(1869) 06 CAL CK 0054

Calcutta High Court

Case No: Special Appeal No. 563 of 1869

Syad Akram Ser and Others		APPELLANT
	Vs	
Lalji Sing		RESPONDENT

Date of Decision: June 15, 1869

Judgement

Glover, J.
This was a suit to recover a sum of rupees 713, arrears of rent for the year 1275. The defence was that all the rent had been paid, except rupees 84-12. The first Court gave plaintiff a modified decree for 337 rupees. But the Judge, considering that the receipts not having been stamped, were not receivable as evidence, disbelieved the oral evidence in support of the plaint, and gave a decree to the plaintiff in full.

2. It is objected, in special appeal, 1st, that under the provisions of section 350, Act VIII of 1859, the Judge was not justified in rejecting the receipts, and that in any case he ought, under the provisions of Act X of 1862, to have given the parties filing those documents an opportunity, of paying in the sum necessary for stamping them, together with usual penalty provided for in the Act; secondly, it is objected that the judgment of the lower appellate Court is wholly unintelligible, and is contrary to the terms of section 259 of the Civil Procedure Code; and thirdly, that with reference to the payment said to have been made to Shujaat Ali, the Judge was wrong in dismissing the appeal on the ground that Shujaat Ali was not authorized to receive rents for the plaintiff.

3. With regard to the first objection, the special appellant appears to be in error in supposing that the Judge could have rectified the want of stamps on the receipts. Section 17 of the Stamp Act does undoubtedly say that documents may be stamped on payment into Court of the proper amount of stamp duty. But this section refers distinctly to documents which are required to be stamped u/s 15 of the Act, those namely which were already stamped, but had been executed on paper insufficiently stamped. There is no section of the Act which provides for the reception of documents which have not been stamped at all; such documents ought not to be received as evidence. Section 130 of Act

VIII of 1859 is much to the same effect. It also provides for the payment of stamp duty on papers insufficiently stamped, but does not allow documents which have not been stamped at all to be so received.

4. But with regard to the first part of the objection, we think that the special appellant''s contention is correct. Section 350, Act VIII of 1856, distinctly lays down that no decree shall be reversed or modified, nor shall any case be remanded to the lower Court on account of any defect, error, or irregularity, which defect, error, or irregularity does not affect the merits of the case or the jurisdiction of the Court. In this case it is quite clear that the want of stamps on the receipts cannot affect either the merits of the case or the jurisdiction of the Court; and therefore we are of opinion that, although those receipts might have been very properly rejected by the first Court, still, being filed and accepted as evidence, the Judge was bound to consider them as evidence in the case.

5. There seems to be no reason to interfere with the Judge''s decision on the second ground urged in special appeal.

6. With regard to the third ground, that is, the alleged payment made to Shujaat Ali, we think that the Judge was in error. It was never denied by the plaintiff that Shujaat Ali was his servant, and it was never alleged that this person had no right to receive rents for his master; and we think therefore that the defendant is entitled to the benefit of having paid the sum of rupees 55 to Shujaat Ali, on behalf of his master the plaintiff.

7. The case must be remanded to the Judge, in order that he may take into consideration the evidence of the receipts, and pass a fresh decision with reference to the remarks made in this judgment. Costs will follow the result.