(1960) 08 MP CK 0057

In the Madhya Pradesh High Court

Case No : C.R. No. 42 of 1960

Sobhagmal Kesharimal Mahajan APPELLANT

Vs

Ramnivas Murlidhar Mahajan and Others RESPONDENT

Date of Decision : 08-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115(c)
Stamp Act, 1899 — Section 2(5)

Citation : (1961) JLJ 143 : (1961) MPLJ 293

Hon'ble Judges : V.R. Newaskar, J

Bench : Single Bench

Advocate : R.G. Waghmare, for the Appellant; Dharkar, for the Respondent

Judgement

V.R. Newaskar, J.

This revision petition is directed against an order holding that the document sued upon is liable to stamp duty under Article 15 of the Stamp Act as a bond and requiring the plaintiff to pay the duty and penalty amounting to Rs. 343-12-0.

The document in question ran thus:-

Date of maturity:- Masgar Sudi 1 Samvat 2012. Salutation to Bhai Sobhagmalji Kesrimalji, I have received Rs. 5,000 (in words rupees five thousands) taken by me for one month on Katik Sudi 1 Samvat 2012. Written on Miti Katik Sudi 1 Samvat 2012.

(One anna stamp) Ramniwas Murlidhar Sd. Ratanlal

Having regard to the terms of this document which is not attested it has to be seen whether the Court below was justified in construing it to be a bond. The term bond is defined u/s 2(5) of the Indian Stamp Act:-

''Bond'' includes:-

(a) Any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produces to another.

It is clear that the present document cannot fall under clause (a) as it is not subject to any condition that it would be void if a specified act is performed or not performed. The document being unattested it would not fall under clause (b) or (c) and is, therefore, evidently not a bond. In terms it appears to be a receipt although it mentions a date by which the repayment would be made. There is no express agreement to pay. Their Lordships of the Privy Council in AIR 1938 121 (Privy Council) , had occasion to consider a similar document and it was held to be a receipt. The document in the identical form had come up for consideration before myself and Samvatsar J., as the Judges of the Madhya Bharat High Court in the case reported in Samirmal v. Gendalal AIR 1955 M.B. 81, and it was held by us, relying upon the aforesaid decision of the Privy Council, that the document is a receipt. There is nothing in the operative part of the document to suggest that the writer had made an express promise to pay the amount although an implied promise to pay can be inferred by reference to the date of maturity mentioned. That would not amount to even an agreement much less a bond. Their Lordships of the Privy Council in Mohammad Akbar Khan v. Attar Singh AIR 1936 P.C. 171 and AIR 1938 121 (Privy Council) , treated a document such as this as substantially a receipt. The Court below was therefore, not right in treating it as a bond and requiring the plaintiff to pay duty and penalty amounting to Rs 313-12-0. The order of the Court below amounted to refusal to exercise jurisdiction to admit the document and to act upon it in case the plaintiff failed to pay the duty and penalty. This action on the part of the lower Court is clearly illegal. The document in any case cannot be a bond.

I would therefore hold that the present case can properly fall under clause (c) of section 115 of the CPC and the order of the Court, below deserves to be interfered with.

The petition is therefore allowed and the order of the Court below holding the document to be a bond and requiring the plaintiff to pay Rs. 343-12-0 as duty and penalty is set aside and it is held that the document is a receipt.

The petitioner is entitled to his costs of this petition from the opposite party.

The trial Court shall deal with the case in view of the opinion expressed above as regards the nature of the document and dispose of the case according to law.