

Present : Lyall Grant J. and Maartensz A.J.

1929

KARUNARATNE v. COMMISSIONER OF STAMPS.

119—D. C. (Inty.)

In the Matter of an Appeal under Section 32 of the Stamp Ordinance.

Stamp Ordinance—Mortgage bond—Deed of release of property mortgaged—Property under two bonds—One instrument—Stamp duty—Ordinance No. 22 of 1909, s. 6.

Where a person raised money on two bonds hypothecating a certain property, among others, as a primary mortgage in one bond and a secondary mortgage in the other and, where in consideration of certain payments, the debtor obtained from the creditor a release of the property in question from both the mortgages,—

Held, that the deed of release should be stamped as one instrument and that it was not liable to duty under section 6 of the Stamp Ordinance.

APPEAL from a decision of the Commissioner of Stamps. The point for determination was whether a deed of release granted by a creditor in respect of a property mortgaged under two bonds was liable to stamp duty as a double instrument under section 6 of the Stamp Ordinance.

Croos Dabrera, for appellant.—The deed of release affects one land, which was mortgaged by two separate bonds to one creditor. A release by this creditor of this particular land, for a certain consideration cannot be said to be one affecting two different matters. It is really one and the same transaction. It does not comprise or relate to several distinct matters. The Stamp Ordinance provides for a fixed duty on an instrument of release. It therefore contemplates a single document. Counsel cited *Wills v. Bridge*,¹ *In re Parasea Collieries Ltd.*,² *Ex parte Hill and others*,³ *Alpe 3*, and *24 Halsbury 715*.

Mervyn de Fonseka, C.C., for the Commissioner of Stamps.—Parties are different. The mortgages are not the same. The release is in respect of two different bonds and the consideration has been so apportioned. The instrument is therefore a double one and under section 6 of the Stamp Ordinance, No. 22 of 1909, duty should be paid as on separate instruments. It is in no sense one and the same transaction. The release of the land from the charge in respect of one bond is quite a different matter to the release of the same land from the charge on another bond. To permit a massing of different instruments in one deed on one duty would result in the

¹ (1849) 4 *Exchequer Reports* 193.

² 37 *Calcutta* 629.

³ 8 *Calcutta* 254.

1929
*Karunaratne
 v. Commissioner
 of Stamps*

revenue being defrauded. Counsel cited *Mulla's Stamp Act 170, Shabudin Mohamed v. Hirnak Rajnak*,¹ and *Freeman v. Commissioner of Inland Revenue*.²

Croos Dabrera, in reply.

September 27, 1929. LYALL GRANT J.—

This is an appeal from an adjudication by the Commissioner of Stamps on a question of stamp duty on a deed of release.

A deed or instrument of release falls to be stamped with a duty of Rs. 10. Item 26 of Schedule B, Stamp Ordinance, 1909.

The Commissioner has ruled that the deed in question is stampable as on two instruments of release.

The appellant's contention is that only one duty is payable.

The deed is in the following terms:—

D. M. Karunaratne,
 Notary Public,

Kochchikade.

Search dispensed.

A 79 248—86/64.

Deed of release,
 No. 32,115.

Know all men by these presents that I, Suna Pana Lena Ramen Chettiar of Kochchikade in Dunagaha pattu of the Alutkuru korale, do hereby declare that by the mortgage bond No. 31,286 dated September 15, 1927, attested by Don Migel Karunaratne, Notary Public, Warna Kulasuriya Manual Fernando of Bolava in Kammal pattu of the Pitigal korale and two others borrowed Rupees Two thousand Five hundred (Rs. 2,500) Ceylon currency out of funds of me and Suna Pana Lena Supramaniam Chettiar, and jointly and severally promised to pay the said amount with interest thereon as mentioned in the said deed to me and the said Supramaniam Chettiar or to either of us on demand.

2. And on mortgage bond No. 4,124 dated December 13, 1928, attested by Sannugam Kadiravalo Wijeratnam, Notary Public, the said Warna Kulasuriya Manual Fernando borrowed Rupees Four thousand Two hundred and Fifty (Rs. 4,250) Ceylon currency out of the funds of me and Suna Lena Sabapathy Chettiar, and promised to pay the said amount with interest thereon as mentioned in the said deed on demand to me and the said Sabapathy Chettiar or either of us.

And whereas to secure the payment of the said principal sums and interest the property mentioned in the schedule hereto together with other properties were mortgaged and hypothecated as primary mortgages by the said deed No. 31,288 and as secondary mortgage by the said deed No. 4,124.

And whereas the said Warna Kulasuriya Manual Fernando having paid me the said Suna Pana Lena Ramen Chettiar the sum of Rupees Five Hundred and Seventy-five and Twenty-five Cents (Rs. 575.25) Ceylon currency, to wit: Rs. 46.75 being interest up to this date due on the said deed No. 31,288, and Rs. 300 out of the principal amount thereof, and a further sum of Rs. 68.75 as and for interest due for three months from this day on balance principal due on the said deed, and a further sum of Rs. 159.75 being interest for three months up to June 13, 1929, on the principal amount due on the said bond No. 4,124, amounting in all to Rs. 575.25 Ceylon currency, and requesting me to release

¹ 10 Bombay 47.

² 8 Exchequer 101.

from the said mortgage bond Nos. 31,288 and 41,124 the property mentioned in the schedule hereunder written, I agreed thereto and having accepted the said amount do hereby release the said properties from the mortgage created by the said deeds.

1929
—
LYALL
GRANT J.
—

And I for myself and for the other creditors in the said bonds and for my and their heirs, executors, administrators, assignee, and lawful representatives do hereby promise and bind myself not to do any act on the strength of the said mortgage bonds regarding the hereby released properties or any part thereof.

Karunaratne
v. Commis-
sioner of
Stamps

And I do further declare that the lands remaining unreleased in the said mortgage bonds shall be in no way affected by this release.

The Schedule above referred to.

The land called Pallamewatta, situate at Thambarawila in Kammal pattu of the Pitigal korale in Chilaw District, North-Western Province, is bounded on the north by the fence separating the garden of Wanselestu Fernando, Notary, and others, east by the fence separating the garden of Nicholas Fernando, *ex-Vidanarala*, and others, on the south by Maha-oysa, and on the west by the fence separating the garden of Don Salvadore Perera Muppurala; containing in extent within these boundaries about one acre and three roods. The undivided one-third share of this land and of the buildings, plantations, and all other appurtenances belonging thereto.

In proof hereof I, the said Suna Pana Lena Ramen Chettiar, set my hand to three of the same tenor as these presents, at Kochchikade, on this Twentieth day of April, 1929.

Sgd. S. P. L. Ramen Chetty.

This is the signature of the executant.

We, the hereto witnesses, do hereby declare that we are well acquainted with the executant and know his full name, occupation, and residence.

Sgd. P. R. A. Muttaiya.

Sgd. Suse Fernando.

(Signatures of the witnesses.)

Sgd. D. M. Karunaratne,
Notary Public.

Deed notorially executed.

It will be seen the appellant was a mortgagee on two mortgage bonds.

By the first of these Manuel Fernando and two others mortgaged certain lands to him and another in consideration of a loan.

By the second, Manuel Fernando mortgaged to the appellant and another (not the same) creditor in respect of a second loan.

The deed of release frees a certain land which was mortgaged with others under both these deeds in consideration of certain payments.

It is not disputed that so far as this land is concerned the appellant had power to grant release, and that the effect of the deed and its only effect is to release this land from any liability under these mortgages, and that the consideration for this release is the payment of certain sums to the appellant.

It is argued for the Commissioner of Stamps that the instrument comprises or relates to two distinct matters, viz., two loans and two mortgages, and is therefore under section 6 of the Stamp Ordinance

1929

LYALL
GRANT J.

*Karunaratne
v. Commis-
sioner of
Stamps*

chargeable with the aggregate amount of duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable.

The appellant argues that the matters are not distinct, that both relate to the debt due to the appellant and to the release of the land mentioned in the schedule to the deed.

The case is peculiar, and although a number of cases have been cited on both sides none of them seem closely analogous.

I think the true way to look at the matter is to ascertain the intention of the parties. The party released, Manual Fernando obviously, for some purpose, desired to free this land from encumbrances.

The appellant was prepared to execute this release on payment of a certain consideration.

There is nothing to show that if payment had been made of part of the consideration only he would have released one or other of the mortgages, nor is there anything to show that such a transaction would have been entered into by the mortgagor.

It is quite conceivable and seems in fact probable that the only transaction into which the parties would have entered was one involving the out-and-out release of the land.

I do not think we should be justified in saying that there are here two separate transactions, and that, therefore, the deed refers to distinct matters.

There was in fact only one transaction, one complete release for one complete consideration, and I think the deed should be stamped as one instrument of release.

The appeal is allowed. I declare the deed duly stamped, and the appellant will have his costs on the appeal.

MAARTENSZ A.J.—I agree.

Appeal allowed.
