

(1960) 07 MP CK 0035

In the Madhya Pradesh High Court

Case No : Civil Revision No. 49 of 1960

Vinayak Dattatraya

APPELLANT

Vs

Hasanali Haji Nazarali

RESPONDENT

Date of Decision : 23-07-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4
Stamp Act, 1899 — Article 33, 27, 35, 36, 64

Citation : AIR 1961 MP 6 : (1962) JLJ 482 : (1960) 5 MPLJ 1346

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : S.L. Garg, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is an application in revision by the defendant in a money suit, objecting to the order of the Civil Judge that it was not necessary to impound for assessment of stamp duty, a deed of gift produced by the plaintiff as the basis of his right to sue, and that it was admissible without stamp duty. Though this is only a matter arising between the Government and the plaintiff in regard to taxation, the present case raises important questions regarding the significance of the words "admitted into evidence" in Section 36 of the Stamp Act, the real meaning of the words "value of the property as set forth in such instrument" in Article 33 in the Schedule of the Stamp Act, and in general, the significance of Sections 27 61 and 64 of the said Act.

The facts of the case are that the plaintiff brought this suit as the present owner of a running business by virtue of a deed of gift from the original owner, who was no other than his father. A gift-deed was referred to in the plaint, and was produced in time, setting out the particulars of the establishment but not mentioning the value of the property that was being gifted and on which the

donee was being placed in possession. However, elsewhere in the document certain liabilities of the donor have been mentioned and it has been stated that the donee should take over that liability. The document riot being stamped, the defendant raised an objection as to the admissibility at that stage and urged that the document should be treated as being for a consideration at least equal to the debt which, as a part of the general arrangement, the donee was to take over. On that basis, the penalty payable in the event of the document being impounded and sent to the Collector for taxation would be of the order of several thousands.

The Civil Judge held that the value of the property or the consideration for the gift has not been set forth in the deed. Whether or not it is a breach of the requirement of Section 27 of the Stamp Act, and whether or not there was a case for starting a prosecution u/s 64 of the Act, the document was not under Article 33 liable to any tax for that very simple reason. In effect, it applied the principles contained in the Full Bench ruling in the matter of In Re: Muhammad Muzaffar Ali, which in fact happens to be practically the only reported ruling on this point, and ordered:

"In these circumstances this document can be taken into evidence (Saksha me grahya hai) without payment of any stamp duty."

Whether this order amounts to admission into evidence or only a bare declaration o? admissibility into evidence, is a question seriously canvassed by the parties before me.

From this order, the defendant has come up in revision urging that the Allahabad ruling is incorrect and the words "set forth" should be understood as referring to "property" that immediately precedes them and not to "value" which is farther behind in the sentence. The Court should have impounded it, and left it to the Collector to ascertain by due inquiry the value of the property and tax it accordingly. He also urged that the order of the trial Court is not one actually admitting the document in the manner provided in Order 13, Rule 4, but one merely declaring that it is admissible as a preliminary step to the actual admission. Therefore, he is not banned by Section 36 of the Stamp Act from raising this question in revision. The plaintiff-opposite party has urged, on the contrary, that the Allahabad interpretation is the only proper one of Article 33, and further that in any view of the matter, the order of the Court is one actually admitting the deed into evidence though the mechanical process of putting the number and similar particulars under Order 13 Rule 4 was yet to be done.

In my opinion, the order of the Civil Judge to the effect that the document is admissible (grahya hai) is equivalent to the admission itself. The distinction sought to be made between the Court's declaration of admissibility and the actual admission does not really exist. As laid down in Shivaji v. Gopalji 1955Madh LR 212, where the Court finds in course of the judicial proceeding that the document is admissible, it is really admission for the purpose of Section 36 of

the Stamp Act, and cannot be called into question.

Admission of documents, like any other judicial function in course of a suit, has necessarily to consist of two stages; the first, being the strictly Judicial aspect of it, that is, the weighing of pros and cons; and the second, the mechanical process, giving a palpable and unmistakable shape to that judicial finding. Order 13 Rule 4 deals with the latter and, in fact, begins with the clause "on every document which has been admitted in evidence". The word "admitted"" here means "admitted for judicial purpose", in other words, found, or held to be admissible by the presiding officer after such inquiry as might be called for in that case. Thus, it is not correct to argue that the order of the Court merely declares admissibility, and is not equivalent to admission simply because the officers of the Court take some time to note the particulars and put the mechanical marks.

It has been urged by the applicant that on this view the party which objects to the admission and wants to challenge the order admitting a document will never be able to take the matter in revision. At all events, most often, he will not be able to do so; in other words, he will not get second opportunity to challenge the admission on the ground of absence or insufficiency of the taxation if that is the intention of the law, I certainly fail to see anything wrong or unjust in it. After all, this is a matter primarily between the State and the litigant. Certainly, the opposing litigant can take advantage of this and remind the Court of its own duties in this regard of seeing that the taxpayer is not cheated. But the law does not enable, and in my opinion should not enable, the over-zealous opposing litigant side-tracking the dispute merely by repeatedly insisting upon apparent or real deficiencies of stamp duty, when the Court itself having considered it once, finds that the taxpayer's interests have either not been affected, or have been adequately safeguarded.

It would, of course, be another matter, if a Court hearing an appeal or revision acting suo motu, or upon a prayer by the Collector, reopens the decision, and calls upon the party producing the document to make good the stamp duty and the penalty. This is enabled by Section 61 of the Act. But that is a matter between the authorities and the litigant and not one inter partes. In principle, there is nothing to prevent the disappointed opponent from moving the Collector and trying to persuade him to apply in time u/s 61(1) to the superior Civil Court. But that cannot be taken up directly in revision.

In this connection, the ruling reported in Moon Lal v. Sampat Lal ILR (1952) Raj 1010, has been cited. The position there was different as the Court passed a provisional order that the plaintiffs document should be admitted on condition that penalty is paid. The defendant, however, went up in revision repeating his argument that it was a pro-note and could not be made admissible even on payment of penalty; but by the time he filed the revision, the penalty had been paid, and the conditional admission became final. So, the High Court would not allow the applicant to challenge the admission of the document; in answer to the

submission that on this view the decision of the first Court would always be final in such matters, the High Court suggested a possible way, by which the first Court may immediately on the passing of the conditional order be asked to stay its implementation for some time and move the High Court, meanwhile getting a formal stay order. Such a procedure is no doubt possible where the first Court's order is conditional and it itself stays subsequent admission. It is not possible where the order is final. As already noted, I find nothing unjust or incongruous in the litigant being refused a second chance of objecting admission on the ground of failure to pay or shortage of stamp duty. A later Rajasthan ruling *Ratanlal Vs. Daudas and Another*, , expressly mentions this, as it were, removing any misapprehension that the earlier ruling may have created.

"In enacting Section 36, the Legislature obviously intended that the question of admissibility of an instrument in evidence and the consequence following on such admissibility are only to be considered once, and if the instrument was once admitted in evidence that should put an end to all controversy on the question of sufficiency or insufficiency of stamp so far as parties in that suit were concerned."

The real question is, whether the Allahabad view that in Article 33 the words "as set forth" refer to "value" and not to property is correct. Undoubtedly, it is. Otherwise, the significance of "as" will be missed. It is not property "set forth", but "value..... as set forth", the rule of proximity being broken by the preposition "as". In fact, the property would always be set forth and it need not be mentioned as a yard-stick. For valuation, it is value that may or may not have been actually set forth, the provisions of Section 27 notwithstanding. To the very obvious question whether this would not enable a party to a deed to evade the stamp duty by just not setting forth the value, the Allahabad High Court has given the answer. It is that such a person would for failure to comply with Section 27 be liable to prosecution u/s 64 of the Stamp Act. Section 27 of the Stamp Act, unlike Section 49 of the Registration Act, gives a direction, but does not impose a penalty that the document would be inadmissible into evidence.

All the same, it is not a pious wish without any effective sanction behind it. The sanction is a liability to prosecution and a real possibility of a fine u/s 64 of the Stamp Act. It was entirely the concern of the Legislature, if it should not have armed the State as a taxing authority with a double sanction, as it has done in some other statutes, or give, as here, only one sanction namely, the liability to criminal prosecution. Thus, the mere failure on the part of the parties to a transaction set out in a document to comply with Section 27, does not either render the document inadmissible or liable to impounding and taxed in the manner provided in Section 35. For that, one will have to go to that section and the appropriate article in the schedule which is Article 33.

In the result, I find no substance in this application and I dismiss it accordingly. Costs and pleader's fee to the opposite party according to rules.