

(1964) 03 AP CK 0017

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 527 of 1962

State Bank of Hyderabad per V.V. Shastri	APPELLANT
Vs	
Ranganath Rathi	RESPONDENT

Date of Decision : 05-03-1964

Acts Referred:

Hyderabad Stamp Act, 1331 — Section 2(18), 2(4)
Stamp Act, 1899 — Section 2(22), 2(5), 6

Citation : AIR 1966 AP 215

Hon'ble Judges : Satyanarayana Raju, J; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : N. Narasimha Iyyengar, for the Appellant; N.V.B. Sankara Rao, 2nd Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This Revision Petition has been referred to a Division Bench as it involves an important question of law.

2. An objection was raised by the Court Fee Examiner that the document, which is extracted below, is not a promissory note but it bond and, therefore, stamp duty and penalty is leviable under Article 10 read with Section 33 (1) (b) of the Hyderabad Stamp Act. The learned Chief Judge, City Civil Court, upheld the objection and directed the plaintiff (the State Bank of Hyderabad) to pay stamp duty of Rs. 690 and a penalty of Rs. 6,900 in all totalling Rs. 7,590 (H.S.) equivalent to Rs. 6505-71 nP (I. G.).

3. The document reads as follows:

"117, Park Lane, Secunderabad -- Deccan, Date 18th July 1950.

On demand I Ranganatha Rathi son of Harnath Rathi residing at Kachiguda Station Road, Hyderabad, promise to pay to Messrs Darabji Bros and Co., Bankers, 117, Park Lane. Secunderabad--Dn., the sum of O. S. Rs 46,000 (Forty six thousand only) together with interest thereon at 6 per cent per annum for

value received in cash.

Executed at Secunderabad-Dn. this 18th day of July 1950,

Sd/ Ranganth Rathi (on four one-anna India revenue stamps).

Witnesses:

1. Sd).....

2. Sd).....

4. On the reverse of the document, there is an endorsement made by Darabji Brothers and Company, represented by partner, that the amount should be paid to the State Bank of Hyderabad or order.

5. The document in question bears stamps requisite for a promissory note, and if it is held to be of a promissory note, no question of payment of deficit stamp duty would arise. But the learned Judge has held that the document is a bond as defined in Section 2, Sub-section (4) of the Hyderabad Stamp Act. It is contended by Sri Narasimha Ayyangar, learned counsel for the plaintiff, that the conclusion reached by the Judge proceeds upon a misconstruction of the provision of Section 2 (4) (b) of the Hyderabad Stamp Act, that the document is a promissory note as defined in Section 2 (18) and that it is duly stamped.

6. The question for decision is whether the document is a promissory note or a bond.

7. It is common ground that this question must be answered with reference to the provisions of the Hyderabad Stamp Act, though it is no doubt true that those provisions are, for the most part, in pari materia with the provisions of the Indian Stamp Act.

8. Before considering the contentions raised by the learned counsel for the petitioner, it would be convenient to read the material provisions of the Hyderabad Stamp Act. Section 2(4)(b) reads:

"bond" includes

(a).

(b) every instrument attested and not payable to order or bearer, whereby a person agrees to pay money to another."

9. Section 2 (18) adopts by reference the definition of "promissory note" in the Hyderabad Negotiable Instruments Act.

10. The following definitions of "promissory note" and "negotiable instrument" are from the authorised translation of the Hyderabad Negotiable Instruments Act (V of 1318 Fasli), as amended by Act No. XIV of 1329 Fasli.

"3. A "promissory note" is an instrument in writing containing an unconditional

undertaking, signed by the maker, to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

EXCEPTION: This does not include bank notes or currency notes."

* * * *

"11. A "negotiable instrument "means a promissory note, bill of exchange or cheque payable to

(1) a specified person or his order;

(2) the order of a specified person or the bearer thereof, or

(3) any person or the bearer thereof."

Section 3 of the Hyderabad Negotiable Instruments Act corresponds to Section 4 of the Indian Negotiable Instruments Act. Section 13 of the Indian Act, as amended in 1919, contains the definition of "negotiable instrument". It reads as follows:--

"(1) A negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

EXPLANATION: (i):-- A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. . ."

11. There can be no doubt that the document in question clearly falls within the definition of a bond in Section 2(4)(b) of the Hyderabad Stamp Act, namely, an instrument attested by a witness and not payable to order or bearer, whereby a person agrees to pay money to another. The instrument is attested by a witness. It is not payable to order or bearer and by the instrument a person has agreed to pay money to another. But it is contended before us that the definition of "promissory note" in the Hyderabad Stamp Act, which adopts by reference the definition contained in the Hyderabad Negotiable Instruments Act, does not make it obligatory that the amount should be made payable to bearer or order.

12. In a recent decision rendered by a Division Bench of this Court, consisting of Manohar Pershad and Mohamed Ahmed Ansari JJ. in *Govula Ramakistiah Vs. Yerram Yellappa*, it has been pointed out that a document, which is not one payable to bearer or order and which is attested by a witness, clearly falls within the definition of "bond". The learned Judges reached this conclusion after a careful consideration of the material provisions of the Hyderabad Stamp Act and the Hyderabad Negotiable Instruments Act. They have held that Explanation I to Section 13(1) of the Indian Negotiable Instruments Act, cannot be read into the definition of "bond" as contained in Section 2(4)(b) of the Hyderabad Stamp Act, so as to make the instrument which on the face of it is not payable to order by virtue of the said explanation. In arriving at this conclusion, the learned Judges

followed a series of decisions of the High Courts of Calcutta, Madras and Nagpur and the decision rendered by Mr, Chief Justice Subba Rao in *Sitharama Ratna Ranganayakamma v. Venkata Subba Rao*, AIR 1957 A P 779. They also followed the decision of the erstwhile Hyderabad High Court in *Naoshir Yarkhan v. Prabhu Dayal*, 38 Deccan LR 342. We are informed that the original report is in Urdu and we have had not the advantage of reading its English version.

13. In *Ram Narayan Bhagat and Another Vs. Ram Chandra Singh and Others*, *Ramaswami C. J. and Choudhary J.*, have held that for the purposes of the Stamp Act, an instrument has to be considered as it stands and if, on the terms thereof, the amount due under it is not payable to order or bearer and is attested by a witness, it is a bond and not a promissory note within the meaning of the Stamp Act. The learned Judges have further held that Section 13 of the Negotiable Instruments Act, as amended in 1919, does not introduce any change in the definition of "promissory note" as given in Section 4 of that Act, though in effect, for the purposes of that Act the scope of a document coming within the definition of promissory note is enlarged as being negotiable even in the absence of express terms as regards their negotiability. The teamed Judges referred to the decision of this Court in *Govula Ramakistiah Vs. Yerram Yellappa*, with approval.

14. In the above decision, the Patna High Court has referred to a long line of authority, beginning with *Sakharam Sankar v. Ram Chandra*, I L R (1903) Bom 279; *Ramen Chetty v. Mohamed Ghouse*, I L R (1889) Cal 432 and Reference under Stamp Act Section 46, I L R (1885) Mad 87. All these decisions have taken a consistent view that if the amount payable under a document is not payable to order or bearer, it is a bond and not a promissory note. The same view was taken by a Full Bench of the Rajasthan High Court in *Nanga Vs. Dhannalal and Others*,

15. This question was also considered by a Special Bench of the Allahabad High Court in *Mohd. Mustafa Ali Khan Vs. Raj Rajeshwari Devi*, where the document read as follows:

"On demand I promise to pay.with

interest at 3 per cent per annum for value received by me."

The document was duly stamped as a promissory note and was signed by the executant and bore the signatures of two witnesses. The majority of the Judges held that the document was chargeable as a bond. This view was dissented from by Mr. Justice Dayal.

16. Sri Narasimha Ayyangar has fairly conceded that barring the dissenting judgment of Mr. Justice Dayal in the *Mohd. Mustafa Ali Khan Vs. Raj Rajeshwari Devi*, referred to above, the Courts in India, including the erstwhile Hyderabad High Court, have taken the view that all express agreements to pay money, when attested, are chargeable as bonds unless they are payable to order or bearer. But he has submitted that a Full Bench of the Madras High Court has taken a contrary view or at least a view which supports his present contention.

It, therefore, becomes necessary for us to consider the decision of the Full Bench decision of the Madras High Court in *In the matter of Kuppusami*, *In the matter of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar, in favour of Arunachala Chettiar*, where the learned Judges pointed out that the mere omission of the expression "to the order of" would not render a document any the less a promissory note, if otherwise it fulfilled the terms of the definition of promissory note; that actually a promissory note need not contain the expression "to the order of", and that it would be sufficient if there was an unconditional undertaking to pay a certain sum of money to a certain person. There the document provided as follows:

"Promissory note executed in favour of A. residing at P by K. The sum found due to you is Rs. 3000. As this sum had to be paid to you, I shall pay the same together with interest at Re. 0-4-0 per month per Rs. 100 in six equal instalments and discharge the same."

Rajamannar C. J. there pointed out as follows:

"We are further of opinion that the document in question clearly falls within the definition of "bond" in Section 2(5)(b) of the Indian Stamp Act, namely, an instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another."

17. According to Sri Narasimha Ayyangar, the real test would be to find whether the document contains an unconditional undertaking to pay and that the absence of the words "to the order of" should not render the document any the less a promissory note. He would deduce the existence of an unconditional undertaking to pay in the document which is before us by the presence of the words "on demand", and it is on this basis that he has endeavored to distinguish the decisions of the various High Courts, all of which have taken the view that negotiability is the test of a promissory note. We find on a careful review of the decisions rendered by the High Courts of Bombay, Allahabad, Patna and Madras, that in some or them the words "on demand" were there but notwithstanding the existence of those words, the Courts had taken the view that the documents did not satisfy the test of negotiability and that they were not promissory notes. The expression "on demand" in a promissory note has a technical meaning. It means "payable immediately or forthwith". But every document which contains a promise to pay on demand is not necessarily a promissory note.

18. In *Khetra Mohan Saha and Others Vs. Jamini Kanta Dewan and Others*, *Mukerji and Graham JJ.* observed as follows:

"Explanation (1) which, amongst other amendments, was introduced by Act VIII of 1919 to Section 13 of the Negotiable Instruments Act of 1881, was meant to enlarge the definition of a negotiable instrument. By this amendment a promissory note not payable to order, which previously was not negotiable was brought within the class of negotiable instruments; and the amendment, in my opinion, cannot be read into the definition of a bond as contained in Section 2(5)

(b) of the Stamp Act so as to make an instrument, which on the face of it is not payable to order, one payable to order by virtue of the said explanation and thus to take it out of the said definition. For the purposes of the Stamp Act, the documents, as they appear on the face of them, have to be considered. They are attested by witnesses and are not payable to order or bearer. In my judgment they are bonds within the meaning of the Stamp Act and should have been stamped as such."

19. This decision was followed by a Division Bench of the Madras High Court in In the matter of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar, in favour of Arunachala Chettiar, .

20. In the above Madras Full Bench Case, In the matter of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar, in favour of Arunachala Chettiar, the earlier decision of that Court which followed the Calcutta view was not considered nor did the learned Chief Justice express his dissent. We are unable to hold that the Full Bench decision of the Madras High Court has the effect of overruling the earlier view of that Court.

21. This brings us to the question as to whether, in any view, the provisions of Section 6 of the Hyderabad Stamp Act, which are in pari materia with the provisions of Section 6 of the Indian Stamp Act, are not attracted. Section 6 reads as follows:

"Subject to the provisions of Section 3, when an instrument is so framed as to come under two or more items of the schedule, and where different duties are chargeable therefore such instrument shall be chargeable with the highest duty of such items."

22. In The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another, a Full Bench of the Madras High Court held that the document under consideration was an instrument of partition within the meaning of Section 2(15) of the Stamp Act and must be stamped as such under Article 45; that though it might also fall under Article 46(b) as an instrument of dissolution of partnership, it had to be stamped under Article 45 with the higher stamp duty by reason of Section 6. At page 176 (of Mad LJ): (at p. 309 of AIR) Mr. Justice Varadachariar, who spoke for the Full Bench, stated thus:

"Before us, however, the objection has been stated in a different form by Mr. K. Rajah Aiyar who appears for the party. He contended that there being a special article, namely, Article No. 46 providing for an instrument of dissolution of partnership there is no reason why the document in the present case should be held to fall by a strained construction under the definition of an instrument of partition. This argument ignores the provision in Section 6 of the Stamp Act which enacts that wherever an instrument is so framed as to come within two or more of the descriptions in Schedule I and the duties chargeable thereunder are different, that document will be chargeable only with the higher of such duties. It is therefore no argument to say that the instrument in question is one relating to

the dissolution of a partnership if according to its terms it also falls under the definition of an instrument of partition."

23. This Full Bench decision of the Madras High Court was affirmed by their Lordships of the Supreme Court in *The Member, Board of Revenue Vs. Arthur Paul Benthall*, . Dealing with the object and scope of sections 4 to 6 of the Stamp Act, Mr. Justice Venkatarama Ayyar stated thus;

"Section 4 deals with a single transaction completed in several instruments, and Section 6 with a single transaction which might be viewed as falling under more than one category, whereas Section 5 applies only when the instrument comprises more than one transaction, and it is immaterial for this purpose whether those transactions are of the same category or of different categories. The topics dealt with in the three sections being thus different, no useful purpose will be served by referring to Section 4 or Section 6 for determining the scope of Section 5 or for construing its terms. It is not without significance that the legislature has used three different words in relation to the three sections, "transaction" in Section 4, "matter" in Section 5, and "description" in Section 6."

24. Sri Narasimlia Ayyangar has, however, contended that where instruments fall under both a general and a specific head of duty, duty will be chargeable under the specific head even though it may be lower than the duty under the general head. As supporting his contention he has relied upon the decision of a Full Bench of the Madras High Court in *In the matter of Guardians and Wards Act*, ILR 1949 Mad 82 : (AIR 1949 Mad 567). There it has been held that a proxy falling under Article 52 is also a power of attorney (Article 48) but would only be chargeable as a proxy. The basis for this exception is that in such a case there is no ambiguity. Section 6 deals with ambiguous instruments, i.e., instruments which may fall under any one of two or more Articles in Schedule I. This section embodies the principle that where an instrument is liable to duty under two or more categories of taxation, the document should be assessed to the highest of the duties payable. We hold that in any view of the matter, Section 6 is applicable and even if the document in question falls within the definition of both "bond" and "promissory note", the higher of the duties," which is payable on a bond, should be paid.

25. As a result of the above discussion, we hold that the conclusion reached by the learned Judge is correct. This Revision Petition, therefore, fails and is dismissed. The petitioner shall pay a sum of Rs. 100 to the Government Pleader.