
(1906) 11 BOM CK 0005
In the Bombay High Court
Case No : Civil Suit No. 230 of 1906

Nathu Gangaram

APPELLANT

Vs

Hansraj Morarji

RESPONDENT

Date of Decision : 16-11-1906

Acts Referred:

Stamp Act, 1899 — Section 2(10)

Citation : (1907) 9 BOMLR 119

Hon'ble Judges : Russell, J

Bench : Single Bench

Judgement

Russell, J.—This case raises a very interesting question under the Stamp Act, for which, I may say, no distinct authority has been brought to my notice.

2. The question arises in this way : The plaintiff sues as the assignee of a certain contract for the delivery of gunny bags which had been entered into by one Sharifbhoy Ebrabim who was the son of the second plaintiff with the present defendant.

3. It appears that Sharifbhoy was largely indebted to the firm of which the first plaintiff and Sharifbhoy's father were partners? and towards satisfaction of the liability he assigned the benefits of this contract with the defendant which I have mentioned.

4. In the course of the plaintiff's evidence Mr. Jardine, his counsel, tendered the following document (the one which is impounded).

5. The principal portion and the principal subject matter of this document is this. It is a Gujarati contract called a sale of a number of gunny bags by the defendant to this man Sharifbhoy and there are a large number of conditions which are in print upon the document but to which for the purpose of this argument it is not necessary for me to refer. The important part of the document, however, runs as follows :-

In the translation it is to be found in red ink at the end of the document. " I have sold the whole of my right and interest in this contract...and in the goods mentioned therein to Thakor Nathoo Gangaram that is the plaintiff. Signed Sharitbhoy Ibrahim." Now when Mr. Jardine tendered this document with this endorsement, Mr. Lowndes objected inasmuch as apparently it was stamped with a one anna stamp.

6. The contract for sale is signed by the vendor but the contract of assignment is written in black ink across the last few clauses at the back of the contract and there is a one anna stamp affixed at the foot of that page. It is signed by Sharifbhoy Ebrahim.

7. Now the point that Mr. Lowndes makes is that this assignment comes u/s 2, Clause (10), of the Stamp (Act II of 1899) and that gives the definition of conveyance as follows :-"conveyance includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I." If this document comes within the above definition an ad valorem stamp will be necessary. I am told that that stamp and the penalty would come to several thousands of rupees.

8. Mr. Jardine, on the other hand, contends that the true construction of this document is that it is an agreement or memorandum of agreement for or relating to sale of goods or merchandise exclusively and therefore is exempt from stamp altogether; also as a second string, he asks leave to be allowed to give evidence to shew that this assignment is a "mercantile document of title to goods" falling under Clause (b) of article 62 of the Stamp Act.

9. Now it appears to me that the first question to decide is what is the effect of this document; and, I confess, although at one time I was inclined to accede to Mr. Jardine's argument, I do not see the answer to Mr. Lowndes' argument which runs thus :-The plaintiff is suing as an assignee of the benefit of the contract and the document in question is an assignment of a chose in action which must be in writing under the Transfer of Property Act. It is not an agreement for the sale of goods at all.

10. Now it appears to me that when you consider what assignments of choses in action are, that argument is correct. Upon this point I think one may refer to the Judicature Act, Section 25, Sub-section (G), because that states, I think I may safely say, the law on this point, namely, what really an assignment of a chose in action does. ""It passes and transfers the legal right to the debtor chose in action from the date of the notice."

11. The contract, I apprehend, is nothing but a chose in action and you cannot say that this assignment of the contract effected a transfer of the goods or was an agreement to transfer the goods from Sharifbhoy to the plaintiff; for the very excellent reason that, as Mr. Lowndes has pointed out, this is not only not the plaintiff's case, but if it were the plaintiff's case he would not have any chance

of succeeding at all in this suit which is based solely on the plaintiff being the assignee of the contract. Therefore it is only as the assignee of the chose in action, viz. the contract, that the plaintiff is entitled to sue.

12. That being so it appears to me that it will be impossible to say that this is "a mercantile agreement relating to the sale of goods or a merchandise exclusively."

13. It relates to something which is not the sale of goods or merchandise exclusively, but is the assignment of the obligation by the present defendant to deliver to Sharifbhoy and thus it is a chose in action, i. e. a legal right which has been transferred by Sharifbhoy to the present plaintiff.

14. The cases that are cited by Mr. Lowndes, viz. Mortgage Insurance Corporation v. Commissioners of Inland Revenue (1888) 21 Q.B.D. 352 and In re Vernon [1901] 1 K.B. 297 relating to the Stamp Acts in England certainly bear out Mr. Lowndes' argument and as he has pointed out the case of Haribai v. Krishnarav ILR (1897) 22 Bom. 632 was decided on different words in the former Stamp Act in India.

15. As I have said, in the present Act Section 2 Clause (10), it is important to notice the words "every instrument by which property whether moveable or Immovable is transferred inter vivos..." The property here is the right to get the goods delivered to him. It is property which I apprehend would have passed to the Official Assignee in the event of Sharifbhoy's Insolvency. That being so, I am of opinion that this document must be stamped with the ad valorem stamp.

16. I now proceed to deal with the second string that Mr. Jardine relied upon.

17. As I have said he asks leave to give evidence to show that this document comes within Article 62(b) of the Stamp Act.

18. I need not however pursue this any further now as Mr. Jardine requests that the case be allowed to stand over to enable him to consider his client's position. But of course the plaintiff must pay the costs of the day.

19. The case is adjourned till Tuesday next.