(1925) 07 BOM CK 0002

In the Bombay High Court

Case No : O.C.J. Appeal No. 12 of 1925

Dayaram Sorajmal — APPELLANT

Vs

Chandulal Dayabhai — RESPONDENT

Date of Decision : 08-07-1925

Acts Referred:
Stamp Act, 1899 — Section 12(2), 47

Citation : (1925) 27 BOMLR 1118

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff alleged that he was a holder in due course of a Shah Jog hundi for Rs. 900, dated February 10, 1922, drawn by one Jaggannath Gordhandas of Poona on Joraji Deoraj, the second defendant firm of Bombay, in favour of Venkatesh Eamchandra Shivnoor of Belgaum. The plaintiff transmitted the said hundi from Gulberga to his branch firm at Secunderabad. In the course of transmission to Secunderabad the said hundi was stolen by some person not known to the plaintiff''. It then came into the hands of the first defendant firm, who presented it for payment to the drawees, the second defendant firm The first defendant received payment from the second defendant. The plaintiff claimed that the first defendant had no title to the hundi, and that the first defendant was bound to pay the same with interest as moneys had and received for and on behalf of the plaintiff The plaintiff further submitted that the second defendant firm was not entitled to pay the amount to the first defendant firm as they had no title to the same. The plaintiff, therefore, prayed that the defendants be ordered to pay to the plaintiff the sum of Rs. 1035 with interest on Rs. 900 at the rate of nine per cent, per annum from October 10, 1923, till judgment, and costs of the suit.

2. We are not concerned with any other issues which were raised at the trial, except the issue whether the hundi was properly stamped. The Judge found on

this issue that the instrument was unstamped, and therefore was inadmissible in evidence. The plaintiff''s suit was then dismissed.

3. According to the evidence the hundi bore an uncancelled one anna stamp when it came into the hands of the first defendant firm. It was not, therefore, duly stamped at the time of execution. u/s 12 (2) of the Indian Stamp Act:-

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so fat as such stamp is concerned, be deemed to be unstamped.

4. u/s 17 :-

All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

5. There is one exception provided by Section 47 of the Act which enables certain documents chargeable with the duty of one anna, if unstamped, to be stamped at a later date, Section 47'' says :-

When any bill of exchange, promissory note or cheque chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same is manner hereinbefore provided, may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

6. If the second defendant firm, when the hundi was presented, had affixed the stamp and cancelled it, then the hundi would have been considered with regard to the payment of duty, a good and valid document, The evidence shows that R. 141 some time on February 12, when the hundi was paid by the second defendant firm, Nagardas, a partner in the first defendant firm, noticing that the stamp on the hundi had not been cancelled, wrote across it the date " February 12, 1922." That would not, according to the provisions of the Act, make a . document, which up to that time had been unstamped, stamped. It is clear, therefore, that there has been no attempt whatever to comply with the provisions of Section 47 of the Act, and the document still continues to be unstamped. We think then that the decision of the Judge was right and the appeal must be dismissed with costs.

