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## BEST OF THE REST

### **I. Chargeability of instrument – ‘Bond’ or ‘agreement’ – Document cannot be treated as mere agreement – Petitioner being obliged to pay money to respondent, instrument clearly fell under definition of bond – Construing instrument as agreement not requiring additional stamp duty, improper. Stamp Act, 1899, Ss. 3, 2(5)**

The petitioner is the defendant in the suit filed by the respondent for recovery of a sum of ₹ 15,38,500/- along with future interest. During recording of evidence the respondent sought to mark the document stated to have been executed by the petitioner in favour of the respondent. The Petitioner filed Interim Application to determine the true nature of the document in question and not to admit the same till the same is properly stamped and impounded. It was pleaded by the Petitioner that the document in question is either a partnership deed or a surety bond and that in either case, it is not admissible in evidence for the reason that if it is a partnership deed, the same is not signed by the petitioner and if it is a surety bond, it is not sufficiently stamped. The respondent filed a counter affidavit pleading that the

document in question is only an agreement or in alternative, it can be considered as only a loan receipt. The court below accepted the plea of the respondent and held that the document in question can be considered as an agreement and not as a bond, which does not require deficit stamp duty.

The High Court held that the document cannot be treated as a mere agreement and it falls under the definition of bond in Section 2(5)(b) of the Indian Stamp Act, 1899 which reads as :

“Section 2(5) “Bond”: “Bond” includes – (a) ..... (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and (c) .....”

As the petitioner allegedly obliged to pay money to the respondent, the instrument clearly falls under the definition of bond. The lower Court has, therefore, committed a jurisdictional error in misconstruing the instrument as an agreement not requiring additional stamp duty. The High Court directed the lower Court to treat the document as bond. The petition was allowed.

*Nareddi Mohan Reddy vs. Siripuram Mallaiah*  
AIR 2013 Andhra Pradesh 91

## **2. Rectification of instrument – Only parties to instrument can claim undue influence : Specific Relief Act, 1963, S. 26**

The contesting parties before the court were the son and the daughter of Late B. P. Sandy who decided to transfer/settle his two houses in favour of his youngest son and daughter. Therefore, the father of the parties executed two registered settlement deeds transferring House No. 23 in the name of his daughter and House No. 22 in the name of his son. It is allegedly by the appellant that the father of the parties had only at a later point of time realised that the House No. 23 which was given to the daughter, ought to have been given to him and House No. 22 to the daughter. Thus, the parties to give effect to the real intention of their father decided to exchange the properties given to them, and in furtherance thereof, executed a Agreement Deed to exchange the same. Since the said agreement had not been given effect to by the respondent No. 1, the appellant filed Suit for issuance of direction to the defendant/respondent No. 1, to execute a Deed of Rectification and further to restrain her from interference with the appellant's possession of the suit property. During the pendency of this suit, Shri B. P. Sandy and the appellant executed a Rectification Deed by which property No. 23 was given to the appellant. The respondent No. 1/defendant filed suit before the same court for declaration that the earlier agreement, an unregistered document, was null and void, being a forged document, and that she has under undue influence put her signature on the blank non-judicial stamp papers. The trial court decided both the suits and decreed the suit filed by the appellant and dismissed the suit filed by the respondent No. 1. Aggrieved by the same the respondent No. 1 filed an appeal before the District Judge, however, it was subsequently transferred to the High Court and High

Court has allowed both the appeals filed by the respondent No. 1.

The Hon'ble Supreme Court observed that section 26 of the Specific Relief Act, 1963 provides for rectification of instruments, where through fraud or a mutual mistake of the parties, an instrument in writing does not express the real intention, then the parties may apply for rectification. However, clause 4 thereof, provides that such a relief cannot be granted by the court, unless it is specifically claimed. In *Subhadra & Ors. vs. Thankam*, AIR 2010 SC 3031, the Court while deciding upon whether the agreement suffers from any ambiguity and whether rectification is needed, held that when the description of the entire property has been given and in the face of the matters being beyond ambiguity, the question of rectification in terms of Section 26 of the Act would, thus, not arise. The provisions of Section 26 of the Act would be attracted in limited cases only where the ingredients stated in the Section are satisfied. The relief of rectification can be claimed where it is through fraud or a mutual mistake of the parties that real intention of the parties is not expressed in relation to an instrument. Thus, Section 26 of the Act has a limited application, and is applicable only where it is pleaded and proved that through fraud or mutual mistake of the parties, the real intention of the parties is not expressed in relation to an instrument. Such rectification is permissible only by the parties to the instrument and by none else.

Section 16 of the Contract Act provides that a Contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to obtain an unfair advantage over the other. If there are facts on the record to justify the inference of undue influence, the omission to make an allegation of undue influence specifically, is not fatal to the plaintiff being entitled to relief on that

ground; all that the Court has to see is that there is no surprise to the defendant. In *Hari Singh vs. Kanhaiya Lal*, AIR 1999 SC 3325, it was held that mere lack of details in the pleadings cannot be ground to reject a case for the reason that it can be supplemented through evidence by the parties. In *State of Bihar & Ors. vs. Radha Krishna Singh & Ors.* AIR 1983 SC 684, the Court held that admissibility of a document is one thing and its probative value quite another – these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil. The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little. Reiterating the above proposition in *Madan Mohan Singh & Ors. vs. Rajni Kant & Anr.*, AIR 2010 SC 2933, Court held that a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case.

The first appellate Court lost sight of the fact that the party who propounds the document will have to prove it. It was the plaintiff who had come to Court alleging that the first defendant had executed an agreement of sale in his favour. The defendant having denied it, the burden was on the plaintiff to prove that the defendant had executed the agreement and not on the defendant to prove the negative. The Trial Court held that was a document executed by her voluntarily and by free will and hence it was binding on her and it was not permissible for her to say that it was a forged document.

The Trial Court had also taken note of a letter written by the father of the parties to respondent No. 1 in which it was stated that he had given her house No. 23. However the said letter was simply brushed aside by the

court without giving any reason whatsoever.

In view of the law referred even though the document may be admissible, still its contents have to be proved and in the instant case, as the appellant did not examine either the attesting witnesses of the document, nor proved its contents, no fault can be found with the judgment. Section 26 of the Act provides for rectification of a document if the parties feel that they have committed any mistake. Also it was only the father of the parties who could have sought rectification of the deed. Mere rectification by parties herein does not take the case within the ambit of Section 26 of the Act. Taking note of the statutory provisions of Section 16 of the Contract Act and the parameters laid down by the Court for application of doctrine on undue influence, the High Court had reached a correct conclusion. Thus the document of Memorandum of Agreement cannot be read as an “agreement to exchange”. It can be read only as a rectification deed, which could have been done only by the settler and not by the contesting parties. Thus the matter was dismissed.

*Joseph John Peter Sandy vs. Veronica Thomas Rajkumar and Anr.* AIR 2013 Supreme Court 2028.

**3. Disposal of public asset – Without ascertaining its market value in fair and transparent manner – Permissibility – Not ascertaining market value of property by fair and transparent manner, held improper – No sanction obtained from Govt. – Disposal of property in violation of R. 3 of 1975 Rules, not proper : Constitution of India, Article 14**

The issue involved in writ petitions was whether a public asset can be disposed of without ascertaining its market value in

a fair and transparent manner. The Town Improvement Trust, Jabalpur prepared a scheme namely Scheme No. 13, Civil Centre, Jabalpur which later on was transferred to Jabalpur Development Authority. In the said scheme, an area was reserved for construction of cafeteria on the ground floor and the library on the first floor. The area situate adjoining the area earmarked for cafeteria, has been earmarked for children park and for a water body and is in existence. The Jabalpur Development Authority constructed a building with two halls on the aforesaid land for the purpose of establishment of cafeteria, under an agreement, two halls in the building were allotted for running the cafeteria on licence, without issuing any notice inviting tender. Thereafter the licence was renewed in favour of a partnership firm comprising three persons including respondent No. 2 for running the cafeteria for a period of 5 yrs. The said licence was renewable with enhancement of licence fee. During the currency of the licence, the licensee expressed its willingness to take the open terrace on rent and therefore the aforesaid terrace was allotted on licence for a period of three years on 01.01.1995. The Housing and Environment Department, Government of Madhya Pradesh by order directed the Chief Executive Officer of the Authority to cancel the licence, as the same was granted without inviting any tenders. The Authority was further directed to invite tenders and to allot the same to the highest bidder on licence. In compliance of the aforesaid order, the Authority issued notice of eviction to initiated against the licensee. The licensee thereafter submitted a representation that it is willing to pay entire arrears of rent and shall withdraw the writ petition if the licence is renewed. In order to resolve the dispute, instructions were sought from the State Government by the Authority. Thereupon, the State Government instructed the Authority to decide the issue pertaining to renewal of the agreement at its level keeping

in view the interest of the authority and the litigation which was pending before the High Court.

The Hon'ble Court observed that the Authority has been constituted for making better provisions for preparation and development of plans and to ensure town planning. The property in question is the property of the public, which has to be dealt with in a fair, transparent and rational manner. In the instant case, admittedly, no attempt was made by the Authority to ascertain the market value either by holding public auction or by inviting tenders. The market value of the property in question could have been ascertained by the Authority only by making its intention known to public to dispose of the property by lease, in accordance with the modes well known to law for disposal of the public property namely either by inviting tenders or by holding auction. The valuation reports could not have formed the basis to ascertain the market value of the property for the simple reason that potentiality of the property in question has not been taken into consideration while preparation of the valuation reports. Similarly, the guidelines issued by the Collector could not furnish a reasonable basis for ascertaining the market value of the property for the reason that the guidelines are prepared by the collector only for the purpose of payment of stamp duty. Therefore, the action of the Authority in not ascertaining the market value of the property by a fair and transparent manner cannot be approved.

Further, the property in question belongs to the State Government which on constitution of the authority vested in it. Rule 3 of 1975 Rules provides that no Government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government given in that behalf. The Authority while dealing with property of the State

Government which has vested in it, acts like an agent of the State Government. There are two limitations imposed by law which control the discretion of the authority in granting largess, firstly with regard to the terms on which largess may be granted and other in regard to the persons who may be recipients of such largess. Therefore, under Rule 3 of the 1975 Rules, the Authority is required to take an approval from the State Government with regard to the manner of disposal of the land as well as the value on which it proposed to be transferred, as the Authority is the custodian of the property of the Government. In the instant case, the Authority is the custodian of the property of the Government. In the instant case, the Authority has not obtained the sanction as required under Rule 3 of the Rules. Thus, the property has been transferred in violation of Rule 3 of the 1975 Rules. The Authority was directed to issue a notice inviting tender for disposal of the property in question on lease. The writ petition was disposed of.

*Neetu Tejkumar Bhagat & Anr. vs. Jabalpur Development Authority & Ors. AIR 2013 Madhya Pradesh 100*

**4. Release deeds – Stamp duty payable – Determination – Important differentiating factor between documents covered by Article 46A on one hand and Article 46B on other, is element of benami.: Stamp Act, 1899, Sch. I-A Articles 46B, 46A – Benami Transactions (Prohibition) Act, 1988, S. 2(a)**

One Sri Shafiuddin Babu Khan was owner of very large extent of property at Hyderabad. Through two sale deeds, he sold two bifurcated plots of the same land in favour of Respondents. Through another sale deeds he sold further third plot of the same land to the same party. The sale deeds were registered

in the office of the Sub-Registrar. Eleven shareholders, who figured as co-purchasers in the sale deeds, executed separate release deeds in favour of the respondent stating that they figured as benami in the sale deeds and they intend to relinquish their rights, if any, in favour of the respondent.

In each of the documents, they indicated the value at ₹ 1,00,000/- and paid the stamp duty of ₹ 3,000/- apart from registration fee. They invoked Article 46B to Schedule I-A of the Indian Stamp Act, 1899. The 2nd petitioner entertained a doubt as to the adequacy of stamp duty and registration charges paid on the documents. Exercising powers under Article 47A to Schedule I-A of the Act, he referred the matter to the 1st petitioner. The 1st petitioner issued notices to the respondent and the executants of the documents, expressing the view that the stamp duty is payable under Article 46A and requiring them to explain. The respondent and its shareholders submitted explanation stating that the entire consideration for the sale transaction was paid by the respondent alone and since 11 shareholders figured as benami, it is only Article 46B that gets attracted.

The High Court held that an important differentiating factor between the documents covered by Article 46B on the other, is the element of benami. As is evident from the definition of 'benami transaction' under the Benami Transactions (Prohibition) Act, 1988, transaction, assumes that character in case the consideration for the sale was paid by a person, other than the one who figured as purchaser. In a given case, the party, who figured as the purchaser may not have paid anything and the entire consideration is paid by a stranger. There may also be instances where more persons than one figure as purchasers and only one or few of them have paid the consideration and others did not pay any amount at all. Even in the second

category of cases, the transaction is prone to be treated as benami to the extent they relate to the persons, who figure as purchasers, but did not pay the consideration. The case on hand falls into that category, if the relevant facts are proved. The High Court further held that it was represented before the 1st petitioner, in reply to a notice that the entire sale consideration was paid by the respondent and that 11 persons, who executed the release deeds, did not share the burden at all. As long as that plea stood not contradicted, the transaction, to the extent of those persons, is invariably benami in nature. The fact is sufficient to attract Article 46B.

*The Collector under S. 47A of Indian Stamp Act, 1899 and District Registrar (R & S) Department, Hyderabad and Anr. vs M/s. Asrani Inns & Resorts (P) Limited, Rep. by its Director Sachin, J. Joshi, Secunderabad AIR 2013 Andhra Pradesh 101*

**5. Powers of Executing Court – Objection against attachment of property – Agreement to sell suit property produced by relative of judgment debtor, was not genuine, but collusive in nature and brought into existence to defeat fruits of decree obtained by decree-holder – Executing Court would have power to determine validity of agreement. : Civil P. C., 1908, O. 21, R. 58(2), S. 47**

Respondent No. 1 filed two different suits for recovery of amount based on the different promissory notes and obtained attachment before judgment, later the suits were decreed. Respondent No. 1 filed Execution Proceedings (E.P.) seeking sale of three items of the Execution Proceedings Schedule property. In both EPs, the property was one and the same. The case of the petitioner was

that he purchased item No. 3 of the E.P. Schedule property in both the EPs from the respondent No. 3 for a sale consideration under an agreement of sale and paid the earnest money. Therefore, the petitioner filed claim petitions. The Respondent No. 1 filed suit to defeat the fruits of the decrees and later Respondent Nos. 2 and 3 were set ex parte.

In the instant case, the Hon'ble High Court held that property was attached before judgment in suit for recovery. When execution proceedings were initiated, suit for specific performance of agreement to sell subject property was filed by judgment-debtor's relative. A shadow was cast upon genuinity of agreement of sale and it was under a cloud. Unless and until the agreement of sale was held to be a genuine one, question of attaching any value to sale deed did not arise, and as such no importance could be attached either to agreement of sale or sale deed. If there is sufficient proof that agreement of sale was executed in ordinary course prior to date of attachment and in pursuance of such genuine transaction if sale deed is executed subsequent to date of attachment, then only attachment does not prevail over pre-existing contract of sale.

Since the agreement of sale was not genuine, but collusive in nature and it was brought into existence to defeat fruits of decree obtained by decree-holder, it was held that ownership of property and/or right, title or interest therein may necessarily involve determination of validity or otherwise of agreement of sale, as done by executing Court. Executing Court had power to determine validity of agreement of sale. The appeals were dismissed.

*Punumacha Ashok Raju vs. Indukuri Venkata Gopala Krishnam Raju & Ors. AIR 2013 Andhra Pradesh 103*

