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**(1963) KLJ 223**

**High Court Of Kerala**

**Case No:** C.R.P. No. 43 of 1961

Chellammal

APPELLANT

Vs

Sivasankaran Chettiar  
and Another

RESPONDENT

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**Date of Decision:** Dec. 5, 1962

**Acts Referred:**

Stamp Act, 1899 " Section 40

**Citation:** (1963) KLJ 223

**Hon'ble Judges:** T.K. Joseph, J

**Bench:** Single Bench

**Advocate:** G. Viswanatha Iyer, for the Appellant; T.K. Narayana Pillai, D. Narayanan Potti and M.N. Gopinath, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Joseph J.

1. The question for decision is whether the document sued on is a Promissory Note or a Bond. The court below held that it was a promissory note

and hence not admissible in evidence as it was not properly stamped. The suit was accordingly dismissed. The plaintiff-petitioner contends that the

document having been held to be a bond by the Collector who levied deficit stamp duty and penalty on such basis, the court was incompetent to

go into the question. What happened in this case is that the court impounded the document and sent it to the Collector for appropriate action. The

Collector treated the document as a Bond, levied the stamp duty and penalty and returned it to the court with a certificate that the stamp duty and

penalty were collected. According to the petitioner the decision of the Collector is final and conclusive.

2. I am not inclined to accept this argument. Section 42 of the Travancore-Cochin Stamp Act under which the Collector issued the certificate

substantially corresponds to section 40 of the Indian Stamp Act. Section 42(T. C. Act) reads as follows:

Collector's power to stamp instruments impounded:

(1) When the Collector impounds any instrument u/s 35, or receives any instrument sent to him u/s 40, sub-section (2), not being an instrument

chargeable with a duty of two annas or less than two annas only or a bill of exchange or promissory note, he shall adopt the following procedure:

(a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly

stamped, or that it is not so chargeable, as the case may be, and shall thereupon deliver such instrument, to the person by whom it was presented,

or return it to the Officer from whom it was received for the purpose of being returned to the person from whose possession it came into the hands

of such Officer.

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the

amount required to make up the same, together with a penalty of five rupees or if he thinks fit an amount not exceeding ten times the amount of the

proper duty or of the deficit portion thereof whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 14 or section 15, the

Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purpose of this Act, be conclusive evidence of the matters stated therein.

The first clause shows that the procedure prescribed in sub-clauses (a) and (b) is to be resorted to only in the case of instruments other than those

chargeable with a duty of two annas or less than two annas only or a bill of exchange or a promissory note. In case the instrument falls under the

excepted categories the Collector cannot proceed under the section. The presumption under clause (2) does not arise when the certificate of the

Collector is issued without jurisdiction. This is the view taken in Chotey Lal Vs. Girraj Kishore and Another, with which I respectfully agree.

3. Learned counsel for the petitioner relied on certain decisions in support of the argument that the Collector's certificate is conclusive. Nand Lal v.

Emperor (A.I.R. 1941 Lah. 65) was a case in which the instrument in question related to a transfer deed of shares in a joint stock company which

is not one of the excepted instruments u/s 42. The decision in Gangaram v. Nur Ahmed (A. I. R. 1935 Sind 46) is also not helpful as it was held

that the instrument was not a promissory note and that, even assuming that it was, it was a foreign note which would be governed by different

provisions in the Stamp Act. In Kotappa v. Vallur Zamindar (I. L. R. 25 Mad. 51) the point for decision was entirely different. These decisions

afford no help in this matter. The last point urged was that the plaintiff should be given an opportunity to amend the plaint so as to convert the suit

into one on the original cause of action. Such a prayer was not made in the lower court, and no such ground was taken in the revision petition. In

the circumstances I am not inclined to grant the prayer.

In the result, the civil revision petition fails and is dismissed. No costs.