

(1979) 03 MP CK 0011

Madhya Pradesh High Court

Case No: C. Revision No. 1208 of 1977

Satish Kumar

APPELLANT

Vs

Lal Singh

RESPONDENT

Date of Decision: March 9, 1979

Acts Referred:

- Evidence Act, 1872 - Section 51, 62
- Stamp Act, 1899 - Section 2(14), 33, 33(1), 35, 36

Citation: (1982)JLJ 738

Hon'ble Judges: U.N. Bhachawat, J

Bench: Single Bench

Advocate: P.R. Padhye, for the Appellant; P.S. Khirwadkar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

U.N. Bhachawat, J.

This objector's revision is directed against the order dated the 25th October, 1977 of the Court of Second Civil Judge, Class I, Bhopal, in M.J.C. No. 10 of 1977, arising out of the Execution Case No. 181-A of 1969 in the same Court.

2. Briefly stated, the facts leading to the present revision are these.

Non-applicant No. 1 had obtained a decree for ejectment against non-applicant No. 2 in respect of the suit premises in Civil Suit No. 181-A of 1969. When this decree was put in for execution, the objector-applicant herein and non-applicant No. 3 here in (hereinafter referred to as "the objector's") intimated the executing Court that they were occupying the suit premises as tenants of non-applicant No 1 and would, therefore, obstruct the delivery of possession in execution of a warrant of possession against non-applicant No. 2. In the course of inquiry under Order 21, rule 97 of the CPC (hereinafter referred to as "the Code"), the objectors sought to

tender in evidence a carbon copy of the document dated 1-2-1977 in respect of their case. The nomenclature given to this document is "rent agreement" and it purports to have been signed by both the parties, that is, non-applicant No. 1 and the objectors. The Court below found that the document for the purpose of Stamp Act is a lease and was, therefore, liable to stamp duty as a conveyance under Article 23 of Schedule 1 of the Act and on that basis, it held that the document was insufficiently stamped inasmuch as according to the objectors themselves the original was stamped with Rs. 5 only, and holding that the carbon copy, which was filed before the Court, was a primary evidence within the meaning of section 51 of the Evidence Act as it purported to have been executed by both the parties, ordered that it would be admitted in evidence u/s 35 of the Indian Stamp Act (hereinafter referred to as "the Act") subject to the payment of the deficit duty Rs. 1,080 and penalty Rs. 10,800. Being aggrieved by this order, this revision has been filed by one of the objectors.

3. The learned counsel for the objectors has raised the following contentions before this Court :

(i) The Court below was not competent to determine the question whether the document in question was insufficiently stamped and could not be admitted in evidence without the payment of the alleged deficit stamp duty and penalty till the Court decided about the genuineness of the document as the non applicant had challenged the execution of the document by him.

(ii) That the document produced before the Court was only a copy and no deficit stamp duty and penalty could be charged on the copy of the document which has been found to be a lease deed in view of the provisions contained in section 35 of the Act.

(iii) That it is not imperative for the Court to levy a penalty of a sum equal to 10 times of the deficient portion, The Court has jurisdiction to impose lesser amount in its discretion. The Court below acted injudiciously in imposing the maximum penalty, labouring under a misapprehension of law that it had no such jurisdiction to impose a lesser amount.

4. The learned counsel for the decree-holder, reiterating the reasons given by the Court below supported the impugned order.

I shall proceed to deal with the contentions raised by the learned counsel for the objector ad seriatim.

5. The learned counsel for the applicant submitted that a duty is chargeable on an instrument which has been defined u/s 2(14) of the Act, to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded and argued that when the genuineness of the document is challenged it cannot be held to be a document unless it is proved and held to be genuine. The argument does not impress me and has to be repelled.

6. Chapter IV of the Act deals with the instrument not duly stamped. Section 33(1) of the Act provides, that:

33. Examination and impounding of instruments--(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same.

The relevant portion of section 35 is as under:--

35, Instrument not duly stamped inadmissible in evidence etc.--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 a receipt, 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.

Section 36 of the Act lays down 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 proceedings on the ground that the instrument has not been duly stamped.

In section 33(1) of the Act, set out hereinabove, the expression "instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same, clearly indicates that it is at the very point when the document is being produced, that the question of its being properly stamped has to be determined. This view gets reinforced from subsection (2) of section 33 of the Act also which reads thus--

33. *** **

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed.

7. There are two limbs of the main section 35 of the Act. The first limb clearly shuts out from evidence for any party any instrument chargeable with duty unless it is duly stamped and the second limb totally prohibits the acting upon the instrument which is insufficiently stamped. The words "for any purpose" in the section are of wide amplitude and cover within its ken the question of determination of the genuineness of the document. To prove the genuineness of a document has necessarily to be put in evidence, and once the document is admitted in evidence rightly or wrongly its admission cannot be questioned on the ground of insufficiency of stamps at subsequent stage in view of section 36 of the Act. Therefore, if the argument of the learned counsel is accepted and it is held that when the genuineness of the insufficiently stamped document is challenged, it has first to be admitted in evidence to decide its genuineness and only when the genuineness is established the deficit stamp duty and penalty has to be charged, would be to add to the Act a provision, which it does not contain and it would tantamount to permitting an infringement of section 35 of the Act in other words section 35 which prohibits the admission into evidence or acting on the insufficiently stamped document, would be rendered otiose; and a party would get a decision about its genuineness. In this view of the matter, the first contention of the learned counsel for the applicant is rejected.

8. I now turn to the consideration of the second contention. The law is well-settled in view of the decision of the Supreme Court in *State of Bihar v. Ms. Karam Chand Thapar and Brothers* AIR 1962 SC 10 and *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others* AIR (sic) SC (sic) that section 35 is not concerned with a copy of an instrument; a party can only be allowed to rely on a document which is instrument for the purpose of section 35 and in view of the definition of the instrument contained in section 2(14) of the Act; there is no scope for inclusion of a copy of a document as an instrument for the purpose of the Act. u/s 35 of the Act there can be validation only of the original when it is unstamped or insufficiently stamped. A copy of an instrument cannot be validated It is also well-settled that section 35 shuts out any secondary evidence of insufficiently stamped instrument for allowing such evidence to be led as it would tantamount to the document being acted upon which is not permissible according to the second limb of the section. In the instant case the trial Court has neither ordered for the validation of a copy or the admission of a secondary evidence. In the instant case the trial Court has held that as the carbon copy purports to have been signed by parties it is original. In my view, the view taken by the trial Court is correct What appears to be is that the document is prepared in duplicate and each one has been signed by the parties, is a primary evidence in view of section 62 of the Evidence Act. See *Gulam Mohammad v. Ali Hussain* (sic) MPLJ SN 7 I would venture to seek support in this view from the decision of the Supreme Court in *The State of Bihar v. Karamchand Thapar and Brother Ltd.* (Supra). In this case, the arbitrator had prepared an award in triplicate, signed all of them and sent one each to the parties and the third to the Court The

copy sent to the Court, though bore an endorsement "certified copy" was held to be an original and the words "certified copy" were held to be misdescription. The relevant observation is set out below--

Therefore, the question is whether the award which was sent by the arbitrator to the Court is the original instrument or a copy thereof. There cannot, in our opinion, be any doubt that it is the original and not a copy of the award. What the arbitrator did was to prepare the award in triplicate, sign all of them and send one each to the party and the third to the Court. This would be an original instrument, and the third to the Court. This would be an original instrument, and the words "certified copy" appearing thereon are a misdescription and cannot have the effect of altering the true character of the instrument. There is no substance in this contention of the appellant either. In the result, the appeal fails and is dismissed with costs.

In the light of the foregoing discussion, the second contention of the learned counsel is also of no consequence.

9. I would now advert to the third contention. On the bare reading of section 35 proviso reproduced hereinabove, it is clear that the Court has no discretion to reduce the amount of penalty. The proviso provides Rs. /- to be the minimum penalty; but it provides that if the sum equivalent of 10 times of the deficit stamp duty exceeds Rs. 5/- the amount of penalty would be a sum equal to 10 times of such deficient portion of the duty. The learned counsel interpreting the expression "of a sum equal to ten times such duty or portion" in the proviso, argued that it means that the Court has the discretion to impose penalty 10 times of the deficit amount of duty or lesser than that. In my view this argument cannot be accepted. Reading the expression in context the word "portion" has a reference to the deficient portion of stamp duty To make it more clear I would like to demonstrate it by following illustrations : (i) A document is required to be stamped with 50 paise and is stamped with 25 paise only. In that event the duty and penalty chargeable would be 25 paise for the stamp duty and the penalty would be Rs. 5/- because ten times of 25 paise is less than Rs. 5/, (ii). There is a document "Y" chargeable with stamp duty of Rs. 5/-, it bears a stamp of Rs. 5/- only. The stamp duty is deficit by Rs. 10/-. In this case the chargeable amount Rs. 10/- towards duty and Rs. 100/- towards penalty as 10 times the amount of the deficit portion exceeds Rs. 5/-. In this view of the matter the third contention raised by the learned counsel for the applicant also fails.

10. In the result, there is no ground for allowing this revision. The revision is, therefore, dismissed with costs.