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Court : Rajasthan

Decided On : Nov-17-1964

Reported in : AIR1965Raj114

Judge : Jagat Narayan, J.

Acts : Stamp Act, 1899 - Sections 35 and 37; Rajasthan Stamp Rules - Rule 14; Rajasthan Court Fees - Rules 13 and 14; Suits Valuation Rules, 1961

Appeal No. : Civil Revn. No. 420 of 1963

Appellant : Anoop Chand

Respondent : Nathmal

Advocate for Def. : B.K. Acharya, Adv.

Advocate for Pet/Ap. : C.D. Mundra, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Jagat Narayan, J.

1. This is a revision application by the defendant against an order of the Civil Judge, Bikaner, returning a promissory note to the plaintiff for getting it certified by

the Collector to be duly stamped under Section 37 of the Stamp Act read with Rule 89 of the Rajasthan Stamp Rules 1955.

2. The document in question is a promissory note for Rs. 5000/- executed on 12-8-81. Under Article 49 of the Stamp Act the stamp duty payable on it is 25 Naye Paise. The promissory note is however stamped with four adhesive stamps of 10 Naye Paise inscribed for use for revenue.

2a. The defendant took an objection that the promissory note should have been stamped with one revenue stamp of 25 Naye Paise and as this was not done it is not duly stamped and is inadmissible in evidence. The trial court agreed with the defendant that the promissory note was not duly stamped on this account but was of the opinion that the defect could be cured by obtaining a certificate of the Collector under Section 37 of the Stamp Act. He accordingly ordered the return of the promissory note to the plaintiff for obtaining such a certificate.

3. Against the above order the present revision application has been filed. It is contended that a document of the nature referred to in proviso (a) to Section 35, if not duly stamped cannot be made admissible in evidence by obtaining a certificate as provided under Section 37 of the Stamp Act. Reliance is placed on the decision of a learned Single Judge of the Andhra Pradesh High Court in N.D. Erranna v. Modappa, AIR 1963 Andh. Pra. 457.

4. The learned counsel for the respondent relied on the following decisions in which a contrary view was taken:--

Tukaram v. Sonaji, 10 Ind. Cas. 702 (Nag.) Ranjitsingh v. Behramji, AIR 1957 Madh. Bha. 181.

Having heard the learned counsel for the parties I am of the opinion that the view taken in the Andhra Pradesh case is correct. The relevant part of Section 35 runs as follows:--

'35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person

or by any public officer, unless such Instrument is duly stamped:

Provided that-

(a) any such instrument not being an instrument chargeable with a duty of one anna (or half an anna only), or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

.....'

It a document bears a stamp of improper description then it is not duly stamped. Further if such document happens to be an instrument chargeable with a duty not exceeding 10 Naye Paise only or is a bill of exchange or promissory note and it is not duly stamped then under Section 35 read with proviso (a) it cannot be admitted in evidence for any purpose. It stands to reason that such a document cannot he certified to be duly stamped under Section 37 of the Stamp Act.

5. The only defect which can be cured under the above section is the use of a stamp of improper description. In the present case however a stamp of proper description has been used and the question of application of Section 37 does not arise at all.

6. Rule 3 of the Rajasthan Stamp Rules prescribes the use of two descriptions of stamps namely impressed stamps and adhesive stamps.

7. Rule 6 of the Rajasthan Stamp Rules runs as follows:--

'6. Promissory note and bills of exchange.-

A promissory note or bill or exchange shall except as provided by Section 11 or by Rules 14 and 19 be written on paper on which a stamp of the proper value, with or without the word 'hundi', has been engraved or embossed.

8. From the above rule it is clear that a provision of law is that a promissory note shall be written on a paper bearing an impressed stamp except as provided by Rule 14, the relevant part of which runs as follows:--

'14. Use of adhesive stamps on certain documents.--The following instrument may be stamped with adhesive stamps, namely:--

.....

(i) Promissory notes payable on demand when the amount or value exceeds Rs.250/-;

.....

It is clear from the above rule that it permits the use of an adhesive stamp on promissory notes payable on demand when the amount or value exceeds Rs. 250/-. In the present case the value of the pronote exceeds Rs. 250/-, The use of adhesive stamps is thus permitted under rule 14. The stamps used in the present case are therefore of proper description.

9. The objection of the defendant however is that one adhesive stamp of 25 Naye Paise should have been used instead of four adhesive stamps of 10 Naye Paise. This objection thus pertains to the denomination of the stamps used and not to their description.

10. There is however no provision in the Stamp Act or the Rajasthan Stamp Rules prescribing the denomination of stamps which can be used or placing any restriction on the use of more stamps than one where one stamp of the requisite value is available. Where the duty payable is Rs. 100/- a person is entitled to use one hundred stamps of rupee one each in place of one stamp of one hundred rupees.

11. Further it is well settled that a document is treated as duly stamped if it bears stamps of proper description exceeding in value the amount of duty prescribed.

12. It was therefore open to the defendant to affix to the promissory note adhesive stamps of the value of any amount in excess of 25 Naye Paise. It was also open to

him to use any number of stamps in doing so

13. The pronote in suit which is stamped with adhesive stamps of the value of 40 Naye Paise as against the prescribed duty of 25 Naye Paise is therefore duly stamped.

14. In Dalpat Singh v. Jiwan Mai, ILR (1960) 10 Raj 808: (AIR 1961 Raj 43) the pronote bore 4 adhesive stamps of 1 anna each and the prescribed duty was 4 annas. The defendant took an objection that as it did not bear one stamp of 4 annas it was not duly stamped. The plaintiff did not contend in that case that the objection was not warranted by any provision of the Stamp Act or the Rajasthan Stump Rules and the learned Single Judge who decided the case assumed wrongly that stamps of improper description had been used.

15. There is a provision in the Rajasthan Court Fees and Suits Valuation Rules, 1961, prescribing the use of the minimum number of adhesive labels available. This provision is contained in Rules 13 and 14 which run as follows:

'13. When in the case of fee amounting to less than 25/- Rupees the amount can be denoted by a single adhesive court fee stamp, such fee shall be denoted by the single adhesive court fee stamp of the required value. If the amount cannot be denoted by a single adhesive court fee stamp or if the single adhesive court fee stamp of the required value is not available, a court fee stamp of next lower value available shall be used and the deficiency shall be made up by the use of one or more additional adhesive court fee stamps to make up the required amount of the fee.

14. In the case of fee amounting to or exceeding Rs. 25/- the fee shall, if possible, be denoted by a single impressed court fee stamp of the required value. If the amount cannot be denoted or if a single impressed court fee stamp of the required value is not available, an impressed court fee stamp of the next lower value available shall be used and the deficiency shall be made up by the use of one or more additional impressed and adhesive court fee stamps.'

16. There is no similar provision in the Stamp Act or the Rajasthan Stamp Rules, however.

17. I accordingly hold that the suit promissory note is properly stamped and dismiss the revision application. In the circumstances of the case, I direct that parties shall bear their own costs of this revision application.

18. Let the record of the case be returnedforthwith so that the suit may be proceeded with.

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