

AIR 1939 All 588 : (1939) 9 AWR 557

Allahabad High Court

Case No: None

M.K. Lodhi

APPELLANT

Vs

Zia-ul Haq

RESPONDENT

Date of Decision: May 9, 1939

Citation: AIR 1939 All 588 : (1939) 9 AWR 557

Hon'ble Judges: Iqbal Ahmad, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Iqbal Ahmad, J.

This is a reference by the Small Cause Court Judge of Saharanpur u/s 113 read with Order 46, Rule 1, Civil P.C., and the question that has been referred for decision is as follows:

Whether the expression "admitted in evidence" in Section 36, Stamp Act, means that the Court should have admitted the document after having consciously applied its mind to the question of sufficiency of stamp or whether it includes a case in which the question of sufficiency of stamp has escaped the notice, of the Court and the attention of the parties.

2. The facts that led to the reference may shortly be stated as follows : In a suit for recovery of arrears of rent of a house or a a shop the plaintiff relied on a written acknowledgment made by the defendant in order to sail clear of the bar of limitation. This acknowledgment was unstamped. The case was heard first by Mr. Pran Nath Aga, Judge, Small Cause Court, who examined the plaintiff and during the course of the plaintiff's examination the following entry was made on the document containing the acknowledgment:

Exhibit 1 admitted against defendant.

Sd. Pran Nath Aga J., S.C.C.,
24th February 1938.

3. Till this stage of the suit no objection was raised by the defendant to the admissibility of the document on the ground that the document required a stamp and was unstamped. The case was then heard by the successor-in-office of Mr. Pran Nath Aga who also recorded some evidence. Finally the case was heard by Mr. Brij Mohan Lal Judge, Small Cause Court, who has made the present reference. For the first time before the last mentioned officer the defendant objected to the admissibility of the document on the ground that the same was unstamped. It was then contended on behalf of the plaintiff that in view of the provisions of Section 36, Stamp Act (2 of 1899), the objection raised by the defendant could not be entertained. It was however urged on behalf of the defendant that as Mr. Aga had not "judicially considered" the question raised by the defendant Section 36 had no application to the case and, in support of this contention, reliance was placed on certain judicial decisions which will be noticed hereafter. The learned Judge entertained doubt as to the correctness of those decisions and, as there was no reported case of this Court on the point, he made the present reference. Section 36, Stamp Act provides that

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. Section 61 has no bearing on the question referred to this Court and may therefore be left out of account. The provisions as regards the admission of documents in evidence are contained in Order 13, Civil P.C. By Rule 1 of that order the Court is enjoined to receive all documents of every description produced by the parties at the first hearing of the suit. Rule 2 empowers the Court to receive documents produced subsequent to the first hearing, provided, good cause is shown to the satisfaction of the Court for the non-production of the document on the date of the first hearing. Rule 3 authorizes the Court to reject irrelevant or inadmissible documents produced by the parties and then Rule 4 prescribes the endorsements that are to be made on a document admitted in evidence. In the case before us the document in question was, as stated before, admitted in evidence by Mr. Aga and the endorsements prescribed by Rule 4 were made on the document. There can therefore be no question that the document was admitted in evidence by Mr. Aga. But when Mr. Aga admitted the document in evidence his attention was not called to the fact that the document required stamp and as it was unstamped it was inadmissible in evidence. It is under these circumstances that the question arises whether it was open to the Court at a belated stage of the trial to ignore the order admitting the document in evidence and to reject the same. In *Chunnila Tulsiram v. Mulabai* (1910) 6 I.C. 903, it was held that the phrase, "admitted in evidence," in Section 36 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. In cases however where the question of stamp has escaped the notice of the Court and the attention of the parties, and a document is allowed by the

Court to go in, the admission is a judicial determination of the question, because the Court let in the document on its view that there was nothing against its admission.

5. These observations apply to the case before us as when Mr. Aga admitted the document in evidence no question about its inadmissibility on the ground of being unstamped was raised by the parties. The question was considered by the Nagpur Judicial Commissioner's Court in *Sitaram v. Thakurdas* AIR (1919) Nag. 141 and it was held that unless the Court admits a document not properly stamped after applying its mind consciously to the question whether the document was admissible or not the document cannot be deemed to have been "admitted in evidence" within the meaning of Section 36, Stamp Act. To the same effect is the decision of the Madras High Court in [Attili Venkanna Vs. Parasuram Byas trading under the name of Parasuram Doulatram and Others](#), and of the Lahore High Court in *Jagan Nath v. Mt. Chauhi* A.I.R.(1933) Lah. 271.

6. On the other hand in *Dasi Chamar v. Ram Autar Singh* AIR (1923) Pat. 404, it was held by the Patna High Court that "when a document is admitted in evidence and exhibited, the Court cannot, in view of the provisions of Section 36, Stamp Act, thereafter remove the document from the record of evidence on its attention being called to the fact that the document was not properly stamped and the same view was taken by the Calcutta High Court in [Nirode Basini Mitra Vs. Sital Chandra Ghatak](#), . The provisions of Section 36, Stamp Act, are mandatory and absolute and preclude the admission of a document once admitted in evidence from being called in question at any stage of the suit on the ground that the document was not duly stamped. 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. As pointed out by Kankin G. J. in [Nirode Basini Mitra Vs. Sital Chandra Ghatak](#), , that u/s 36 it matters nothing whether it (document) was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection.

7. To accede to the view taken in *Chunilal Tulsiram v. Mulabai* (1910) 6 I.C. 903, *Venkanna v. Parasuram Byas* A.I.R.(1929) Mad. 522 and *Jagan Nath v. Mt. Chauhi* AIR (1933) Lah 271, would be to introduce in Section 36 the words "after judicially considering the question of sufficiency of stamp" after the words "admitted in evidence," and for this there is no warrant. When a Court admits a document in evidence it does or at least is deemed to act judicially and this judicial act of admitting the document in evidence can at no subsequent stage of the suit be set at naught on the ground that the document was not duly stamped. In other words, if no objection to the admissibility of a document on the ground of insufficiency of stamps is raised before the document is admitted in evidence such objection cannot subsequently be raised. This is our answer to the reference. Before parting with this reference we may observe that the view taken by us does not in any way prejudice the right of the revenue authorities to realize the proper stamp duty and penalty as u/s 61, Stamp Act, power is given to the Appellate Courts to revise the decision of Subordinate Courts regarding the sufficiency of stamps.