

# THE INDIAN LAW REPORTS

## LETTERS PATENT APPEAL

Before G. D. Khosla, C.J., and D. K. Mahajan, J.

MRS. G. R. PARRY AND ANOTHER,—Appellants

*versus*

UNION OF INDIA AND OTHERS,—Respondents

Letters Patent Appeal No. 56 of 1957

*Stamp Act (II of 1899)—Sections 3, 12 and 29 and article 62(a)—Share transfer deed—Liability to pay stamp duty—Whether of the transferor or the transferee—Transferee being the Union of India—Transfer deed—Whether requires to be stamped—Stamps on the share transfer deed not cancelled—Effect of—Companies Act (I of 1956)—Section 108—Share scrip not handed over along with the transfer deed—Transfer of shares—Whether can be ordered.*

*Held*, that under section 29 read with article 62(a) of the Indian Stamp Act, 1899 the duty on the instrument of transfer of shares is payable "by the person drawing, making or executing such instrument". Ordinarily the stamp duty is payable by the transferor and not the transferee unless there is a contract to the contrary. It cannot, therefore, be said that the Government is liable to pay the stamp duty on a share transfer deed, where the Government is the transferee of shares, simply because it is to be executed both by the transferor and the transferee.

*Held*, that if the stamps on a share transfer deed are not cancelled, the deed is not properly stamped and the transfer of shares cannot be said to have been complete and the transfer of shares in favour of the transferee cannot be ordered on the basis thereof. Similarly if the share scrip is not handed over along with the transfer deed, the transfer cannot be said to have been complete and no transfer of shares can be ordered in such a case.

1960

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July 12th.

*Letters Patent Appeal under section 155 of the Companies Act, I of 1956, and clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice G. L. Chopra, passed in Civil Original No. 101 of 1954 on 8th February, 1957.*

BAL RAJ TULI, ADVOCATE, for the Appellants.

N. L. SALUJA, K. L. KHANNA AND R. K. AGGARWAL,  
ADVOCATES, for the Respondents.

#### JUDGMENT.

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KHOSLA, C. J.—These are two cross appeals (Letters Patent Appeals Nos. 56 and 58 of 1957) arising out of an order made by Chopra, J., on an application made by the Union of India for the rectification of the register of members of the Kulu Valley Transport Company. The application was in respect of eight shares of which four were held by Ram Dial (Nos. 39 to 42), two were held by Gurdial (Nos. 14 and 43), and the remaining two by Vidya Vati, wife of Ram Dial (Nos. 44 and 45). The four shares held by Ram Dial had been previously pledged with Mrs. Parry. The Kulu Valley Transport Company began to fare badly in 1952 and an offer for the sale of these shares was made to the Union of India in the Railway Department. The offer was made by means of three letters, Exhibits P. 2, P. 3 and P. 4, signed, respectively, by Ram Dial, Gurdial and Vidya Vati. The letters were all in identical terms and the text has been reproduced in the judgment of the learned Single Judge. The offer for sale was unconditional, and the shareholders offered to receive whatever price was considered just and proper by the Railway Department. No reply or a formal acceptance to these letters was sent, but it seems to have been understood by all parties that the shares were, in fact, transferred to the Railway Department. The letters were accompanied by

blank transfer-deeds and by the scrips of six shares. The scrips of the shares of Gurdial and Vidya Vati accompanied their respective letters, but of four shares of Ram Dial, the scrips of only two were submitted. The scrips of the remaining two (Nos. 39 and 40) were with the pledgee, Mrs. Parry. Nearly a year elapsed, and then Gurdial and Vidya Vati began to make claims for the price of these shares. They claimed that a sum of Rs. 8,000 was due to each of them on account of the price of the four shares which had been transferred by both of them. It may be mentioned here that the face value of each share of the Kulu Valley Transport Company was Rs. 4,000. It may also be mentioned here that Ram Dial had previously offered to receive 10 per cent of the face value of his own shares and also of the shares held by the members of his family.

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The Union of India treated these transactions as complete transfer of the shares and made an application for the rectification of the register of members of the Company. The learned Judge allowed the application in so far as it related to the two shares of Ram Dial of which he had sent scrips along with the transfer-deeds, but dismissed the application in respect of the remaining six shares. In coming to this conclusion he held that there was no completed transaction of sale affected by Gurdial and Vidya Vati. He also came to the conclusion that the transfer-deeds bore stamps which had not been cancelled at the time of their execution and, therefore, the transfer-deeds must be treated as unstamped, and since an unstamped transfer-deed could not be made the basis of a genuine transfer, the transfers by Gurdial and Vidya Vati must be treated as incomplete. With regard to the two shares which were held by Mrs. Parry, the learned Judge took the view that since no share-scrips were handed over along with

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the transfer-deeds, the transfer could not be said to have been complete within the meaning of the Indian Companies Act.

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Against this decision two cross appeals have been preferred under clause 10 of the Letters Patent. The appeal of Mrs. Parry in respect of the two shares held by her may be disposed of in a few words. Ram Dial made an unconditional offer of transfer on the 29th of December, 1952. He handed over the scrips of the two shares held by him to the Railway Department and later agreed to accept 10 per cent of the face value of these shares. The fact that these shares were pledged with Mrs. Parry, does not affect the transfer, because the pledge may well have been redeemed, and since the scrips were in possession of Ram Dial and were handed over along with the transfer certificates, the transfer must be held to have been completed.

With regard to the appeal by the Union of India, it has been urged before us that there was a completed contract of sale inasmuch as Gurdial and Vidya Vati had made an unconditional offer of sale. The fact that the price was not fixed, makes no difference to the case. The learned Judge has referred to section 5 of the Sale of Goods Act, but it seems to me that the terms, in which Gurdial and Vidya Vati made their offer, were of an unconditional offer, and the subsequent conduct of the parties shows that this offer was accepted. The only thing that remained undetermined was the price, and in accordance with the provisions of section 9 of the Sale of Goods Act, the vendor could claim a reasonable price since no steps had been taken to determine the figure. There is, however, another objection to this transaction being considered a valid one, namely,

the non-cancellation of the stamps. The transfer certificates were stamped, but the stamps were not cancelled, and under the provisions of section 12 of the Indian Stamp Act, the transfer-deeds must be deemed to be unstamped. If a transfer-deed is unstamped, the company cannot be asked to give effect to the transfer. Mr. Salooja, who appears on behalf of the Union of India, drew our attention to section 3 and section 29, item 62(a), Indian Stamp Act, and argued that transfer-deeds of shares had to be executed both by the transferor and the transferee. The transferee in this case is the Government and, therefore, the Government being the executant of the documents, the deeds were exempt from stamp duty. The first proviso to section 3 is in the following terms :—

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“Provided that no duty shall be chargeable in respect of any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.”

The liability is dealt with under section 29, item 62(a), which relates to the transfer of shares, etc. The duty is payable “by the person drawing, making, or executing such instrument”. The argument of Mr. Salooja is that in this case Government is the person drawing, making, or executing the instrument and, therefore, the duty was ordinarily payable by Government, and that being so, the deeds will be exempt from duty under the provisions of the first proviso of which the terms have been quoted above. Ordinarily, it is the transferor of shares, who is liable for stamp duty. This matter has been considered in a number of cases, and it has been held by the Federal Court

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in *Jainarain Ram Lundia v. Surajmull Sagarmull and others* (1), that ordinarily and, as a matter of law, in case of transfer of shares of a company it is the vendor who is liable for stamp duty. The matter arose out of a contract to sell shares and the question for the consideration of the learned Judges of the Federal Court was whether the contract was complete or not. The party challenging the contract contended that no agreement had been arrived at regarding the payment of the stamp duty on the transfer-deed and, therefore, the transfer could not be said to be complete. It was contended, on the other hand, that the question of payment of stamp duty was not one of the terms of the contract as ordinarily stamp duty was paid by the transferor. This contention was accepted by the learned Judges of the Federal Court, and holding that in law it is the transferor, who pays the stamp duty, the absence of any agreement on this point could not invalidate the contract. In another case which came up before the Bombay High Court—*New Citizen Bank of India v. Asian Assurance Co. Ltd.* (2) it was held that where an instrument of transfer properly stamped has not been given, it cannot be said that the transferee's name was omitted without any sufficient cause. The same view was expressed by the Nagpur High Court in *Amraoti Electric Supply Co., Ltd. v. R. S. Chandak and others* (3).

Taking the view that the stamp duty is ordinarily payable by the transferor, it cannot be said that the Government was liable for paying the stamp duty simply because an instrument for transfer of shares is to be executed both by the transferor and the transferee. That being so, the

(1) A.I.R. 1949 F.C. 211.

(2) A.I.R. 1945 Bom. 149.

(3) A.I.R. 1954 Nag. 293.

case does not fall within the exemption referred to in the first proviso to section 3 of the Indian Stamp Act, and the transfer-deeds executed by Gurdial and Vidya Vati not being considered properly stamped, the transfers cannot be said to have been complete. The view of the learned Single Judge on this point, therefore, was right and must be upheld.

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With regard to the remaining two shares of Ram Dial, which were in possession of Mrs. Parry, since the scrips were not handed over along with the transfer-deeds, this transfer cannot be said to have been complete and the decision of the learned Judge on this point also must be upheld.

In the result, I would uphold the decision of the learned Judge in all respects and dismiss both the appeals and make no order as to costs.

MAHAJAN, J.—I agree.

Mahajan, J.

B.R.T.

LETTERS PATENT APPEAL

Before G. D. Khosla, C.J., and Gurdev Singh, J.

RAM CHAND PURI,—Appellant

versus

THE LAHORE ENAMELLING AND STAMPING COMPANY  
LTD. (in Liqn.), Respondent

Letters Patent Appeal No. 39 of 1958.

Indian Companies Act (VII of 1913)—Sections 167, 168 and 229—Provincial Insolvency Act (V of 1920)—Sections 28(7) and 34—Provable debts—Debt within limitation on the date of the petition but barred by time on the date of the winding up order—Whether provable—Indian Limitation Act (IX of 1908)—Extraneous matters—Whether affect the question of limitation.