

Balu Ram Vs. Dhangal Ram

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Court : Himachal Pradesh

Decided On : Mar-24-1961

Reported in : AIR1961HP44

Judge : C.B. Capoor, J.C.

Acts : [Stamp Act, 1899](#) - Sections 35, 36 and 61

Appeal No. : Civil Revn. No. 5 of 1961

Appellant : Balu Ram

Respondent : Dhangal Ram

Advocate for Pet/Ap. : Mohinder Lal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

C.B. Capoor, J.C.

1. This application in revision by the defendant is directed against an appellate judgment and decree of the learned District Judge, Mandi and Chamba districts, affirming a decree passed by the learned Subordinate Judge Karsog for recovery of Rs. 735/- on foot of a promissory note dated 1-1-1959 executed by the petitioner for a consideration of Rs. 684/-. A receipt Ex. P. B was also executed by

the petitioner contemporaneously with the execution of the pronote.

2. The petitioner admitted the execution of the pronote but denied having received the sum of Rs. 684/- in cash. His case was that the pronote. was executed in lieu of past transactions.

3. The learned Subordinate Judge decreed the suit. An appeal was filed by the petitioner in the Court of the District Judge and in support of it an argument was advanced that the pronote in suit was insufficiently stamped and as such was inadmissible in evidence and no decree could have been passed on its basis. While the learned District Judge held that the pronote was insufficiently stamped, he repelled the aforesaid contention relying upon the provisions of Section 36 of the Indian Stamp Act and on a ruling of the Allahabad High Court reported in AIR 1935 All 410, Lakhmi Das v. Lakho Ram.

4. The only point that has been urged on behalf of the petitioner is that the correct law was not applied by the learned District Judge and that even though the pronote in suit might have been admitted in evidence it could not have been acted upon and no decree could have been passed on its basis. I am, however, unable to accede to that contention.

5. The relevant portion of Section 35 of the Stamp Act reads as below :

'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..... (e) nothing herein contained shall

prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act.'

6. The words 'for any purpose' were introduced for the first time in the Stamp Act of 1879. The aforesaid words were added after the words 'shall be admitted in evidence' in order to set at rest the controversy if any instrument not duly stamped could be admitted in evidence for a collateral purpose. If an instrument not duly stamped is filed to serve as evidence it cannot be acted upon either. The words 'shall not be admitted in evidence for any purpose' are wide enough to include acting upon also.

In other words, it is implicit in the words 'shall not be admitted in evidence' that, it shall also not be acted upon. The words 'or acted upon' have also been used in that Section and a question arises as to what is their import. An instrument may also be filed in a Court which is intended to be acted upon but not to serve as evidence, e.g. security bond filed by a judgment-debtor for obtaining stay of execution, security bonds filed by the appellant for the costs of the respondent.

Again, an instrument not duly stamped may be lost or its execution may be admitted by the defendant and in such cases the instrument may be acted upon without being filed. The provision that no instrument chargeable with duty shall be acted upon unless it is duly stamped appears to have been made by the Legislature to cover the instruments which are filed for being acted upon and not to serve as evidence in the case as also to prohibit the passing of a decree either on the basis of secondary evidence of the contents of such instruments or of the admission of execution of such instruments. It would, thus, appear that the words 'shall not be acted upon' do not refer to an instrument which is filed as evidence in a case.

7. Proviso (a) to Section 35 inter alia provides that if the deficient duty and the penalty provided are levied in respect of an instrument which is not duly stamped it shall, subject to all just exceptions, be admitted in evidence and it has next to be seen as to what is the connotation of the words 'admitted in evidence' in that proviso. Prima facie those words mean admission in evidence only but a reference to Section 42 of the Stamp Act would indicate that the words 'and acted upon' are

implicit in them.

Sub-section (1) of that Section *inter alia* provides that when the duty and penalty (if any) leviable in respect of an instrument have been paid under Section 35 the person admitting such instrument in evidence shall certify by endorsement thereon that the proper duty and penalty have been levied in respect of it. By the second sub-section it is provided that an instrument so endorsed shall thereupon be admissible in evidence and may be registered and acted upon and authenticated as if it had been duly stamped.

It would, thus, appear that an instrument which is not duly stamped becomes admissible in evidence and can be acted upon if the requisite duty and penalty, if any, have been levied in respect of it and an endorsement to that effect has been made on the instrument. It is only an instrument which is admissible in evidence that can be admitted in evidence and it, therefore, follows that if an instrument not duly stamped is admitted in evidence by virtue of proviso (a), or for the matter of that any other proviso to Section 35, it can also be acted upon provided the acting upon is not otherwise barred. It was held by their Lordships of the Privy Council in the case of *Lachmi Narayan v. Rameshwar Prasad*, reported in AIR 1924 PC 221(1) that on payment of duty and penalty a document which is not duly stamped 'becomes effective' i.e. can be acted upon.

8. Indeed, if an unstamped or an insufficiently stamped instrument is not acted upon even after the levy of the deficient duty and penalty, if any, the payment of the deficient duty etc. would be futile and serve no useful purpose.

9. In the case of *Bittan Bibi v. Kuntu Lal*, reported in AIR 1952 All 996 there was difference of opinion between Raghubar Dayal J, (now a Judge of the Supreme Court) and Desai J. (now the Chief Justice of the Allahabad High Court) on the question as to whether an unstamped or insufficiently stamped instrument can be acted upon if it is admitted in evidence and the case was referred to Brij Mohan Lal J. who agreed with Raghubar Dayal J. Desai J. was of the opinion that even though an instrument which is not duly stamped may be admitted in evidence it cannot be acted upon.

The words 'the admission of any instrument in any Court' find place in the proviso (e) to Section 35 also and even Desai J. was of the opinion that the intention of the Legislature could not have been that an instrument which was admissible in evidence by virtue of proviso (e) could not be acted upon and according to him the words 'and acting upon' were missing from the aforesaid proviso by way of a drafting mistake. In my opinion the words 'and acting upon' were not used by the Legislature as they were not considered necessary and there was no mistake in drafting.

10. A reference may now be made to Section 36 of the Stamp Act which reads as below :

'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.'

It has not been in doubt that the aforesaid section governs those instruments which have been admitted in evidence under Section 35. There has, however, been a difference of opinion on the question as to whether the said section governs those instruments also which are not covered by Section 35 and have been admitted in evidence by mistake. It has been held in AIR 1939 All 588, *M.K. Lodhi v. Zia-ul-Haq* that there is nothing in the section to warrant the conclusion that the section has application only to cases in which the Court has admitted the document after consciously applying its mind to the question of admissibility.

In AIR 1938 Mad 938, *Boppana Prakasam v. Nagabhushanam* it was held that if an instrument is let in, whether after deciding the objection regarding its admissibility or not it must be held to have been admitted in evidence within the meaning of Section 36 of the Stamp Act and its admissibility cannot thereafter be questioned. The same view has been taken in AIR 1930 Cal 577 (1), *Nirode Basini v. Sital Chandra* and AIR 1923 Pat 404, *Dasi Chamar v. Ram Autar Singh*.

A contrary view was taken in 50 Ind Cas 781 : (AIR 1919 Nag 141) *Sitaram v. Thakurdas* where it was held that Section 36 did not apply unless the instrument had been admitted in evidence after judicial consideration of the circumstances

relating to its admissibility. The words 'an instrument has been admitted in evidence' as used in Section 36 are of wide amplitude and cover the erroneous admission in evidence whether by virtue of Section 35 or otherwise.

11. Section 36 it will have been noticed is subject to Section 61. That section comes into play only when an order is made by a Court admitting an instrument in evidence and in such an event the Court of Appeal may record a declaration that the instrument is insufficiently stamped and determine the amount of duty with which it may be chargeable and impound the instrument and send a copy of the declaration to the Collector.

Section 61 has, however, no application to the instant case as no order was made by the trial Court admitting the pronote in evidence. There is preponderance of judicial authority in support of the proposition that if once an instrument which is not duly stamped including a promissory note is erroneously admitted in evidence and a decree is passed on its basis an appellate Court is debarred by Section 36 from setting aside the decree on the ground that the document should not have been acted upon, vide AIR 1939 Nag 220, Ramchandra Krishnaji v. Zolba Balaji, AIR 1934 Mad 700, Lakshmappa v. Masud Sahib, AIR 1932 Mad 765, Alagappa Chetti v. Narayanan Chettiar, 33 Ind Gas 595 : (AIR 1916 Upp Bur 2), Mi Mi v. Sohan Singh and AIR 1952 All 996 (supra).

12. Section 36 would virtually be a dead letter if even on being admitted in evidence an insufficiently stamped or unstamped instrument cannot be acted upon and I am in respectful agreement with the view taken in the aforesaid cases.

13. In fine, I hold that if an unstamped or insufficiently stamped instrument filed to serve as evidence in a case or proceeding is once admitted in evidence whether by virtue of any of the provisos to Section 35 or otherwise then for the purposes of that case or proceeding it shall be deemed to have been duly stamped and except as provided in Section 61 no objection with regard to its admission can be taken in subsequent stages and it may also be acted upon provided there is no bar other than the one created by Section 35 to acting upon it.

14. The petition in revision is devoid of force and is not admitted.

