

(1966) 08 PAT CK 0015

In the Patna High Court

Case No : Civil Revision No's. 36 and 71 of 1963

Bibi Khairunissa

APPELLANT

Vs

Elahi Bux

RESPONDENT

Date of Decision : 25-08-1966

Acts Referred:

Stamp Act, 1899 — Article 33, 3, 33, 35

Citation : AIR 1967 Patna 233

Hon'ble Judges : H. Mahapatra, J; A.B.N. Sinha, J

Bench : Division Bench

Advocate : Addl. Govt. Pleader, S. Ali Ahmad, for the Appellant; S. Matin Ahmad and Pratapdhari Sinha, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Both these applications by the defendant are in connection with the impounding of a document as a deed of gift and admitting the same into evidence subject to payment of the stamp duty and penalty as stated by the Court below.

2. The defendant-petitioner, in the trial Court, tendered a document in evidence which, according to her, is not a deed of gift but only a memorandum of gift. The trial Court impounded it, obviously for the reason that the document was chargeable to stamp duty, and it did not bear the requisite stamp as provided u/s 33 of the Indian Stamp Act, 1899. The Court, further, admitted the document as exhibit B in evidence, and stated that a particular amount was payable by the defendant as the stamp duty with the penalty imposed upon her, as provided u/s 35 of the Act. The defendant challenges both these actions of the Court below.

3. Learned Counsel appearing for the defendant-petitioner, first of all, pressed that the trial Court was wrong in thinking that the document marked as B is a deed of gift. He read out the contents of the document, and urged that that was a document which was engrossed on an ordinary piece of paper, and was really a

declaration of a gift made by Tinkauri Mian, and this declaration was by the panches, who had also affixed their own signatures upon that document. Tinkauri Mian also put his thumb mark. Reading the context of that document, there is no doubt left that it purported to be a deed of gift in respect of the properties mentioned therein. Tinkauri Mian was incapable of writing or even putting his signature. One of the panchas, therefore, wrote the document, and the other panchas signed it, as it were, by way of being witnesses to the execution of the same by Tinkauri Mian. Learned Counsel further contended that no possession was stated to have been given to the donee under that document. But that fact will very much go against him. If there had been, as he wanted to urge, a completed gift by Tinkauri Mian before this document was brought into existence, the document would have mentioned also that the donee had accepted the gift, and possession had been delivered to him. That statement is not there in the document. Therefore, this document has to be taken as an instrument by which the gift was made to be followed by acceptance by the donee and delivery of possession to him. In our view, the trial Court was right in holding that this document is a deed of gift.

4. Next, learned Counsel contends that, even if it is taken to be a deed of gift, it was not liable to be impounded u/s 33, nor was there any question of calling upon the defendant to pay any duty and penalty as provided u/s 35 of the Indian Stamp Act before it was admitted into evidence and marked as exhibit B. Section 3 of the Stamp Act lays down that the instruments described in the different clauses to that section shall be chargeable with duty of the amount indicated in Schedule I of the Act as the proper duty therefor, respectively. "Deed of gift" is named as one of such instruments; but the relevant article in Schedule I of the Act in that respect is 33 which states :

"GIFT--Instrument of, not being a Settlement (No. 58) or will or Transfer (No. 62).

The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument."

It, therefore, appears that the duty payable on an instrument of gift, according to the schedule, is the amount which has been prescribed for a conveyance of an amount of consideration which is the same as the value of the gift property, under Article 23 of the schedule. Such amount is related to the amount of consideration mentioned in the conveyance. In other words, the amount of duty will be related to the amount of value "as set forth in such instrument". If, in the deed of gift, no value is stated, there will be no question of any duty being payable at all on that instrument. The expression "as set forth in such instrument" relates to "the value", and, if no value is put in the document, no amount of duty becomes payable according to the schedule. [See the cases of *In Re: Muhammad Muzaffar Ali*, *Miran Baksh v. Emperor* AIR 1945 Lah 69 (and *Sitaram Kamalia and Another Vs. State of Bihar*,].

5. If such is the position, strictly speaking, a deed of gift, in which the value of

the property has not been stated, does not come within the scope of Section 3 of the Indian Stamp Act, on which an amount of duty as per Schedule I is chargeable. Even if it is held that, in a general way, a deed of gift is chargeable to stamp duty as provided u/s 3, no action u/s 34 or u/s 35 of the Act will be called for in respect of a deed of gift in which the value of the property covered thereunder is not stated. The reason for that is that, no amount of duty being ascertainable as payable on such a document in accordance with Article 33 of Schedule I of the Act, no person in charge of a public office can hold the opinion that such an instrument is not duly stamped because it does not bear any stamp on it. For the same, reason, neither he can impound it u/s 33, nor can he admit it into evidence on payment of duty with which the same could be said to have been chargeable. In this view of the matter, the orders of the trial Court impounding the document in question and calling upon the defendant to pay stamp duty and penalty in that respect cannot be sustained. Those orders are, therefore, set aside.

6. Notice had been given to the State in this case, and Mr. Sarwar Ali appeared for the State, and made his submissions on the question discussed above.

7. The applications are allowed in part to the extent that the document cannot be said not to have been duly stamped and that document could not have been impounded or admitted into evidence subject to payment of stamp duty and penalty. We would like to make it clear, however, that any other objection against the admissibility or evidentiary value of this document on ground other than stamp duty is not excluded, and it will be open to the parties to raise such objections, if any, if they so like. In view of the circumstances of the case, there shall be no order for costs in any of the two applications.