

(1958) 10 PAT CK 0014
In the Patna High Court
Case No : Civil Revision No. 289 of 1956

Chandrama Singh

APPELLANT

Vs

Awadh Bihari Singh and Another

RESPONDENT

Date of Decision : 17-10-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16
Stamp Act, 1899 — Section 33, 33(1)

Citation : AIR 1959 Patna 353

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : K.B.N. Singh and Sankat Haran Singh, for the Appellant; L.S. Sinha and D.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—The only question of law canvassed in this case is whether the production of an unstamped instrument in obedience to the order of the Court is production within the meaning of Sub-section (1) of Section 33 of the Indian Stamp Act. The facts of this case lie in short compass and may be briefly stated, One Sheoshankar Pandey obtained two money decrees against the opposite party judgment-debtors, and for realisation of the decrees he levied two executions, being Execution Cases 1191 and 1192, both of 1951,

On 15-5-1952 he assigned the two decrees to Chandrama Singh, the petitioner before this Court, by a registered deed of assignment which he described as Transfarnama. On the strength of this assignment the petitioner presented on 21-4-1955 an application for execution in respect of one of the decrees in the Court of the 1st Additional Munsif Arrah, which was numbered as Title Execution Case 717 of 1955. In this application the petitioner alleged that the decree has been transferred to him by the original decree-holder, Sheoshankar Pandey, and prayed for permission to execute the decree.

On 18-6-1955 the executing Court asked the petitioner decree-holder to produce

the registered deed of assignment, and the same was filed on 30-6-1955. The execution proceeded and notices as required by Rule 16 of Order XXI of the CPC were issued. On 29-2-1956 the opposite party, it appears, raised an objection that the deed of assignment was insufficiently stamped, whereupon the Court directed the Sheristadar to examine and check the document and to report whether stamp duty and penalty were leviable. The Sheristadar submitted this report, and on the strength of it the following order was passed on 1-3-1956 :

"Sheristadar"s report seen. D. Hr (O.P.) to deposit Rs. 82/8/- as duty and 825/- as penalty by the date fixed. Inform." (The next date fixed was 2-3-1956).

The petitioner has come up in revision against this order.

2. Learned counsel for the petitioner put forward the argument that the lower Court had no power to impound this document and demand payment of stamp duty and penalty, and its order was wholly without jurisdiction. He submitted that for an execution under Order 21, Rule 16 of the Code the production of the deed of assignment was not necessary and further that production, as envisaged by Section 33(1) of the Indian Stamp Act is voluntary production, and a production under compulsion of the Court"s order is not a production in law and, therefore, the deed of assignment, though produced in Court, did not come within the purview of Section 33(1) of the Act. This contention is wholly untenable and cannot be accepted as correct. Sub-section (1.) of Section 33 provides as follows :

"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 police before whom any 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."

This section empowers certain authorities to impound documents not duly stamped in the circumstances set forth in the section and to admit it in evidence u/s 35 of the Stamp Act on payment of the excess duty and penalty. It will appear that to attract the provisions of the said sub-section three conditions must be fulfilled : (1) the authority empowered to impound a document must be the authority specified therein, (2) the instrument in question is not stamped according to the Stamp Act and (3) the instrument "is produced or comes in the performance of his functions".

This section does not specify how the document is to be produced. There is no doubt that the production of a document under compulsion is not a-production as envisaged in Sub-section (1) of Section 33. At the same time it would be wrong to restrict the operation of Section 33(1) to voluntary production only, When the expression "is produced" is considered in juxtaposition with the expression "comes in the performance of his functions" along with the object of this act, in my opinion, production of a document in obedience to the order of the Court is also a production within the meaning of Section 33(1).

But, it must be assumed that the document whose production the Court directs must necessarily be the document relevant for the enquiry or the case before it. If the documents produced either voluntarily or in obedience to the orders of the Court are wholly irrelevant, the order of production cannot be said to be legal order and the production of those documents will not be a production as contemplated by Section 33. Where, however, a document, not duly stamped, is relevant for an enquiry or a case of which the officer is in seisin and that document is produced by a party to that enquiry or case, either voluntarily or in obedience to the order or summons of a Court, such a document "is produced or comes in the performance of his functions" as laid down in the aforesaid section.

In this case before issuing notice under Rule 16 of Order XXI of the Code it was incumbent upon the executing Court to satisfy itself whether or not a valid transfer of the decree had been effected and for that purpose it was entitled in law to call upon the decree-holder to produce before it his title deed, and if in obedience to that order the decree-holder produced the deed of assignment it cannot be said that it was a production against his will or that the document did not come before it in the performance of its functions.

The view I take is amply supported by a decision of the Madras High Court in *King Emperor v. Balu Kuppayyan* ILR 25 Mad 525. In that case one person was charged before a Deputy Magistrate with having committed offences under Sections 64(c) and 68(c) of the Stamp Act. The Deputy Magistrate issued a search warrant against him and in course of that search certain documents insufficiently stamped were seized and impounded u/s 33(2) of the Act. It was contended that the Deputy Magistrate was not justified to order seizure of the documents, and compulsory seizure of the documents was illegal and consequently the documents did not come before him in the performance of his functions within the meaning of Section 33(1).

This contention was overruled and a Division Bench of the Madras High Court has laid down that the word "comes" is sufficiently wide to include the production of documents under a search warrant issued by the Magistrate. This case was referred to in *In Re: Payanda Khan*, , and the views expressed therein were not dissented from. The case was simply distinguished. If the ingredients of Sub-section (1) of Section 33 are kept in view, as explained above, it will not be difficult to distinguish the cases relied upon by the learned counsel for the petitioners.

He referred to the decisions in *Thakar Das v. The Crown* AIR 1932 Lah 495 *Munshi Ram v. Harnam Singh* AIR 1934 Lah 637 *Harjimal and Sons v. H. S. Palta and Sons*, AIR 1947 Lah 319 and AIR 1943 97 (Nagpur) . None of these cases supports the wide proposition of law learned counsel attempted to enunciate, namely, the production of a document in obedience to the order of the Court is not a production within the meaning of Section 33(1). In the first case, a document purporting to be a deed of dissolution of a partnership and stamped as such under Article 46. Stamp Act, was registered by a Sub-Registrar without any

objection being raised as regards the stamp duty, and . the document was returned to the executants.

Subsequently, in the course of inspection, it came to the notice of the Registrar that the document was in reality a deed of partition and should have been stamped under Article 45 and not under Article 46, Stamp Act. He therefore called upon the executants to produce the deed, and the deed was accordingly produced and the Registrar, holding that the document was not duly stamped, made a reference to the Collector u/s 33, Stamp Act.

It is evident that the registration of the document was complete, and the document had also been returned and, therefore, the Registrar was functus officio and had no power to order the production of the document, and accordingly he cannot be said to be acting in the performance of his functions within the meaning of Section 33 when he impounded the document and made a reference to the Collector under that section. In the case of *Munshi Ram* AIR 1934 Lah 637 the original document had not been produced, but only its copy had been produced, and in those circumstances it was said that Section 33(1) had no application.

The decision in the case of *Harjimal and Sons* AIR 1947 Lah 319 is widely expressed. It was laid down in that case that unless and until the plaintiffs tender the document in evidence and seek to use it as such they cannot be called upon to make good the deficiency in the stamp duty. This is a single Judge decision, and with great respect I think that such a wide proposition is not supportable on the plain meaning of Section 33(1). It is not necessary to examine this decision beyond saying that the view expressed therein is opposed to the decision of the Full Bench of that very Court in *Mahomed Hussain v. Emperor* JLR 1940 Lah 637: AIR 1940 Lah 315.

In the last case, namely AIR 1943 97 (Nagpur) , the document in question was not the document which the Court directed to be produced. In that case, the applicant was not a party to the suit. He was a witness and was summoned to produce a certain document which was in his possession. This document was bound up by him in a book called a bahi with a number of other documents which had nothing to do with the case. Instead of detaching the relevant document from the book, the applicant produced the whole book. The lower Court, on glancing through the book, noticed that certain other document, wholly irrelevant to the case before it and which the witness had not been asked to produce, were, in the opinion of the learned Judge, insufficiently stamped.

These documents were accordingly impounded. Vivian Bose J., observed that the document which falls accidentally or incidentally into a Judge's hands cannot be said to be produced. There can be no question of correctness of this observation. As stated earlier, the document which a party is called upon to produce must be relevant to the case. In the case before the learned Judge the relevant document was produced along with other irrelevant documents, and therefore, those

irrelevant documents cannot be said to be produced in obedience to the order of the Court.

There are, however, certain observations which go against the contention of the learned counsel for the petitioner. It has been laid down in that case that the word "produced" has a technical meaning and means either produced in response to a summons or produced voluntarily for some judicial purpose, such, for instance, as evidence. In the present case the document was no doubt produced in pursuance of the summons of the Court. Learned counsel tried to distinguish this case and contended that in the instant case the document was not produced in response to summons but that it was produced in obedience to the order of the Court, I do not think there exists any such distinction. In my opinion, there is no difference between a document produced in response to a summons and a document produced in obedience to the order of the Court. In either case it is a production against will, but under compulsion of law. Production under compulsion of law is a valid production within the meaning of Section 33 of the Stamp Act. Therefore although on facts this case is distinguishable, the ratio of the decision supports the conclusion I have reached. It is manifest that the decisions referred to by the learned counsel have no application in the present case and are clearly distinguishable. In my considered opinion, the production of a document in obedience to the order of the Court is a production within the meaning of Section 33(1) of the Stamp Act.

3. It was next contended that the executing Court had no authority to order production of the document, as for the purposes of execution under Order XXI. Rule 16 of the Code, the production of the deed of assignment is not imperative. His contention is that the Court should have issued notice under Rule 16 of Order XXI to the other side without examining the document. In support of his contention, he referred to the decisions in the cases of Sundarabalakadiresa Thevar and Others Vs. Avudai Ammal and Others, ; Meenakshiammal Vs. K.G. Krishnaswami Iyer and Others, ; and Gour Chandra Ray Vs. Janardan Prasad Thakur and others . These decisions do not support his contention. All that they lay down is that the production of the instrument of transfer of the decree along with the application for execution is not necessary, and this seems, to be correct. When an application for execution is filed and it conforms to the provisions of Order XXI, Rules 11 to 14, the application for execution must be taken on file, numbered and proceeded with. The Court cannot outright reject the application simply because it is not accompanied by a deed of assignment. They do not, however, lay down that the Court is also precluded from calling for the deed of assignment subsequently in order to satisfy itself whether or not there was a bona fide assignment of the decree. On the contrary, the ratio of the decision in the case of Sundarabalakadiresa Thevar and Others Vs. Avudai Ammal and Others, , goes against the contention of learned counsel. It has been clearly laid down that after the application for execution has been filed and registered, the executing Court may call for the deed of assignment as also any other information that the Court may think, necessary in order to proceed with

the execution. The contention of learned counsel if allowed to prevail will rob Rule 16 of Order XXI of its significance. It will amount to saying that the Court should act automatically without applying its mind to the validity or otherwise of the deed of assignment, or without deciding the disputes between the parties. The very object of issuing notices under this rule to the transfer is to determine once for all, and in the presence of all parties concerned, the validity of the assignment. Vide *Brajabashi Modak and Others Vs. Manik Chandra Modak*, . This contention of learned counsel has no substance and must be rejected.

4. In the result, this application is dismissed with costs.

Ramaswami, C.J.

5. I agree.