

(1910) 08 CAL CK 0017
In the Calcutta High Court

Syed Basir-Ud-Din Ahmed

APPELLANT

Vs

Kalika Prosad Singh and Others

RESPONDENT

Date of Decision : 16-08-1910

Acts Referred:

Stamp Act, 1899 — Section 35, 61

Citation : 7 Ind. Cas. 582

Hon'ble Judges : Vincent, J; Brett, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for recovery of arrears of rent Brought by the plaintiffs who are the transferees of the original lessor's rights in the property. The lower appellate Court has given the plaintiffs a decree for the full reliefs claimed. The defendant No. 1 has appealed to this Court and, in support of the appeal, three points have been raised. The first point is that the ekrarnama or the document by which the rights of the lessors were transferred to the plaintiffs not having been properly stamped and the penalty not having been paid, the document is inadmissible in evidence and the plaintiffs' claim which is based on that document should not have been decreed. It seems, however, that, in the Court of first instance, a point was raised as to the character of this document and as to the stamp duty payable thereon and the learned Munsif came to the decisions that the stamp upon the document was sufficient under the law and he accordingly admitted the document in evidence. On appeal, the question whether the stamp was sufficient or not was raised and the learned Judge in concluding passage in his judgment gives his finding that the stamp was insufficient and that an extra stamp duty of Rs. 15 was payable and a penalty of Rs. 150 was recoverable on the document u/s 35 of the Stamp Act. He then directed that the document should be impounded u/s 61 of the Stamp Act. Section 35 of the Stamp Act, on which the learned pleader for the appellant relies, provides that a document chargeable with duty shall only be admissible in evidence on payment of the proper duty and Section 36 of the same Act provides that where a document has been admitted in evidence, such admission shall not, except as

provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the document has not been duly stamped. Section 61 provides that, when during the hearing of an appeal it is brought to the notice of the appellate Court that an instrument which has been admitted in evidence has not been duly stamped, then that Court may take the matter into consideration, and if of opinion that the instrument should not have been admitted in evidence without the payment of duty and penalty as required by the Act, the Court may record a declaration to that effect determining the amount of the duty to which the instrument is chargeable, and may require any person in whose possession or power such document then is to produce the same and may impound the document. It has been argued by the learned pleader for the appellant that the effect of these two provisions of the law is that the appellate Court is vested with the same powers as the Court of first instance with reference to the acceptance of a document as admissible in evidence and that, therefore, when the appellate Court holds that the proper duty has not been paid, that decision of the appellate Court amounts to a finding that the document is inadmissible in evidence without payment of the higher duty and penalty and, therefore, until that duty and penalty have been paid, the document cannot be accepted in evidence. In our opinion, that is not the effect of the law as laid down in those two sections of the Act. The latter section is, in our opinion, clearly framed for fiscal purposes, that is to say, for the protection of the Government revenue and it does not affect the provisions of Section 36, which distinctly provides that, when an instrument has been admitted in evidence, such admission shall not be called in question at any subsequent stage of the suit. In our opinion, the learned District Judge took a correct view of the law and adopted the only procedure which he could have adopted, that is to say, he regarded the document as admissible in evidence and at the same time declared that an extra duty ought to be paid and that that duty and the penalty were leviable from the person who filed the documents. He also held that that sum might be recovered by the Collector. In our opinion, the first point taken in support of the appeal fails.

2. The second point which has been taken is that the lower appellate Court erred in law in allowing the plaintiff to recover interest on the arrears of rent from before the date of the transfer in their favour or to anything more than Rs. 971 which, in the ekrarnama, is the amount described as the rent due to their transferers from the defendant No. 1. We are of opinion that the view taken by the learned Judge is correct. Under the terms of that document, the transferers clearly conveyed to their transferees all their rights as lessors, not only to the rents in arrear but also to the interest on such arrear; and the learned Judge is right in saying that the interest, being a legal incident, passed to the transferees with the transfer of the arrears of rent. The second point, therefore, in our opinion, cannot be supported.

3. The third point taken is that the learned Judge erred in law in giving to the plaintiffs a decree for certain amounts which are described as abwabs. They

appear from the plaint to be the sums claimed as selami, wasilbalti salami and teherir or entry-fee to the zemindary sherista. It is not proved that these sums were ever included in and consolidated with the rent and, in these circumstances, we are of opinion that the plaintiffs are not entitled to recover them. The case of Pudmanund Singh v. Baij Nath Singh 15 C. 828, on which the learned Judge relies in holding that these sums are recoverable, was expressly dissented from in the decision of a Full Bench of this Court in the case of Radha Prosad Singh v. Bal Kowar Koeri 17 C. 726, The judgment of the lower appellate Court in so far as it finds that the sums claimed as abwabs are recoverable must be set aside.

4. The result, therefore, is that we modify the judgment and decree of the lower appellate Court to this extent only that we direct that the sum of Rs. 18-10-0, which has been claimed by the plaintiffs on account of abwabs and has been decreed, be struck out of the decree and that the suit, so far as that sum is concerned, be dismissed. The findings and the decree of the lower appellate Court in respect of the rest of the plaintiffs' claim are confirmed and the appeal with regard to them is dismissed. In view of the fact that the success of the appellant in this Court has been very small, we direct that the appellant do pay the respondent costs in this Court.