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**(1869) 05 CAL CK 0007**

**Calcutta High Court**

**Case No:** Regular Appeal No. 1 of 1869

S.V. Mutu Ramen  
Chetty and Another

APPELLANT

Vs

Mark Ridded Currie and  
Another

RESPONDENT

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**Date of Decision:** May 21, 1869

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### **Judgement**

Sir Barnes Peacock, Kt., C.J.

There are three objections which have been urged: 1st, that the document was not stamped which is said to come under the general ground of appeal, that the Recorder has admitted evidence which he ought to have rejected, 2ndly, that the document has not been registered, which it is said also come under the same ground of appeal; and, 3rdly, that the Recorder has awarded excessive damages, the plaintiffs not being entitled to recover anything beyond nominal damages. I do not consider it necessary to decide, whether the objections that the document was not stamped or registered are admissible under the general ground of appeal that the Recorder has admitted evidence which he ought to have rejected, because it is not in my opinion made out that he did admit evidence which he ought to have rejected; but I am not at all prepared to admit that if the objection of want of registration would have rendered the document inadmissible in evidence, such objection could have been taken under this general ground of appeal, it never having been made a ground of objection before the Recorder. I am of opinion that, with regard to the want of stamp, it is not a ground for reversing the decision, because I think that the error, if any, of receiving the document without a stamp, did not affect the merits of the case or the jurisdiction of the Court, although it might have affected the Government revenue.

2. In *Munohur Lal v. Sheodyal Singh* S.D. (1856) 62, it was held that the insufficiency of stamp formed DO ground for reversing the decision of a lower Court, under Act IX of 1854, which contained words similar to those of section 350 of Act VIII of 1859. In the case of *Prankissen Pal Chowdhry v. Gridhur Ghose* Mundul S.D. (1857). 1227, it was also held, that, as the lower Court had decided the case on the merits, the Judge was

wrong under Act IX of 1854 in dismissing the plaintiff's claim on appeal, on the ground of inadequate stamp. So it has been held, that the wrong valuation of a suit, which does not affect the jurisdiction of the Court, does not affect the merits. If it affects the jurisdiction, it comes under the other portion of section 350. I believe that there are also cases in which the High Court has held to the same effect as the late Sudder Court, with regard to the want of stamps, but whether there are decisions of the High Court on this point or not, the decisions which I have already cited are so consistent with justice that I should feel myself bound to follow them.

3. The next question is, whether the want of registration renders this document inadmissible the memorandum refers to a promissory note for 20,000 rupees, and says: "For the above promissory note, the grant of the dockyard and office to be deposited in three days, and a proper agreement made out. The time of credit to be one year or eighteen months, the interest at Rs. 1-10 per cent. per mensem."

4. This is not an actual mortgage of the dockyard and office nor did it amount to a conveyance; but it is a document of which, after the advance of 20,000 rupees, the Court would have compelled a specific performance by compelling the defendants to deposit the grants, as a security for the advance, if they had not put it out of their power specifically to perform the agreement. It is merely an agreement to deposit the deeds and to execute a proper agreement. Mr. Kennedy contends that a Court of Equity considers that as done which a party agrees to do. I do not dispute that position as a general rule, but it is not because a Court of Equity would treat a document as doing a thing which a party agrees to do, that the document comes within the meaning of an enactment which refers to a document by which the thing is done, and not to an agreement to do it. The two cases are very different, and stand upon wholly different grounds.

5. I do not think that this document, although a Court of Equity would compel a specific performance of it, is a document coming within the meaning of clause 2, section 17 of the Registration Act XX of 1866. The documents therein specified are instruments which purport to create any right, title or interest, whether vested or contingent, of the value of 100 rupees or upwards to or in immoveable property. This, however, was merely an agreement to create such an interest, but it did not purport to create it.

6. Section 18 of that Act points out the documents which may be registered under the Act, and among others in clause 7 we find "agreements and all other documents not hereinbefore mentioned." It is merely optional to register such documents. But I apprehend that the Registrar could not have been compelled to register the document. Suppose a person were to agree to convey certain lands describing them as all the lands then in his possession in a particular village and also to have the lands accurately measured, and the exact boundaries of the lands ascertained and delineated on a map to be annexed to the deed of conveyance,--Would the description of "all the lands then in possession" of the person agreeing to grant them, be such a description of the lands intended to be conveyed as to render the agreement a fit document to be registered as a

conveyance. Section 21 of the Registration Act enacts, that "no instrument relating to immoveable property shall be accepted" for registration, unless it shall contain a description of such property "sufficient to identify the same. Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their occupancies, and also, wherever it is practicable, by reference to a Government map or survey." If an agreement to mortgage must be registered, because a Court of Equity will consider that done which a person agrees to do, an agreement to get the lands measured and the boundaries fixed could never be enforced, because the agreement would be an instrument relating to immoveable property which does not itself contain the requisites of section 21. I am of opinion that the document in question being merely an agreement was admissible in evidence, although it was not registered.

7. The third question is whether the damages awarded are excessive. The appellants appeal, on the ground that they are excessive, and it is for them to show that the decree ought to be reversed on that ground. The Recorder may not have adopted a right principle in assessing the damages; but if the damages assessed are not excessive, it is no ground for our reversing the decree under the 9th ground of appeal that the damages awarded by the Recorder are excessive. The case is simply this. Defendants borrowed from plaintiffs 20,000 rupees, for which they gave a promissory note payable on demand, as a security, with the memorandum of agreement which I have read, and by which they agreed to deposit the grants of the dockyards and offices mentioned therein in three days, and to have a proper agreement made out, the time of credit to be one year or eighteen months, the interest at rupees 1-10 per cent. per mensem.

8. The contract was performed, so far as the plaintiffs could perform it, because the money was advanced. They have the personal security of the defendants, but want the security of the dockyard and offices which the defendants agreed to give them. Defendants, finding after they had taken the money from plaintiffs, that they could obtain it on better terms, offered to return the money which had been advanced with two days' interest upon it, and asked for a return of the promissory note. It is clear, that if the plaintiffs had taken back the money, which they had advanced and the two days' interest, and had given up the promissory note, they would have rescinded the contract, and would not have been entitled to have the grants of the dockyard and the offices, as security, or to the benefit of the agreement, by which the time of credit was to be one year or eighteen months. They could not receive back the principal at the expiration of two days, and be entitled to interest upon it for a year or eighteen months at the rate specified. The defendants had put it out of their power to deposit the grants of the dockyard and the offices, as security, and the plaintiffs therefore were obliged either to allow their money to remain out on the personal security of the defendants, without the

security of the dockyard and offices or to take back the money which they had advanced with two days' interest, and to rescind the contract. The plaintiffs refused to take back the money, and to rescind the contract, and they were entitled to refuse if they thought fit. The consequence was, that the loan continued on the personal security of the defendants instead of the plaintiffs having the additional security of the dockyard and offices.

9. I proposed to give a decree enabling defendants to deposit the grants of the dockyard and offices, if they thought proper to do so, and to award damages as an alternative, if they declined. Mr. Kennedy however contended that the Court had no power to make such a decree, and therefore we have only to consider whether the damages are excessive, defendants having put it out of their power to deposit the deeds. We cannot ascertain accurately and by calculation what is the exact difference in value between having a loan on the defendants' personal security alone, and having it on their personal security together with the security of the dockyard and the offices. Averages have been taken on which the value of a life assurance can be calculated, but I know of no calculation by which you can estimate the difference in value of a loan on landed security and the personal security of a merchant, and the value of a loan depending solely on the same personal security. In order to ascertain the real difference, you must ascertain the probability of the merchant remaining solvent on the day upon which the loan is to be paid, and I know of no calculation of averages by which that fact can be ascertained. If the plaintiffs offered to sell the debt with the personal security of the defendants alone, or to sell the debt with the additional security of the property, I think it would not be going very far beyond what is probable to say, that they would get one-tenth less for the debt, if depending on personal security alone than they would if it were also secured upon landed property. One-tenth of the debt in this case would be rupees 2,000, putting the interest out of the question: and the Recorder has awarded rupees 1,679 as damages. With the means which the Court has of arriving at a just estimate of the damages, I am not prepared to say that the learned Recorder has given an excessive amount of damages; and unless I am satisfied that he has done so, I cannot, in justice to the plaintiffs, nor am I entitled to, reverse the decree. Under these circumstances, it appears to me the decree of the learned Recorder must be affirmed with the costs of this appeal.