
(1927) 01 AHC CK 0022
In the Allahabad High Court

Ram Singh

APPELLANT

Vs

Man Singh

RESPONDENT

Date of Decision : 20-01-1927

Acts Referred:

Stamp Act, 1899 — Section 3(44)

Citation : AIR 1927 All 654 : (1927) ILR (All) 501

Hon'ble Judges : Lindsay, J

Bench : Division Bench

Judgement

Lindsay, J.—The question in this case is the correct interpretation of Section 44 Sub-section 3 of the Indian Stamp Act. This sub-section was pleaded as a bar to the suit in the Court below. The Judge of the Small Cause Court overruled the objection and held that Sub-section (3) to Section 44 was not a bar. In my opinion the decision is erroneous. The section has not been correctly interpreted by the Court below. The facts are quite clear. The plaintiff Man Singh held a mortgage from the defendant Ram Singh dated the 11th November 1922. He put that mortgage in suit, and while the case was pending it was discovered that there was a deficiency of stamp duty. Nobody denies that Ram Singh the mortgagor was the person who was liable for this deficiency.

2. The plaintiff having paid the deficiency in order to make the instrument regular and in order to get a decree has brought this suit for the recovery of the money paid by him. He apparently did not make any application to the Court which was trying the mortgage-suit to include the amount so paid in the costs of the suit. The terms of Section 44(3) require:

Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence.

3. Here the plaintiff and defendant were parties to the mortgage-suit and the mortgage was tendered in evidence. The sub-section then goes on to say.

If the Court does not include the amount in such order, no farther proceedings for the recovery of the amount shall be maintainable.

4. These last words are as precise as can be, and, in my opinion, they indicate clearly that a suit for the recovery of deficiency in stamp duty cannot be entertained if the case falls within the provisions of Sub-section (3) of Section 44. I allow the application, set aside the decree of the Court below and dismiss the plaintiff's claim. Parties will bear their own costs in both Courts.