

(1916) 06 CAL CK 0029
In the Calcutta High Court

Sashishi Mohan Shaha and Another

APPELLANT

Vs

Kumud Kumar Biswas and Others

RESPONDENT

Date of Decision : 16-06-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14
Stamp Act, 1899 — Section 33

Citation : 35 Ind. Cas. 415

Hon'ble Judges : Cuming, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This Rule calls upon the Secretary of State for India in Council to show cause why an order made u/s 33 of the Stamp Act, in circumstances to be presently stated, should not be set aside or modified.

2. On the 27th March 1916 the petitioners instituted a suit in the Court of the second Munsif at Alipore for recovery of money due on a hat-chita. Under Rule 14 of Order VII of the Code of Civil Procedure, the plaintiffs were bound to produce the hat-chita in Court when the plaint was presented. The hat-chita was in a bound volume which contained a large number of hat-chitas executed by other persons in favour of the plaintiffs. The entire volume was brought into Court when the plaint was filed. The plaintiffs prayed that the particular hat-chita, whereon their claim was founded, should be detached and placed on the record, and the remainder of the volume should be returned to them. An examination of the hat-chita, which was the foundation of the suit, disclosed that it was not properly stamped. The Munsif examined the other hat-chitas in the volume and came to the conclusion that the other documents were not properly stamped. He accordingly proceeded to impound all the hat-chitas u/s 33 of the Stamp Act. The question in controversy is, whether the Munsif was competent to impound the hat-chitas on which the claim of the plaintiffs was not founded.

3. The first sub-section of Section 33 of the Stamp Act provides that every person having by law or consent of parties authority to receive evidence, and

every person in charge of a public office, except an officer of Police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. Before action can be taken under this sub-section, it must be established that the instrument in question was produced or came before the officer in the performance of his function. The case for the petitioners is that they did not produce before the officer any hat-chita other than the one upon which their claim was founded. The Munsif took action at a stage, when there was no material to enable him to question the correctness of this allegation. Consequently, the case is not covered by the first of the two alternatives mentioned in Section 33. Nor can we say that the other hat-chitas came before the Munsif in the performance of his functions. In the performance of his functions as a Judicial Officer the only hat-chita which came before him at that stage was the hat-chita whereon the claim was founded. We cannot speculate whether if the trial had proceeded, the plaintiffs might not have possibly relied upon the other hat-chitas in support of their case. If they had done so, it could well be maintained that those hat-chitas were produced before the Munsif or came before him in the performance of his functions. But that stage was never reached. In our opinion, on the materials before us, it is impossible to say that the Munsif had jurisdiction to impound the hat-chitas other than the one which formed the basis of the claim. Reference has been made by the Senior Government Pleader to the case of King -Emperor v. Balu Kuppayyan 25 M. 525 : 2 Weir 670 which is clearly distinguishable. There a search warrant was issued by a Magistrate with a view to the discovery of a register kept by the accused, containing documents not stamped in accordance with the provisions of the Stamp Act. The register was seized in the course of the search and brought in the Court. It is clear that the register was produced before the Magistrate or came before him in the performance of his functions as a Magistrate.

4. The Rule must consequently be made absolute in part and the order of the Court below set aside in respect of all the hat-chitas other than that which forms the basis of the claim. The pages containing the hat-chita in question will be taken out of the volume and kept in the record; the remainder of the volume will be returned to the petitioners.