
(1937) 08 MAD CK 0041
In the Madras High Court

Penatapati Nageswara Rao

APPELLANT

Vs

Moka Narayanamurthi and Another

RESPONDENT

Date of Decision : 30-08-1937

Acts Referred:

Citation : AIR 1938 Mad 75 : (1938) ILR (Mad) 210 : (1937) 2 MLJ 805

Hon'ble Judges : Alfred Henry Ltonel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Ltonel Leach, C.J.—The question raised by this petition is whether an improperly stamped promissory note can be admitted in evidence to prove acknowledgment of liability in order to save limitation in respect of promissory notes previously executed. The petition arises out of a suit filed in the Court of the Subordinate Judge of Amalapurm. The promissory note was in the following terms:

On account of my necessity this day--that is, the amount due for principal and interest on the promissory note executed and delivered on 23rd June, 1929, is Rs. 93-3-0; the amount due on the promissory note executed and delivered on 6th July, 1929, is Rs. 92-13-0 and the amount due for principal and interest on the promissory note executed and delivered on 14th February, 1931, is Rs. 101. The total is Rs. 287. On demand I promise to pay you or order in one lump sum, the (said) principal together with interest thereon at Rs. 1-9-0 (One rupee and nine annas) per cent, per mensem, shall it the payment endorsed on this note and take it back. The consideration hereof has been received as aforesaid. This promissory note is executed with consent.

2. On a stamp of the value of one anna was appended the signature of the executant. The learned Judge before whom the case came refused to admit this document on the ground that its admission was prohibited by Section 35 of the Indian Stamp Act, 1899. The learned advocate for the petitioner contends that this decision is wrong. He says that the learned Judge should have admitted that portion of the document which recited the previous promissory notes, and that

this would have saved limitation in respect of the earlier instruments. The relevant portion of Section 35 reads as follows:

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped.

3. It will be observed that the instrument shall not be admitted in evidence for any purpose, nor shall it be acted upon, unless it bears the stamp prescribed by law. I should have thought that on the wording of this section it was clear that the promissory note in suit could not be admitted in evidence for the purpose sought by the petitioner or for any other purpose.

4. But the petitioner's counsel has quoted two cases decided by which support his contention. He also relies Leach, C.J. on a passage from the work of the late Sir Dinshah Mulla on the Indian Stamp Act.

5. Before referring to these authorities I would point out that the words " for any purpose " did not appear in the General Stamp Act, 1869, but were inserted for the first time in the Indian Stamp Act, 1879, and that they were not introduced into the English Act until the year 1891 (54 and 55 Vict., Ch. 39). In 1849, the question of the admissibility of an improperly stamped document for collateral purposes was discussed by the House of Lords in the case of *Matheson v. Ross* (1849) 2 H.L.C. 286: 9 E.R. 1101. It was there held that where a paper purported to be a receipt, and, as such, required a stamp, but also purported to be an agreed statement of accounts, which did not require a stamp, it might be given in evidence to show the agreed state of accounts only, though it had not been previously stamped. But it has since been accepted that the amendment in the English Act in 1891 has worked a change.

6. In *Rakkappan Ambalamv Suppiah Ambalam* AIR 1930 Mad. 485 Pandalai, J., held that where a promissory note contained, in addition to the promise, a statement that the amount for which it was given was due in settlement of a previous account, the instrument, although inadmissible as a promissory note for want of sufficient stamp, was admissible to prove an acknowledgment u/s 19 of the Limitation Act. The reason given was that Section 35 of the Stamp Act merely shuts out the portion of the document which constitutes the promissory note and does not affect other statements in the document. The learned Judge expressed the same opinion in a later case, *Vancheswara Sastri v. Narayana Aiyar* AIR 1933 Mad. 25 f but it did not find acceptance by Beasley, C.J., in the recent case of *Seshan Pattar's Son Ramanadha Aiyar Vs. G.G. Narayanaswamy Aiyar*, . The learned Chief Justice there held that an insufficiently stamped promissory note could not be used for the purpose of proving an acknowledgment by the maker of it of his indebtedness. This was also a case in which it was sought to save limitation by the admission of the instrument in evidence. In the course of his judgment, Beasley, C.J., referred to the unreported

case of *K.M. Subbayyar & Sons v. P.M. Lakshmana Aiyar S.A.* No. 124 of 1930 where he and King, J., sitting as a Bench, dissented from the opinion of Pandalai, J. The learned Advocate for the petitioner has not referred us to any other decided cases which support the proposition which he has advanced, but has laid stress on a passage to be found at p. 122 of the third edition of Sir Dinshah Mulla's work. The conclusion arrived at by the author of that work is to the effect that an instrument not duly stamped may be admissible as proof for a collateral matter, but is not admissible as proof for a collateral purpose. By "collateral matter" is meant any matter the proof of which does not depend upon proof of the transaction, and by "collateral purpose" any matter the proof of which depends upon proof of the transaction. With great respect I consider that this statement conflicts with the wording of the section, which is very precise. Sir Dinshah Mulla would appear to go back to the case of *Matheson v. Ross* (1849) 2 H.L.C. 286: 9 E.R.I 101 which was decided before the words "for any purpose" were introduced into the statute. That the English Law since the passing of the Act of 1891 is not the same as it was when *Matheson v. Ross* (1849) 2 H.L.C. 286: 9 E.R.I 101 was decided is to be gathered from the decision of President of the Probate, Divorce and Admiralty Division (Sir Samuel Evans) and Bargrave Deane, J., in *Fengl v. Fengl* (1914) P. 274 where it was held that the effect of the Stamp Act of 1891 is that an unstamped document, which requires a stamp, cannot be received in evidence, except in criminal proceedings, for any purpose whatever, including a collateral purpose. Sir Samuel Evans in his judgment remarked that whatever the law was before 1891 he was of opinion that the instrument with which the Court was then concerned was not admissible. As I have already pointed out the English Stamp Act of 1891 is the same as the present Indian Stamp Act in this respect.

7. The Bombay High Court in *Mulji Lala v. Lingu Makaji* I.L.R (1896) 21 Bom. 201 held that an acknowledgment of a debt coming under Article 1, Schedule 1 of the Stamp Act I of 1879, could not, if unstamped, be given in evidence for any purpose including the purpose of saving limitation. There have been similar decisions by other High Courts, but it is riot necessary to examine them in detail. The section itself, in my opinion, provides a complete answer to the petitioner's case. If an unstamped document cannot be admitted for any purpose it must mean, if the words are to be given, their ordinary and plain meaning that it cannot be admitted under any circumstances in a civil suit. If the legislature in placing this provision of law on the statute book had intended to allow unstamped instruments to be admitted for collateral purposes, it would surely have said so. It did not say so, but on the other hand it provided that a negotiable instrument which is insufficiently stamped at the time of execution cannot be properly stamped afterwards, even on payment of a penalty which is allowed in the case of other documents.

8. For these reasons the petition must be dismissed.