

IN THE SUPREME COURT OF SOUTH AFRICA.

Record

(APPELLATE DIVISION)

In the matter between :

THE COMMISSIONER FOR INLAND REVENUE

Appellant

&

FREDDIES CONSOLIDATED MINES LIMITED

Respondent

CORAM : Centlivres C.J., Schreiner, Steyn, de Villiers et
Brink JJ.A.

Heard : 19th November 1956. Delivered : 23-11-56

J U D G M E N T

CENTLIVRES C.J. :- In terms of two separate agreements entered into on the same day the respondent company bought the whole of the undertaking and assets of two other companies for the sums of £5,075,980 and £5,177,942. 10. Od. respectively.

In the one agreement the following clause appears :-

- " 4. It is hereby acknowledged and recorded that of the consideration payable by the Purchaser company to the Seller Company, £730,695 is payable in respect of the immovable property referred to in the Schedule hereto marked 'A', which £730,695 is the value of such immovable property, as shown in the books of the Seller Company. "

In the other agreement the same clause appears, excepting that the figure is £717,463. 0. 0. Each of the 'A' schedules shows that the immovable property referred to in clause 4 of the agreement consists of a large number of separate erven in townships, each erf being referred to by its number. That schedule does not place a value on any of the erven. Those erven were at the time the agreements were entered into registered as separate erven in the Deeds Registry at Bloemfontein.

The respondent and the sellers submitted declarations of purchaser and seller to the Receiver of Revenue in which the true value of each of the erven was stated separately, totalling the above sums of £730,695 and £717,463 respectively. In the case of most of the ^{erf} ~~erven~~ the value of each individual erf was less than £5,000. The appellant admits that the value of each individual erf is the value shown in the declarations of purchaser and seller but denies the relevancy of such value.

A dispute arose between the parties as to the amount of the transfer duty that was payable in terms of Sec. 2 of Act 40 of 1949. The Commissioner for Inland Revenue claimed £57,826. 6. 6d. as transfer duty on the basis that the duty had to be calculated on the total values of all the erven and not on the value of each individual erf. The respondent contended

that the transfer duty payable was £43,950. 16. 9d. on the basis that the duty had to be calculated on the value of each individual erf. On that basis the duty would be 3 per cent on so much of the value of each erf as does not exceed £5,000 and 4 per cent thereafter. The Commissioner contended that duty was payable at 3 per cent on £5,000 of £730,695 and £717,463 respectively and at 4 per cent thereafter. In order to obtain transfer of the erven into its name the respondent paid the amount claimed by the Commissioner. It first paid £43,950. 16. 9d. and thereafter paid under protest the balance demanded by the Commissioner viz: the sum of £13,875. 9. 9d.

The respondent petitioned the Transvaal Provincial Division for an order declaring that transfer duty at the rate of £3 per centum was payable in terms of Sec. 2 of the Act in respect ~~transfer~~ of the first £5,000 of the value of each individual erf and that transfer duty at the rate of £4 per centum was payable on so much of the value of each ~~of such~~ individual erf as exceeds £5,000. The respondent also asked for judgment for £13,875. 9. 9d. The Provincial Division made the declaratory order asked for and granted judgment for the amount claimed. The Commissioner now appeals, the parties having agreed to an appeal direct to this Court.

The charging section of Act 40 of 1949 is Sec. 2, the relevant portion of which, as amended by Sec. 1 of Act 32 of 1954, ~~1949~~ reads as follows :-

" There shall be levied for the benefit of the Consolidated Revenue Fund a transfer duty..... of four pounds per centum on the value of any property (which value shall be determined in accordance with the provisions of sections five, six, seven, and eight) acquired by any person..... by way of a transaction..... Provided that on so much of the said value..... as does not exceed five thousand pounds, the duty shall be three pounds per centum."

Section 1 of the Act defines "property" as meaning "land and ^{any} fixtures thereon..... " and "transaction" as meaning "an agreement whereby one party thereto agrees to sell..... "property to another..... " In this judgment I shall use the word "property" in the sense in which it is defined in Section 1.

Section 5(1) is as follows :-

" The value on which duty shall be payable shall, subject to the provisions of this section -

- (a) where ~~the~~ consideration is payable by the person who has acquired the property, be the amount of that consideration ; and

" (b) where no consideration is payable, be the declared value of the property."

"Declared value" is defined in Sec. 1 as meaning "the value of the property as declared in the declaration completed in terms of section fourteen by the person who has acquired the property;"

Under Sec. 3(1) read with the definition of "date of acquisition" in Sec. 1 the duty in the present case was payable within six months of the date of the agreements entered into between the respondents and the two selling companies. It is clear from the whole scheme of the Act that payment of the duty (apart from cancellation) must be made whether or not the property is transferred ~~into~~ into the name of the purchaser. The word "acquired" in the charging section (sec. 2) must therefore be construed as meaning the acquisition of a right to acquire the ownership of property. It has been said to be a misnomer to call the duty a transfer duty : it is in fact a duty imposed, inter alia, on the consideration given by a purchaser of property for the right conferred on him to acquire the ownership of property. See Minister of Finance v Gin Brothers and Goldblatt (1954 (3) S.A. 881 at pp. 884 and 889). It follows that the meaning of Sec. 5(1)(a) is that the value on which duty must be paid is the consideration payable by the person who has acquired the right to acquire the ownership of property. In the present case the respondent by virtue of the

two contracts entered into by it, acquired the right to acquire the ownership of the property mentioned in those contracts. In the case of each contract that right was acquired by way of one "transaction" and it seems to me that that right was indivisible.

And in each contract the consideration for the acquisition of that right is stated : that consideration is, therefore, in terms of Sec. 5(1)(a), the value upon which the duty must be calculated, the Commissioner not having questioned that value in terms of subsec. (6) of Sec. 5.

If the view I have expressed above is correct it follows that I am unable to agree with the contention advanced on behalf of the respondent that the word "property" in the Act should be construed as meaning any unit of land which is separately registered in the Deeds Office and not as including a number of separately registered pieces of land. It is true that if the Commissioner is of opinion that the consideration payable is less than the fair value of the property in question he may under Sec. 5(6) determine the fair value of that property and that under Sec. 5(7) he must, in determining the fair value have regard, according to the circumstances of the case, inter alia, to the municipal or divisional council valuation of the property itself. He would thereupon have to value separate units of

land for the purpose of determining the fair value of the right to acquire the ownership of those separate units. The aggregate of the fair value placed on each unit then becomes the value of the right to acquire the ownership of all the separate units and the duty becomes payable on that value if it exceeds the consideration payable : if it does not, the consideration remains the value of the right to acquire the ownership of the separate units upon which the duty is payable. But the fact that for certain purposes regard may be had to the values of separate registered units of land does not have the logical consequence that the system of taxation is based on units of land.

Section 5(4)(a) affords a strong indication that the Legislature did not intend the word "property" to mean only a unit of land which is separately registered. That sub-section provides for the determination of the dutiable value "in the case of "a transaction where one property is exchanged for another." If by the word "property" is meant only a unit of land separately registered in the Deeds Office, then the section would not apply to cases where there is an exchange of a farm which is held under one deed of transfer for another farm which is held under two or more deeds of transfer nor to a case where one farm is exchanged for two separate farms. The Legislature must have intended that the section should apply to the cases I have mentioned, for there is no other provision in the Act which provides for the determination of the dutiable value in those cases.

If I am correct in this, it follows that the word "property" does not mean only a unit of land separately registered in the Deeds Office but includes land held under separate titles.

For all these reasons it seems to me that duty is payable on the basis contended for by the Commissioner. The appeal is allowed with costs, and the order made by the Provincial Division is altered to read as follows :-

"Application dismissed with costs. "

Schreiner J.A.	}	CONCUR
Steyn J.A.		
de Villiers J.A.		
Brink J.A.		

Ans. K. L. L. L.