
(1962) 03 AHC CK 0025

Allahabad High Court (Lucknow Bench)

Case No: First Appeal No. 59 of 1957

Thakur Har Bux Singh

APPELLANT

Vs

Satish Chandra and Others

RESPONDENT

Date of Decision: March 16, 1962

Acts Referred:

- Stamp Act, 1899 - Section 35, 36, 61(1), 61(2)

Citation: AIR 1963 All 376 : (1962) 32 AWR 597

Hon'ble Judges: Mithan Lal, J

Bench: Single Bench

Advocate: S.B. Bajpai, for the Appellant; K.S. Varma,, Standing Counsel, for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

Mithan Lal, J.

The Chief Inspector of Stamps has made a prayer to this Court, in his report, for recording a declaration u/s 61(2) of the Stamp Act to the effect that the document, Ex. 20, which has been admitted in evidence by the Civil Judge, was chargeable with a duty of Rs. 46-14-0 and with a penalty of Rs. 468-12-0 before it could be admitted in evidence. Notices on this report were issued to the parties and the learned counsel for the plaintiffs-respondents and the counsel for the State have both appeared in reply to those notices.

2. Briefly stated, the facts of the case are that a suit for accounts was filed by one Raja Lal deceased, whose legal representatives are the respondents, against Thakur Har Bux Singh, who is the appellant in this case, claiming to be a partner in the business of a brick-kiln. The document dated 26-8-1946 (Ex. 20) was filed in the Court of the Civil Judge on 17-2-1949 in evidence. This document specified the plots which were let out for running the brick-kiln for a period of three years on payment

of Rs. 212-8-0 as premium. It further evidenced the payment of that amount. The document was executed by Hari Krishna Dhawan and a revenue stamp of one anna was affixed to it. The report of the Chief Inspector of Stamps is that within the meaning of Section 2(16) of the Stamp Act the document amounted. to a lease of immovable property which also included a Kabuliat and so it was chargeable under Article 35 (SIC) of Schedule I-A of the U. P. Stamp (Amendment) Act 1943 with a stamp duty as aforesaid.

3. The report of the Chief Inspector of Stamps has been objected to by Sri K.S. Varma, learned counsel for plaintiff-respondent No. 4, and his contentions are two-fold. His primary contention is that no revision u/s 61(1) of the Stamp Act is maintainable and no declaration u/s 61(2) could be given where there had been no order of the Trial Court admitting the instrument as duly stamped or as one not requiring stamp duty or any order stating that it was insufficiently stamped. His second contention is that once a document has been admitted in evidence u/s 36 of the Stamp Act, the Chief Inspector of Stamps could not challenge the admissibility of the document and no duty or penalty could be claimed nor any declaration could be given by this Court. In support of this contention he has relied upon the authority of [Javer Chand and Others Vs. Pukhraj Surana](#).

4. The learned State Counsel, while supporting the report of the Chief Inspector of Stamps, has contended that in any case the document could be impounded u/s 33 of the Stamp Act, and duty and penalty have to be paid.

5. I have heard the learned counsel for the parties. The contentions raised by Sri Varma in this case are well-founded and no declaration sought for by the Chief Inspector of Stamps can be given.

6. It may be stated that the document was admitted in evidence and was marked as an exhibit without any objection being raised as to the admissibility of the document for want of proper stamp duty. Nobody raised the question that the document amounted to a lease and not a receipt and required any stamp duty under Article 35 (b) of Schedule I-A of the U. P. Stamp (Amendment) Act, 1943. Since the question was not raised, no order was passed by the Court below about the sufficiency or insufficiency of the stamp or to the effect that the document required any higher stamp duty or that any duty or penalty should be paid u/s 35. There was thus an absence of any order u/s 61(1) and so in the absence of any order the question of filing any revision u/s 61(1) cannot arise. Since Section 61(2) which makes a provision for giving a declaration arises only as a consequence of any order passed u/s 61(1), the declaration prayed for u/s 61(2) cannot be given and the report made by the Chief, Inspector of Stamps cannot be accepted on this ground, specially when the document has been admitted into evidence.

7. So far as the second question raised by the learned counsel-goes, the matter stands concluded by the Supreme Court case of Javer Chand, [Javer Chand and](#)

[Others Vs. Pukhraj Surana, .](#) There, also a document was admitted into evidence with this difference that the question of the admissibility of the document was directly raised and was also the subject of an issue. The observations which have been made in that case require a party to be alert to see that a document is not admitted into evidence in Court without payment of proper stamp duty and when once a document has been marked as an exhibit in the case and has been used by the parties Section 36 of the Stamp Act comes into operation. In such a case it is not open either to the Trial Court itself or to the Court of appeal or revision to go behind that order. The Supreme Court has further observed that such an order is not one which can be reviewed, or revised by the same Court or by a Court of superior jurisdiction. In view of these observations the document cannot be thrown out as inadmissible for want of proper stamp duty.

8. So far as the contention of the learned State Counsel goes, it is not necessary to express any opinion as to the impounding of the document u/s 33. In the present case I am only concerned with the giving of declaration sought for u/s 61(2) of the Stamp Act. That declaration cannot be given as stated above. The question of impounding the document is not at all relevant to the present proceedings and so no opinion is being expressed on that point,

9. The report of the Chief Inspector of Stamps is rejected.