

Laiqram Vs. Agar Das

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Court : Himachal Pradesh

Decided On : Jun-25-1966

Reported in : AIR1967HP29

Judge : Om Parkash, J.C.

Acts : [Stamp Act, 1899](#) - Sections 2(5), 2(22) and 36; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 10, Rule 1

Appeal No. : Civil Revn. No. 36 of 1965

Appellant : Laiqram

Respondent : Agar Das

Advocate for Def. : Chhabil Dass, Adv.

Advocate for Pet/Ap. : Amar Chand, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Om Parkash, J.C.

1. The only question, which requires decision in this revision-petition, against a decree of the learned District Judge, Mahasu, is whether the petitioner was barred

from calling in question the admissibility of the document, in suit, on the ground that it was a promissory note and was not duly stamped and whether the document, in fact, is a promissory note. The question has arisen in the following circumstances:

The respondent had instituted a suit, against the petitioner, in the Court of the Subordinate Judge, Rohru, for the recovery of Rs. 1028.50 nP. principal and interest, on the allegation that the petitioner had, on 9-4-61, borrowed a sum of Rs. 828.50 P, from the respondent, and had executed a promissory note undertaking to pay back the amount, with interest at the rate of Re. 1 per cent, per mensem and that the petitioner had failed to pay back the amount, despite demands. The suit was filed on 7-5-63. The petitioner was summoned for 17-7-63. The Presiding Officer was on leave on that date and that the suit was taken up on 19-7-63. The petitioner did not file the written statement on that date but requested for adjournment. The request was granted and the suit was adjourned to 17-8-63. But before adjourning the suit, the Subordinate Judge examined the petitioner, under Order 10, Rule 1 C. P. C. During the course of examination of the petitioner, the Subordinate Judge impounded the document, in suit, as a bond and ordered the payment of deficiency and penalty. The petitioner filed the written statement on 17-8-63. Besides taking up other pleas (which are not relevant for the decision of the revision-petition), the petitioner had raised a preliminary objection that the document, in the suit, was a promissory note, and being unstamped, was inadmissible, in evidence. The Subordinate Judge framed necessary issues arising out of the pleadings of the parties, including an issue on the preliminary objection, regarding admissibility of the document, in suit. The burden of all the issues was on the petitioner. He led evidence. The document, in suit, was put to him during the course of his examination and was marked as X. The respondent, in his statement as a witness, had referred to the document, in suit. Its admissibility was objected to, on behalf of the petitioner. The objection was not decided, though the document was marked as Ex. PB. After the close of the case, the Subordinate Judge announced judgment. He found all the issues, on merits, in favour of the respondent. So far as the issue regarding the nature and admissibility of the document, in suit, was concerned, the Subordinate Judge held that in view of his order dated 19-7-63, impounding the document as a bond, the petitioner

couldnot be allowed to contend that the document was a promissory note and was inadmissible in evidence. As a result of his findings, the Subordinate Judge decreed the suit of the respondent.

2. Aggrieved by the decree, the petitioner had gone up in appeal to the learned District Judge. One of the contentions, raised in appeal, was that the document, in suit, was a promissory note and was inadmissible in evidence and that the Subordinate Judge had erred in holding that the petitioner could not call in question the admissibility of the document. The finding of the learned District Judge, on this contention, was that though the document, in suit, was a promissory note, yet as the Subordinate Judge had admitted the document in evidence as a bond on 19-7-63, the petitioner was barred by virtue of the provisions of Section 36 of the Stamp Act, from questioning the admissibility of the document at a late stage of the proceedings. The learned District Judge affirmed the findings of the Subordinate Judge on other points and dismissed the appeal.

3. The petitioner has come up in revision. The only point canvassed in revision was whether the petitioner was barred, under Section 36, Stamp Act, from raising the question that the document, in suit, was a promissory note and being unstamped was inadmissible in evidence and whether the document is, in fact, a promissory note. Section 36, Stamp Act reads:

'Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.'

4. It is clear that Section 36 will apply only if the: document has been admitted in evidence. The implication of the expression 'admitted in evidence' used in Section 36, was explained in *Chunilal Tulsirarn v. Mulabai*, (1910) 6 Ind Cas 903 (Born). It was observed:

' 'Admitted in evidence' in Section 36 of the Stamp Act, means the act of letting the document in as part of the evidence; but it must be letting in as a result of judicial determination of the question whether it can be admitted in evidence or not for want of stamp.'

5. Their Lordships of the Supreme Court has held in *Javer Chand v. Puknraj Surana*, AIR 1961 SC 1655, that a document can be said to have been admitted in evidence, within the meaning of Section 36, Stamp Act, if the Court had judicially determined the matter of admissibility as soon as the document was tendered in evidence and before it was marked as an exhibit in the case.

6. The point for decision in the present case, is whether, at any stage of the suit, the Subordinate Judge had let in evidence the document, in suit, after judicially determining the question about its admissibility. As already stated, the document, in suit, was impounded as a bond on 19-7-63, during the course of examination of the petitioner purported to have been made under Order 10, Rule 1 C. P. C. The petitioner had not filed any written statement on that date. He had requested for adjournment for filing the written statement. The examination of the petitioner, on 19-7-63, under Order 10, Rule 1 C. P. C., was not justified as those provisions are to be resorted to, in case of a defendant, to ascertain whether the defendant admits or denies such allegations of fact as are not expressly or by necessary implication admitted or denied in the written statement. The petitioner had not filed any written statement on 19-7-63. There was no question of his examination under Order 10, Rule 1 C. P. C., on that date. There was, thus, no judicial determination of the matter of admissibility of the document, in suit, on 19-7-63. It is significant to note that the Subordinate Judge had, subsequently, struck an issue about the nature of the document, in suit, on an objection, raised by the petitioner, in his written statement. The decision on that issue was postponed by the Subordinate Judge. The petitioner had objected to the admissibility of the document when it had been tendered in evidence during the course of the examination of the respondent. That objection was never decided. It is abundantly clear from the facts of the case that there was no judicial determination of the question whether the document, in suit, was admissible in evidence. The document could not be said to have been admitted in evidence, within the meaning of S. 36, Stamp Act. The provisions of that section were not applicable to the case and the petitioner was not precluded from raising the objection that the document was not admissible in evidence as it was not duly stamped.

7. The authorities, cited by the learned counsel for the petitioner, may be considered. The facts in (1910) 6 Ind Cas 903 (Bom.) (supra) were analogous to the facts of the present case. In that case, the admissibility of the document was objected to when it was tendered in evidence. An issue about admissibility was raised. The decision on the issue was postponed until the delivery of the judgment on the whole case and after evidence had been recorded on all the issues, including the issue as to the admissibility of the document. In the meantime, the document was exhibited as part of the evidence. The trial Court, finally, held that the document was inadmissible for want of stamp. The appellate Court agreed with the trial Court that the document was inadmissible for want of Stamp but it held that as the document was as a matter of fact let in and exhibited as a piece of evidence by the trial Court, its admissibility could not be objected to at any subsequent stage of the case. The High Court, in second appeal set aside the decision of the appellate Court and held that the exhibiting of the document under the circumstances of the case, could not bind the party who had objected to its admissibility and whose objection awaited final determination by the trial Court, and that S. 36, Stamp Act, did not bar the trial Court from holding that the document was not admissible in evidence. Similarly, it can be said in the instant case, that the Impounding and exhibiting of the document, in suit, could not bind the petitioner who had objected to its admissibility and whose objection awaited decision.

8. It was observed in *Ahmed Pillai Meera Sahib v. Sankaran Madhavan*, AIR 1957 Ker 105 that:

'Where the defendant had raised objection regarding the admissibility of the document on the ground of its being insufficiently stamped in the written statement and there is nothing to show that the Court decided the question whether the document was properly stamped, it cannot be held that the document has been admitted in evidence and therefore the objection as to its admissibility on the ground of its being insufficiently stamped is not barred at later stage of the same proceeding.'

9. The facts, in *Yerri Swami v. Chinna Vannurappa*, AIR 1949 Mad 300 were that the plaintiffs had filed suits on the basis of promissory notes. The defendants had taken objection that the promissory notes were not properly stamped and were inadmissible in evidence. A specific issue was framed on the point of admissibility. The suits were dismissed on another preliminary issue. No decision was given on the issue of admissibility of the promissory notes. Notwithstanding the existence of an issue about admissibility, the promissory notes were marked as exhibits for the hearing of the suits on the preliminary issue. The finding of the trial Court, on the preliminary issue, was reversed by the appellate Court and the suits were remanded for disposal on other issues. An objection about the admissibility of the promissory notes was, again, raised. The trial Court held that as the promissory notes had been admitted in evidence, the defendants were precluded from raising the objection regarding the sufficiency of stamp under Section 36, Stamp Act. The High Court did not agree with this finding of the trial Court. The High Court held that as there was a specific issue on the point of admissibility and as the documents were marked at the preliminary trial without disposing of that issue, it could not be said that the documents were admitted in evidence within the meaning of Section 36, Stamp Act so as to preclude the defendants from raising the question that the documents were not properly stamped. Similarly, in the instant case, it can be said that as the specific issue about the admissibility of the document, in suit, was not disposed of, the document could not be held to have been admitted in evidence within the meaning of Section 36, Stamp Act.

10. The finding that Section 36, Stamp Act was not applicable to the facts of the case and the petitioner was not barred from calling in question the admissibility of the document, in suit, on the ground that it was not duly stamped, leads to the question whether the document, in suit, is a promissory note, as contended by the petitioner. The document was executed by the petitioner in favour of the respondent. It was attested by two witnesses. The material part of the document reads;--

'As I have today borrowed a sum of Rs. 828-8-0 from Shri Agar Dass, Rajput, Resident of Thana, for payment of the price of potatoes, I will pay back the aforesaid amount with interest at the rate of Re. 1 per cent per mensem to Agar

Dass on demand at the time and place which may be appointed by him.'

11. It may be pointed out that the document does not contain any undertaking to pay the amount to the order of Agar Dass or to the bearer. From the language, used in the document, it is capable of falling within the definition of a bond, as defined in Sub-section (5) (b) of Section 2, Stamp Act, and also within the definition of a promissory note, under Sub-section (22) of that section. The maxim being, *specialia generalibus derogant*, an instrument which satisfies the definition under Sub-section 5 (b) must be held to be taken out of the more general definition in Sub-section (22), vide A. I. R. Commentaries on the Stamp Act, p. 70. Reference may, also, be made to Stamp Act, by Mulla and Pratt, Sixth Edition, pp. 14 and 15. It was ruled in *Balkrishna Trimbak v. Govind Pand Naik*, (1884) ILR 8 Bom 297 (FB), and in two References, under the Stamp Act, namely, (1887) ILR 10 Mad 158 (FB) and (1890) ILR 13 Mad 147 (FB), that an instrument, attested by witnesses, containing an unconditional undertaking to pay a certain sum of money to a certain person on demand should be regarded as a bond for the purposes of the Stamp Act. In view of the above legal propositions, the document, in suit, in the instant case, is to be treated as a bond, and not a promissory note, for the purposes of the Stamp Act.

12. The learned counsel for the petitioner had vehemently contended that the circumstances of the case indicated that the intention of the parties was that the documents, in suit, should operate as a promissory note and that the document should, therefore, be taken to be promissory note and not a bond. In support of his contention, the learned counsel placed reliance on the facts that the document was described as a promissory note by the parties in the body of the document, a receipt was executed for the consideration and the respondent had described the document as a promissory note in his notice and the plaint. The name, given by the parties to a document, is not conclusive as to its real legal nature and effect. The parties to the suit were zamindars and not professional traders. They could not have intended the document, in suit, to be a negotiable instrument. Such a document, to use the words of their Lordships of the Privy Council in *Muhammad Akbar Khan v. Attar Singh*, AIR 1936 PC 171, the question in which case was whether a particular document was a promissory note or not, must come into

existence for the purpose only of recording an agreement to pay money and nothing more, though of course it may state the consideration. Moreover, the question about the intention of the parties, in order to determine the real nature of a document, becomes relevant and material only if the language of the document be vague or ambiguous. Where the language, used in the document, is unambiguous and clear, the real nature of the document is to be determined by its contents, uninfluenced by any intention of the parties. The language of the document, in suit, is absolutely free from any ambiguity. From the plain language, used, it is clear that the document, in suit, possesses all the characteristics of a bond, as defined in Section 2(5)(b) of the Stamp Act.

13. The Subordinate Judge had impounded the document, in suit, as a bond. Deficit duty and penalty had been paid. The document could, therefore be admitted in evidence, acted upon and a decree passed thereupon. In this view of the matter, the decree of the Subordinate Judge, as affirmed by the District Judge, is to be maintained in spite of the fact that the finding of the lower Courts that the petitioner was precluded from calling in question the admissibility of the document, in suit, was erroneous.

14. The revision-petition is dismissed; but in the circumstances of the case, the parties will bear their own costs of the revision-petition.