

In Re: Sukhdeo Prasad

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Court : Allahabad

Decided On : Aug-23-1934

Reported in : AIR1934All1052; 152Ind.Cas.41

Appellant : In Re: Sukhdeo Prasad

Judgement :

1. This is a reference under Section 61, Stamp Act, made by the Collector of Gorakhpur. One Sukh Deo executed three documents styled receipts on the 5th December 1931, 28th January 1932 and 13th October 1932. They are all in identical terms. Therein Sukh Deo declared that he had borrowed a certain sum of money at a certain rate of interest. The concluding sentence is ' Hence this receipt has been executed.' None of the documents bore any stamp. They were produced in a certain litigation between. Sukh Deo and Katnta in whose favour the documents had been executed. The Judge of the Small Cause Court impounded them, but subsequently admitted them in evidence on payment by the party concerned of stamp duty payable on agreements together with a penalty of Rs. 7-8-0 in each case. On the matter coming to the notice of the Collector, the latter found that in the case of the document dated 5th December 1931 the Small Cause Court Judge had charged stamp duty of 12 annas and a penalty of Rs. 7-8-0. As a matter of fact, the enhanced duty of 12 annas for an agreement became payable with effect from a much later date than 5th December 1931. Similarly, the enhanced penalty of Rs. 7-8-0 was not payable till a later date and no more than Rs. 5 should have been recovered as penalty for the document dated 5th

December 1931. Accordingly the Collector has expressed the opinion that an excess stamp duty of 4 annas and an excess penalty to the extent of Rs. 2-8-0 has been recovered from the party concerned in respect of that document. As regards the document dated 13th October 1932, the action of the Judge of the Small Cause Court is considered by the Collector to be in order. In case of the third document, the Collector points out that it is not signed by any one. This may be an oversight; but the fact remains that it is an unexecuted document, and the Collector has rightly held that it was not liable to pay any stamp duty or penalty.

2. Sukh Deo, the executant of the documents in question, is represented before us. His learned advocate has argued that the documents amount to no more than acknowledgments, and consequently a duty of one anna only is payable in each case. The learned Government Advocate, on the other hand, has drawn our attention to *Mahadeo Koeri v. Sheoraj Ram* 1919 All. 196 and *Sahu Prahlad Prasad v. Bhagwan Das* 1927 All. 677 both of which seem to be cases in point. The learned Judges held that, in view of the stipulation regarding interest the document could no be considered to be mere acknowledgments and that they were memoranda of agreement. The learned advocate for the respondent has referred to the Full Bench case of *Ram Prasad Ram Kumar v. Parshottam Halwai* 1933 All. 256.

3. That case however is distinguishable from the present one, as the so-called stipulation to pay interest appeared at such a place in the endorsement which was in the account book of the creditor as to make it uncertain whether it formed part of the endorsement signed by the debtor or was added to it by the creditor himself. In these circumstances, the Full Bench did not consider the endorsement as one containing a stipulation to pay interest. We hold that the cases relied on by the learned Government Advocate cover the point in question before us and that the view expressed by the Collector in his reference is right. According to the Collector's report, the Small Cause Court Judge has realised, in case of the first document, an excess duty to the extent of 4 annas and an excess penalty to the extent of Rs. 2-8-0 and Rs. 8-4-0 and 12 annas stamp duty and Rs. 7-8-0 penalty in respect of the third document, for which nothing was payable. As regards the second document, the Small Cause Court Judge's action was right. We accept the

reference by the Collector and declare accordingly.

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