

Sudesh Kumar Vs. Mool Chand

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Court : Rajasthan

Decided On : Mar-01-1968

Reported in : AIR1969Raj22

Judge : C.M. Lodha, J.

Acts : Rajasthan Stamp Law (Adaptation) Act, 1952 - Schedule - Article 57; [Stamp Act, 1899](#) - Sections 2(5) - Schedule - Article 35; [Evidence Act, 1872](#) - Sections 115

Appeal No. : Civil Revn. Petn. No. 378 of 1967

Appellant : Sudesh Kumar

Respondent : Mool Chand

Advocate for Def. : M.L. Chhangani, Adv.

Advocate for Pet/Ap. : R.L. Jangid, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

C.M. Lodha, J.

1. This is a revision application directed against the order of the learned Civil Judge, Jodhpur, dated 16-8-1967, in Civil Original Suit No. 2/1966, by which he decided preliminary issues Nos. 4 and 5 against the defendant-petitioner and held that the promissory note and receipt dated 22-12-65 and the agreement to let dated 20th December, 1965 were sufficiently stamped.

2. The non-petitioner-plaintiff Moolchand filed the suit for arrears of rent and for award of future rent also against the defendant-petitioner Sudesh Kumar in respect of a shop situate on the High Court Road, Jodhpur. The plaintiff's case is that he rented out the half portion of the shop in question at a monthly rent of Rs. 150 to the defendant-petitioner on 20th December, 1965, and got a rent note executed by the defendant on the same day. It is further alleged that later on the defendant took the whole shop on rent at a monthly rent of Rs. 300 and agreed to deposit one year's rent in advance and instead of making a cash deposit, the defendant executed a promissory note in his favour for Rs. 3600 (being the rent for one year), on 22-12-65, and also a receipt in respect of this amount of the same date. Since the defendant did not pay the rent to the plaintiff, this suit was instituted in the court of learned Civil Judge on 4-11-66. The defendant in his written statement pleaded inter alia that he had actually taken the shop on rent from 24-12-65 when the possession of the shop was delivered to him. He also raised an objection with respect to the admissibility of the promissory note and receipt and also the rent note dated 20th December, 1965, on the ground that they were insufficiently stamped. Issues Nos. 4 and 5 were framed in respect of this objection and were decided as preliminary issues by the lower court.

3. It is urged by the learned counsel for the petitioner that the promissory note as well as the receipt dated 22nd December, 1965, fall within the ambit of security bond as they were passed on to the plaintiff by the defendant as a security for complying with the condition of the payment of rent of the shop in question regularly. He has, therefore, contended that these two documents should have been stamped as required by Article 57 of the Stamp Act as security bonds. I am however, unable to accept the contention of the learned counsel for the petitioner for the simple reason that neither the promissory note nor the receipt can be considered as a security bond. Article 57 of the Rajasthan Stamp Law (Adaptation)

Act, 1952 on which reliance has been placed by the learned counsel for the petitioner is as under :--

'57. Security Bond or Mortgage-deed, executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract or the due discharge of a liability.'

4. It is no gain-saying the fact that there is nothing either in the promissory note or the receipt dated 22-12-65 to show that these documents were executed by way of security for the due performance of any contract. It is no doubt correct that the promissory note and the receipt were executed and given by way of security for performance of certain conditions agreed to between the plaintiff and the defendant. But that would not make either of these documents a security bond. In order to attract the applicability of Article 57, it is necessary that the document itself must be a mortgage-deed or a security bond. The learned counsel for the petitioner in this connection has also referred to the definition of the word 'bond' contained in Section 2(5) of the Indian [Stamp Act, 1899](#), and has particularly placed reliance on Clause (a) of Section 2(5), which is as under :--

'Bond' includes - (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be.'

5. A bare perusal of this definition will go to show that neither the promissory note nor the receipt contain the ingredients described in this sub-clause. There is, thus, no force in the contention of the learned counsel for the petitioner that the promissory note and the receipt should have been stamped as security bonds. They are properly stamped as promissory note and receipt. The finding of the learned Civil Judge on issue No. 4, which pertains to the promissory note and receipt, is, therefore, in order.

6. Coming to issue No. 5, which refers to the alleged rent note dated 20-12-65 the learned counsel for the petitioner submits that the plaintiff himself has described this document in his plaint as rent note and has stated that the relationship of

landlord end tenant between the plaintiff and the defendant was created by virtue of this document. He has, therefore, argued that the plaintiff cannot go back on the position which he has already taken in the plaint and the document dated 20-12-65 must be considered to be a rent note for purposes of stamp duty. I am afraid, this contention is devoid of force. It is true that the plaintiff has described it as a rent note in his plaint, but this is only a matter of interpretation of the document, which is purely a question of law and there cannot be estoppel in such matters. To take a simple illustration, if a document is in fact a will, but if it has been wrongly described as a gift by a certain party, it would not be correct to hold it to be a gift merely on the ground that the party has described it as a gift and the court will have to consider independently of admission of any party the correct nature of the document.

7. I have examined the document dated 20-12-65 and there is no doubt in my mind that it is not a rent note, but is only an agreement to let. I am, however, constrained to observe that the document is very badly drafted. Nevertheless, so far as the nature of the document is concerned, it is clear that it is only an agreement. It is titled as an agreement and even from the language used in the body of the instrument, it appears that the parties intended to bring into existence only an agreement and not a rent note. This would be crystal clear from para No. 18 of this deed, which says that within six months from the date of its execution the tenant shall execute a valid rent note on requisite stamp paper and get it registered, by embodying therein all the terms and conditions incorporated in the agreement. Faced with this position, the learned counsel for the petitioner has argued, in the alternative that even if it is considered as an agreement to let it must be stamped as a lease, as in Article 35 'lease' includes an underlease or sub-lease and any agreement to let or sub-let. I must state that this alternative position was not taken by the petitioner in the lower court. But since the point envisaged is a pure point of Law, I have allowed the learned counsel for the petitioner to rely on it. In order to hold that an agreement, to let may be stamped as a lease, it is necessary that such an agreement should create an actual demise. If an authority is needed on this point, I may refer to *In re Maneklal Manilal*, AIR 1928 Bom 553, wherein it was observed. -

'An agreement to lease is included in the word 'lease' under the Stamp Act, but an agreement to lease must amount to an actual demise and not an agreement that in certain contingencies a lease will be granted.'

8. The question, therefore, is whether the document dated 20th December, 1965, amounted to actual demise or it was merely an agreement to the effect that in certain contingencies a lease will be granted? I cannot fail to observe that there has been a lot of bungling in drafting this document. However, in the written statement filed by the defendant, it has been pleaded that the possession of the shop in question was handed over to the defendant on 24-12-65 and the defendant became the tenant of the plaintiff only from 24-12-65. There is nothing in this written statement to show that there was actual demise in favour of the tenant on the date when this document was executed. This position was not eventaken in the trial court that even though the document in question was an agreement, yet it amounted to an actual demise in favour of the defendant. Again, there are certain clauses in the document itself which go to show that the parties intended that a regular lease-deed would be got executed after some time on happening of certain contingencies. In this connection, I may refer to paras Nos. 18 and 19 of this document. As already stated above, in para No, 18, it has been mentioned that the defendant would execute a valid rent note on requisite stamp paper within six months. Again in Para No. 19, it is mentioned that the landlord would effect the partition of the shop and the defendant would bear half of the expenses and pay the sum to the plaintiff within six months in easy instalments and if the defendant wanted to take the full shop, he would execute the rent note for the same and pay rent at the rate of Rs. 300 per mensem. In this state of the pleadings of the parties and looking to the contents of the document, I do not feel persuaded to interfere with the order of the lower court in exercise of my revisional jurisdiction.

9. The revision application is, therefore, dismissed. Looking to the circumstances of the case, the parties are left to bear their own costs.