed company", but the vendors were unwilling to agree to that form and relied on the fact that the offer they had accepted had been made by Mohamed personally. Hence it was that the deed No. 1620 of March 15, 1943, purported to be an outright transfer to Mohamed and contained no reference to the object with which the estates were being purchased. The certificate of incorporation of the company was subsequently issued (on June 8, 1943), and in July Mohamed executed, in favour of the company, the conveyance No. 1644 which is the subject of this appeal.

The intention of the persons who provided the consideration for the conveyance No. 1620 was that the estates should be purchased on behalf of the company and thereafter owned by the company. It was impossible at that date for that conveyance to be executed in the name of the company, but only for the reason that the grant of incorporation was delayed. Accordingly, the conveyance was in favour of Mohamed, but with the intention not of vesting the beneficial interest either in himself alone or in himself, together with his three "partners" but rather of vesting the legal title in Mohamed in trust to convey the property to the company when formed—a trust which was duly honoured by the execution of the conveyance No. 1644.

The Commissioner and Crown Counsel both rely on the fact that the company was not in existence at the time of the execution of Deed No. 1620, and argue therefrom that there cannot be a trust in favour of a company which is not in existence at the time of the constitution of the trust. In the case of *De Silva and Mendis v. Commissioner of Stamps*<sup>1</sup>, where a testator appointed trustees and directed them to convert an estate into a company and allot shares in the company to the heirs, it was held that the subsequent conveyance of the estate to the company was chargeable with duty only as a conveyance by a trustee to the beneficiary. Such a decision could only have been reached on the basis that property can be held by a person in trust to convey it to a company which is to come into existence in the future.

Crown Counsel then contended that since the consideration for the first transfer No. 1620 was provided by the four "partners", the estate would be held by Mohamed in trust for all the partners as a constructive trustee

<sup>1</sup> (1943) 44 N. L. R. 462.

under Section 84 of the Trusts Ordinance, and not in trust for the proposed company, and that accordingly the Deed No. 1644 was not a transfer to the persons beneficially interested. This contention would undoubtedly have been a sound one if the "partners" had not in fact formed and expressed a different intention. Although that intention was not specifically expressed in the first conveyance, there is no question but that the company had a right to demand a conveyance from Mohamed who would have been met by the plea of fraud if he relied upon the absence of a written declaration of trust.

It was lastly argued that the expression "trustee" in item 23 (4) covers only persons holding office as such by express appointment or designation (as in the case of "executors" and "administrators" who are also mentioned in the same item), and that the Court will not be at pains to consider a person to be a "trustee" in order to confer the advantage of a low rate of stamp duty. This is in my opinion an interpretation too narrow for adoption in the case of a taxing statute. I think Item 23 (4) would be applicable in every case where the holder of a bare legal title conveys the property to persons having the beneficial interest in fulfilment of an obligation which is a "trust" as defined in the Trusts Ordinance.

I would therefore hold that the Deed No. 1644 is chargeable with duty under Item 23 (4). The appeal must be allowed with costs.

NAGALINGAM S. P. J.—I agree.

*Appeal allowed.*

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