

Pratapchand Gulabchand Vs Purshotamdas Malji and Others

Court: Bombay High Court

Date of Decision: Oct. 6, 1915

Acts Referred: Stamp Act, 1899 "Section 35

Citation: AIR 1916 Bom 214 : 33 Ind. Cas. 366

Hon'ble Judges: Beaman, J

Bench: Single Bench

Judgement

Beaman, J.

The first point raised and argued in limine is whether the writing of the 14th of September 1911 is admissible in evidence. If it is

a promissory note, it is clearly insufficiently stamped, and, therefore, inadmissible u/s 35 of the Indian Stamp Act. I should have had very little

hesitation, notwithstanding the decisions in the cases of Govind Gopal v. Balwantrao Hari 22 B. 986 and Tirwpathi Goundan v. Rama Reddi 21

M. 49 : 7 M.L.J. 291, in holding that this was in substance a promissory note although it does not contain an express promise to pay, but for the

term inserted in it for the repayment of interest at 9 per cent per annum every month. Had that term been omitted, I do not know how it could have

been contended that the mere omission of the words "I promise to pay at the expiration of three years" period" would really have affected the

character of the document, or could have been imported as a qualification of the intention of the parties who made it at the time of its making. That

very restricted mode of interpretation has, it must be admitted, found favour with very learned and eminent Judges, who discover in the absence of

such words as "I promise to pay" and the substitution for them of such words as "I am liable" a sufficient ground of distinction upon which to

declare that the writings containing the former expression are, while those containing the latter expression are not, promissory notes. But, with the

greatest deference, I find it too difficult to impose such weight upon the letter, while entirely ignoring the quite transparent spirit, of the transaction.

Ordinarily where a person acknowledges to have received a definite sum of money on a certain date for a certain term, there can be no reasonable

doubt but that what he means is that on the expiration of that term he is willing to repay the money on demand. Here, however, the whole

complexion of the document of the 14th of September 1911 is, I think, completely changed, and changed too not only in form but in substance, by

the insertion of the term for the payment of monthly interest upon which Mr. Jinnah has relied. I think there is no answer to his argument that such a

term is altogether inconsistent with the legal notion of a promissory note and that his clients were at liberty at any time during the currency of the

three years" period to bring a suit or suits for any interest which may have fallen due and remained unpaid under this clause. Not only is the

existence of such a clause repugnant to the essential character of a commercial document negotiable by mere endorsement such as a promissory

note, but it would, in my opinion, render the negotiability practically impossible while establishing legal relations between the parties anterior to the

period at which alone the principal sum is to be called in. I think, therefore, that the agreement of the 14th of September 1911, whatever else it

may be, is not a promissory note, and, therefore, does not require the stamp of Rs. 125 which otherwise it would have done, nor falls under the

absolute prohibition of Section 35. It is probably correctly stamped, though it is unnecessary to express any opinion upon that at present; but even

if it were not, it would become admissible in evidence upon payment of the required penalty.

2. I decide the preliminary point in favour of the admissibility of the document, provided that should it be found to be insufficiently stamped the

deficiency and penalty be duly paid.