

P. 185 of SRO Arannula.

The document to P. 185 of SRO Arannula has been styled as a Sale deed in respect of 83 cents of land for Rs 50000 under Art. 21 of the S.A. The deed bears a stamp duty of Rs 4500. In the document under reference it is seen that the executant after receiving a part payment of Rs 17000/- of the total consideration of Rs 50000 retains the possession of a portion of 33 cents of property but he secures the balance amount of Rs 33000 from the executer. The doubt raised by the DR is whether the deed evidences a mortgage with possession for Rs 33000 in addition to the sale deed for Rs 50000/- since the executant retains possession of a portion of 33 cents of property and the property is charged for the balance consideration of Rs 33000/-

The SR who impounded the document is of the view that the document is a Sale for Rs 50000, bottomery bond for Rs 33000 release deed for Rs 33000 and an agreement unrelated falling under Art. 21, 14, 48 and 50. Superintending of the Schedule to the S.A. The DR (Audit) and Director of Registration on the other hand holds that the deed is a Sale for Rs 50000/- only.

There is nothing in the recital of the document to show that it is a bottomery bond or a release or an agreement as stated by the SR. The DR and Dy. Regn have also not subscribed to this view. The question therefore to be decided is whether the deed is a mortgage with possession for Rs 33000 besides a sale deed for Rs 50000.

The Board has perused the reports and records of the case. The essence of mortgage is that it is security for the performance of an already existing pecuniary obligation. In the instant case there is no debtor or creditor relationship between the executant and executer nor is there any pecuniary obligation. On the other hand the intention of the parties is very clear from the recital of the document. The executant intends