

CIVIL RULE.

Before Mukerji and Graham JJ.

KHETRA MOHAN SAHA

v.

JAMINI KANTA DEWAN.*

1927

Jan 5.

Stamp—Promissory Note—Bond—Stamp Act (II of 1899), s. 2. cls. 5 (b) and 22 and ss. 35 and 36.

For the purposes of the Stamp Act, documents have to be considered as they appear on the face of them. A document which contains an unconditional undertaking, signed by the maker, to pay on demand to the person in whose favour it is executed a certain sum of money, principal together with interest, and which is attested by witnesses and is not payable to order or bearer, is a bond within the meaning of the Stamp Act and should be stamped as such.

The Court is not entitled to question the admissibility of a document in evidence, after the disposal of the case and the signing and sealing of the decree in the case.

Civil Rules obtained, under section 115 of the Code of Civil Procedure, by the plaintiffs Khetra Mohan Saha and others against the defendants Jamini Kanta Dewan and others in one of the Rules and Kali Prasanna Dewan and others in the two others.

Behari Lal Saha, the deceased father of the petitioners, brought money suits Nos. 28, 29 and 30 of 1925, in the Court of the First Subordinate Judge of Faridpur, for recovery of money due on three hand notes or promissory notes, which were filed along with the plaints. The promissory notes were nothing but unconditional promises made in favour of the said Behari Lal Saha by the defendants to pay on demand certain sums borrowed by them, with interest at the

*Civil Rules Nos. 902, 912 and 913 of 1926, against the orders of G. Das Ghose, Subordinate Judge of Faridpur, dated June 3, 1926.

1927
 KHETRA
 MOHAN
 SAHA
 v.
 JAMINI
 KANTA
 DEWAN.

rate of 1 per cent. per month. The promissory notes were also attested by some witnesses. After the examination of the plaintiff on commission, the suits were compromised on the basis of compromise petitions filed by the parties in Court. Thereafter the decrees in the cases were signed and sealed. Some time after this, the *sheristadar* of the Court reported that the handnotes in the suits being stamped only as promissory notes were insufficiently stamped, because the instruments having been attested by witnesses were bonds and should have been stamped as such. On this, the Court directed that certain stamp duties and penalties must be paid within 10 days.

Thereupon the plaintiffs moved the High Court and obtained these Rules.

Babu Rajendra Chandra Guha (with him *Babu Debendra Nath Bhattacharya*), for the petitioners. There are two grounds upon which the Rules should be made absolute: *First*, the suit having been compromised before the trial commenced, the deposition of the plaintiff was not read or used in evidence. Therefore, the documents that were tendered in evidence, were never used in evidence. Moreover, after the final disposal of the case, the Court below had no jurisdiction to impose any penalty under section 35 of the Stamp Act by reason of the provisions of section 36 of that Act. See *Rung Lal Kalooram v. Kedar Nath Kesriwal* (1). *Secondly*, the documents are promissory notes and not bonds, although they were attested by witnesses, because they do not contain words prohibiting transfer. This is made clear by the provisions of Act VIII of 1919. This very point was raised and discussed, but not

decided, in *Bidhuranjan Majumdar v. Mangan Sarkar* (1).

The Assistant Government Pleader (Babu Surendranath Guha) submitted, on behalf of the Crown, that the second point was the important point in the case. The documents not being, on the face of them, payable to order, are not promissory notes. They are bonds. Act VIII of 1919 does not purport to amend the Indian Stamp Act. It does amend some of the provisions of the Negotiable Instruments Act only. It is not correct to say that, by implication, the definition of "bond" in the Stamp Act is amended.

Babu Rajendra Chandra Guha, in reply.

Cur. adv. vult.

MUKERJI J. These three rules are directed against as many orders passed by the Subordinate Judge, 1st Court, Faridpur, by which that learned Judge directed the petitioners to deposit stamp duty and penalty in respect of three documents. The petitioners had instituted three suits for recovery of money due upon the said documents and filed the same along with the plaints. A commissioner was appointed for the examination of one of the plaintiffs and the documents were proved in the course of the deposition of that witness taken by the commissioner. Thereafter the suits were adjourned from time to time and ultimately resulted in a compromise on the basis of which decrees were passed on the 25th May, 1926. On the 3rd June, 1926, the decrees were signed and sealed. On the 2nd July, 1926, the *sheristadar* made a report stating that the documents were not promissory notes, but bonds, within the meaning of the Stamp

1927

KHETRA
MOHAN
SAHA
v.
JAMINI
KANTA
DEWAN.

1:27

KHETRA
 MOHAN
 SAHA
 v.

JAMINI
 KANTA
 DEWAN.

MUKERJI J.

Act and accordingly should have been stamped as such. On the said report the Subordinate Judge passed the orders against which these Rules are directed.

The two contentions urged on behalf of the petitioners are: 1st, that the Subordinate Judge had no jurisdiction to make these orders; and 2nd, that the documents are promissory notes and not bonds within the meaning of the Stamp Act.

It will be convenient to deal with the second contention first. The documents are addressed to a particular person, namely, the plaintiff No. 1. Each of them contains an unconditional undertaking signed by the maker to pay on demand to the person in whose favour it is executed, a certain sum of money, principal together with interest. They are attested by a number of witnesses. The definition of "promissory note" as given in section 2 (22) of the Stamp Act adopts the definition as given in section 4 of the Negotiable Instruments Act of 1881, and includes some instruments not covered by that definition. The petitioner's contention is that as these documents are all dated subsequent to 1919, the amendment introduced by Act VIII of 1919 to section 13 of the Negotiable Instruments Act of 1881 has to be taken into account in reading this definition, and if so read, these documents would be instruments payable to order as they do not contain words prohibiting transfer or indicating an intention that they shall not be transferable. They would thus be instruments attested by witnesses but payable to order and consequently would not satisfy the definition of "bond" as given in section 2 (5) (b) of the Stamp Act. In my opinion this argument is not sound. 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. The second contention, therefore, must fail.

The arguments advanced on the first contention, shortly put, are as follows: It is said that the documents were never admitted in evidence by the Court, as the depositions recorded by the commissioner had not yet been brought on the record by reading them in Court, and that the suits never reached the stage at which the documents could be sought to be used in Court and consequently the Subordinate Judge had no jurisdiction to act under section 35 of the Stamp Act. It is also said that if the documents are treated as having been admitted in evidence by the Subordinate Judge, he was not entitled to reopen the matter and deal with the documents again under section 35 of the Stamp Act by reason of the provisions of section 36. I am of opinion that it is not necessary to deal with the first branch of this contention, because as the suits had already been disposed of and the decrees signed and sealed, the provisions of section 35 of the Act

1927

KHETRA
MOHAN
SAHA
v.
JAMI N
KANTA
DEWAN.

MUKERJI J.

1927

KHETRA
MOHAN
SAHA
v.
JAMINI
KANTA
DEWAN.

were wholly inapplicable to the case. The Subordinate Judge had no jurisdiction to proceed in the way that he did.

The Rules should be made absolute and the orders complained of set aside. In view of the fact that the petitioners have not been successful in their second and main contention there will be no order as to costs in their favour.

GRAHAM J. agreed.

S. M.

Rule absolute.

LETTERS PATENT APPEAL.

Before Rankin C. J., C. C. Ghose and Mitter JJ.

SATISH CHANDRA BANERJI

v.

HASEMALI KAZI.*

1927

Jan. 20.

*Limitation—Dispossession of raiyat by landlord as auction-purchaser—
Suit for recovery of possession by raiyat—Bengal Tenancy Act (VIII
of 1885), Sch. III, Art. 3—Guardian—Guardian ad litem—Effect
of appointment of guardian ad litem without his consent.*

A suit brought by a person claiming a subsisting tenancy right under the defendant and praying for recovery of land accordingly, where the ouster was effected by the landlord, is governed by Article 3 of Schedule III of the Bengal Tenancy Act.

Semle: It makes no difference that ouster is effected by the landlord through the machinery of a Court of Law.

It is not reasonable to import into the third column of Article 3 of Schedule III of the Bengal Tenancy Act not merely the words "by the defendant" or "by the landlord", but the words "by the landlord as such".

* Letters Patent Appeal No. 37 of 1926, in Appeal from Appellate Decree No. 171 of 1924.