

Deepchand Vs Mahaveer Chand and Others

Court: Rajasthan High Court

Date of Decision: Nov. 18, 2014

Acts Referred: Registration Act, 1908 - Section 17 49

Stamp Act, 1899 - Section 2(15)(iii) 33 35

Citation: (2015) 2 WLN 106

Hon'ble Judges: Arun Bhansali, J

Bench: Single Bench

Advocate: Moti Singh, Advocate for the Appellant;

Final Decision: Disposed off

Judgement

Arun Bhansali, J.

1. This writ petition is directed against the order dt. 17.07.2013 passed by the trial Court, whereby on an application filed by the defendants under

Sec. 17 of the Registration Act, on the ground that the document dt. 28.02.1980 was unregistered and unstamped, the trial Court came to the

conclusion that the registration of the document Annex.-3 was not necessary. However, it went on to observe that as the document does not bear

signatures of other two brothers, the same cannot be taken in evidence, however, the same can be utilised for the collateral purpose and allowed

the application filed by the defendants. It is submitted by learned counsel for the petitioners that the document Annex.-3 is a memorandum of

partition, which is not required to bear any stamp and the trial Court having come to the conclusion that the document did not require registration

and could be admitted for collateral purpose under Sec. 49 of the Registration Act could not have directed that the document could not be

admitted in evidence; so far as the stamp duty on the document is concerned, the plaintiffs have already offered that the stamp duty if applicable,

could be paid by the plaintiffs and the document will then become admissible and the trial Court committed grave error in, on the one hand, holding

that the document could be admitted for collateral purposes, has simultaneously ordered that the same cannot be exhibited.

2. I have considered the submissions made by learned counsel for the petitioner.

3. The contradiction in the order is apparent.

4. However, for the order proposed to be passed, no notice to the respondent needs to be issued in a suit which pertains to the year 2000 and is

at the stage of plaintiff's evidence.

5. A look at the document Annex.-3 reveals that the same is unstamped. The same is claimed as agreement/memorandum of partition. In either

circumstance, the same requires payment of stamp duty either under entry 5 or 45 of the Second Schedule of the Rajasthan Stamp Law

(Adaptation) Act, 1952, wherein even a memorandum of partition is included in the definition of "Instrument of Partition" under Sec. 2(15)(iii) of

the Indian Stamp Act, 1899 ("the Act") as substituted by Rajasthan Act No. 16 of 1966.

6. In that view of the matter, the document being totally unstamped, the same cannot be exhibited in terms of Section 35 of the Act. However,

once, the finding is recorded that a document is unstamped or insufficiently stamped the duty of the trial Court is to act under the provisions of

Section 33 of the Act, whereby it can either itself determine the deficient stamp duty and penalty and/or impound the document and sent the same

to the Collector for determination of proper stamp duty and on payment of stamp duty and penalty the document become admissible in evidence.

However, apparently, the said further procedure has not been adopted by the trial Court. In that view of the matter, the writ petition is disposed of

with the direction to the trial Court to adopt the procedure as prescribed in Section 33 of the Act regarding the document dt. 28.02.1980 and

thereafter, after hearing the parties redecide the aspect regarding admissibility of the document.