(1957) 12 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Reference No. 8 of 1956

Hanuman Prasad APPELLANT

Vs

The State of Rajasthan RESPONDENT

Date of Decision : 12-12-1957

Acts Referred:

Registration Act, 1908 — Section 17
Stamp Act, 1899 — Article 33, 2(14), 38(2), 40(1)

Citation : AIR 1958 Raj 291

Hon'ble Judges : K.N. Wanchoo, C.J;K.L. Bapna, J;D.M. Bhandari, J

Bench : Full Bench

Advocate : R.C. Sharma, for the Appellant; R.A. Gupta, Dy. Govt. Advocate, for the Respondent

Judgement

K.L. Bapna, J.—This is a reference u/s 57 of the Indian Stamp Act.

2. On 11th September, 1951 Seth Hanuman Prasad presented the following document for registration :

"Declaration regarding gift of Rupees three lacs from Shri Murlidhar Mansinghka to Shri Hanuman Prasad Murlidhar Mansinghka."

We Murlidhar Mansinghka and Hanuman Prasad Murlidhar at present residing at Bhilwara (Rajasthan State) respectively solemnly affirm and say as follows : .

"I, Murlidhar Mansinghka for myself say that my son Hanuman Prasad has completed the age of 18 years. With a view to assist him in carrying on his own business, I have out of natural love and affection which I bear towards him made a gift to him of the sum of Rupees three lacs which amount was paid to him on my account by a Hundi drawn by me on Shri Mansinghka Oil Mills Ltd., Bombay in favour of my son Hanuman Prasad. My son Hanuman Prasad has received the sum of Rupees three lacs from Shri Mansinghka Oil Mills Ltd., Bombay on 8th day of September, 1951, The said sum of Rupees three lacs is my separate and self acquired property and I have every right to dispose of the same in such manner as I think fit.

I, Hanuman Prasad Murlidhar for myself say that I have read the statement contained in paragraph 1 above and confirm the same. I have accepted the gift of Rupees three lacs given to me by my father as stated above. I have received the said sum of Rupees three lacs from Shri Mansinghka Oil Mills Ltd., Bombay on 8th day of September, 1951."

Sd/- Hanuman Prasad Mansinghka.

Sd/-M. D. Mansinghka.

Solemnly affirmed by the above named Hanuman Prasad Murlidhar this 11th day of September, 1951.

Solemnly affirmed by the above named Murli-dhar Mansinghka this day of llth September, 1951.

Before me : Solemnly. Sd/-

Before me : Solemnly.Sd/-

Registrar,

Registrar,

Bhilwara, Rajasthan.

Bhilwara, Rajasthan.

(3) This document was executed on a stamp paper of the value of Rs. 3/- and a registration fee of Rs. 2/- was realised.

3. This document was executed on a stamp paper of the value of Rs. 3/- and a registration fee of Rs. 2/- was realised.

4. On 2nd July, 1952 the Registration Inspector reported to the Tehsildar Bhilwara that the deed in question should have been executed on a stamp of Rs. 3,.000/- and a registration fee of Rs. 650/- should have been charged upon it. He reported that 10 times the deficiency in stamp duty (Rs. 29,970/-) and the registration fee (Rs. 650/-) were due in respect of the document.

The Tehsildar issued a notice to Hanuman Prasad for payment of Rs. 30,620/- u/s 40 of the Indian Stamp Act. The latter replied that Section 40 was not applicable and the Tehsildar had no jurisdiction. The Tehsildar forwarded the papers to the Collector for guidance and the Collector (Shri Ram Kumar Sharma) issued the following letter to Seth Hanuman Prasad on 12th January, 1953:

"A document which is a gift deed was executed and presented for registration in Tehsil Bhilwara sometime ago. The Inspector of Registration who is in charge of a Public Office after scrutiny as contemplated u/s 33 of the Indian Stamp Act has held that the penalty of Rs. 307620/- (Thirty thousand six hundred and twenty) is recoverable from you because the document was improperly stamped and the said penalty had become chargeable. The full facts were communicated to you by Tehsildar Bhilwara demanding the payment of the said amount.

The matter has been pending for some time past and the payment has been deferred which is very much regretted. You are hereby directed under the circumstances to please pay the said amount of Rs. 30,620/- in my office on or about 22nd January, 1953 without fail. Please also note that failure to make payment as directed above may render you liable for an action under a process of recovery provided by the law for such cases."

5. Seth Hanuman Prasad filed a revision to the Board of Revenue, which is the chief controlling revenue authority. The Board of Revenue was of opinion that the document was not produced before any person having by law or consent of parties authority to receive evidence or any person incharge of a public office and was not impounded and the occasion did not arise for the exercise of power by the Collector u/s 40 of the Indian Stamp Act.

The Board was also of opinion that the document was not a Instrument of Gift, as the gift itself had been completed three days before the execution of the document. In the opinion of the Board of Revenue the instrument did not at all require stamp duty. The Board of Revenue, however, thought that the question was an important one and accordingly referred the case to this Court u/s 57 of the Indian Stamp Act.

6. We have heard learned counsel for Seth Hanuman Prasad and the Deputy Government Advocate. Two questions arise in the present case :

1. Whether the Collector had any authority or jurisdiction in the circumstances of this case to make a demand of payment of the proper duty and penalty as had lieen done by him?

2. Whether the document was insufficiently stamped?

7. The power to demand proper duty and penalty is conferred upon the Collector by Section 40 Sub-section (1) Clause (b) of the Indian Stamp Act. That section, however, is applicable when the Collector impounds any instrument u/s 33, or receives any instrument sent to him u/s 38, Sub-section (2) of the Act, In the present case the original document had been taken away after registration and what the Inspector saw was the copy of the document in the register of the Registrar. The original document never came to be impounded and, therefore, Section 40 had no application.

8. We agree with the opinion of the Board of Revenue that in the present case the document not having been impounded either by the Collector himself or by any other officer and sent to him u/s 38, the occasion for the demand of any deficit duty and penalty had not arisen. The Collector had no jurisdiction, therefore, to make a demand of any deficit duty and penalty.

9. In respect of the next question a perusal of the document clearly shows that the gift of a sum of Rupees three lacs was completed on 8th September, 1951 and the present document was executed on llth September, 1951, reciting the fact of the gift having been made three days ago. The document by itself was not an instrumental gift in the sense that no gift was made by virtue of that document.

The gift of movable property does not require for its validity, the execution of any document or the registration thereof and is valid and complete by delivery of the property. In the present case the gift of Rupees three lacs was, therefore, completed as soon as the money reached the hands of Seth Hanuman Prasad on 8th September, 1951. The document, therefore, only purported to be a recital of what happened in the past. It was not an instrument of gift.

10. The definition of ''instrument'' in Section 2 Clause (14) is a wide one but nevertheless in our opinion it did not cover the document under consideration. The definition is as follows :

" ''instrument'' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

Obviously no right or liability had been created, transferred, limited, extended, or extinguished by the document and it remains to be seen whether it would be a document by which any right or liability is recorded.

11. It seems to us that the document under examination is not one by which any right or liability may be said to have been recorded. What the document purported to record was an event of the past. It did not speak of any existing right or liability. The fact of the gift became a matter of the past.

12. In Dr. Vishun Shankar and Others Vs. The State of Bihar, a document purported to be a deed of partition was executed by 5 sons of Bachan Devi, daughter of Babu Durga Prasad and his wife Janak Dulari. The deed contained the following passage :

"Srimati Janak Dulari Kuar surrendered her limited interest she had in the property left by her husband in favour of Shrimati Bachan Devi her daughter. Subsequently the said daughter having for sometime remained in possession and occupation of the property left by her father surrendered her rights in respect thereof in favour of us the executants, her sons, that is the grand-sons of Babu Durga Prasad and put them into possession thereof." There was also attestation of the ladies which included a statement that they got the contents of deed read over to them and understood the contents. The obvious intention was to bind them with knowledge of the statement contained in the above cited passage that they had surrendered their interest in the property.

It was contended that the document should have also been stamped as a deed of ''gift but it was negatived on the ground that the deed as it stood was a pure and simple partition deed. It was observed that in the passage cited there was merely a statement in the past tense that the ladies surrendered their interest, that is to say, the deed did not purport to operate as terminating their interest.

It might be that the intention was to bind those ladies and to prevent them in future from asserting any interest in the property. The Court observed that if the question arose in future, it would be for the Courts to consider whether the document had that effect but the question was not held relevant at that stage.

13. We, therefore, agree with the Board of Revenue that the document was not an instrument of gift but only purported to record a past transaction and did not require to be stamped under any of the Articles of the Indian Stamp Act.

14. A copy of the aforesaid judgment shall be sent to the Board of Revenue for disposing of the case, as required u/s 49 of the Act.

