

CIVIL REVISION.

Before R. C. Miller J.

JOGENDRA CHANDRA BANERJI

v.

SHACHEENDRA KUMAR SHEAL.*

1935

Dec. 9, 20.

Agreement—Memorandum of agreement—Promissory note, stamped deficiently—Debt—Acknowledgment—Indian Stamp Act (II of 1899), ss. 33(a), 35, Sch. I, Arts. 1, 5.

To bring a document under Art. 5 of Sch. I of the Stamp Act, the document must be an agreement or a memorandum of agreement.

A deficiently stamped promissory note can neither be used in evidence as an acknowledgment of a debt nor be impounded.

Kanhaya Lal v. Stowell (1) and *Gopala Padayachi v. Rajagopal Naidu* (2) dissented from.

Manick Chand v. Jomona Doss (3) and *Mulji Lald v. Lingu Makdji* (4) followed.

RULE obtained by the plaintiff.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Ramesh Chandra Pal for the petitioner.

Kanai Dhan Datta and *Krishna Lal Banerji* (II) for the opposite parties.

Cur. adv. vult.

R. C. MITTER J. The Rule has been obtained by the plaintiff, whose suit to recover a sum of money advanced to the defendant by his predecessor-in-title, J. C. Banerji, deceased, has been dismissed by the Small Causes Court Judge of Sealdah. The point for consideration is one of limitation.

In the plaint, which was filed on July 31, 1934, the plaintiff stated that a sum of Rs. 450 was borrowed

*Civil Revision, No. 572 of 1935, against the order of T. Banerji, Judge of the Court of Small Causes at Sealdah, dated Jan. 23, 1935.

1) (1881) I. L. R. 3 All 58 1.

(3) (1880) I. L. R. 8 Cal. 645.

(2) [1926] A. I. R. (Mad). 1148,

(4) (1896) I. L. R. 21 Bom, 201,

1935

*Jogendra
Chandra Banerji*
v.
*Shacheendra
Kumar Sheel.*
—
R. C. Mitter J.

by the defendant on August 1, 1931, from J. C. Banerji, and on that date "as evidence of the loan a "document was executed". The said statement was made as the said document is a promissory note stamped with a stamp of one anna and hence stamped deficiently. Hence the suit as framed is on the original consideration. The document was attached to the plaint. No statement was made in the plaint as to whether any acknowledgment in writing had been made and no such statement was necessary, if the statement made in the plaint, that the loan was taken by the defendant on August 1, 1931, was true, as the suit was instituted just within three years of the said date.

In the evidence, however, it transpired that J. C. Banerji had advanced the said sum of Rs. 450 to the defendant by way of loan about a year and half before August 1, 1931. The plaintiff felt the difficulty that the suit, being based on the original consideration, would be barred, unless there was an acknowledgment in writing within the period of limitation. He, accordingly, sought to use the promissory note as an acknowledgment in writing. If the rules of pleading are to be strictly enforced, the suit ought to be dismissed as soon as it is held that the money was advanced to the defendant before July 31, 1931, there being no allegations in the plaint to save limitation in that case.

The Court below, however, instead of dismissing the suit on that ground has considered the question as to whether the document, executed by the defendant in favour of J. C. Banerji on August 1, 1931, could be used as an acknowledgment in writing within the meaning of s. 19 of the Limitation Act. The said document runs as follows:—

On demand I promise to pay to Mr. J. C. Banerji of 17, Kalimuddi Lane, Beadon Street P.O., Calcutta, the sum of Rs. 450 bearing interest at six pias per rupee per month. Value received in cash, dated August 1, 1931.

There cannot be any doubt that the document is a promissory note.

The lower Court held that this document cannot be admitted in evidence even as an acknowledgment, as it is stamped with an one anna stamp and so stamped insufficiently. It was contended by the plaintiff in the lower Court that the document, regarded as an acknowledgment, is stamped properly, that is, in accordance with Art. 1 of Sch. I of the Stamp Act. The lower Court has rightly pointed out in its judgment that Art. 1 of Sch. I of the Stamp Act does not apply, as the document in question contains an express promise to pay and contains also a stipulation to pay interest. The lower Court, accordingly, ruled out the said document from evidence and, having arrived at the finding that the money had been advanced about a year and half before August 1, 1931, has dismissed the suit as being barred by time.

Before me two points have been urged by the learned advocate of the plaintiff, namely,—

(i) that the said document, which is only sought to be used as an acknowledgment in writing for saving limitation, does not require any stamp duty, and (ii) even if it requires stamp duty, if it is to be used as an acknowledgment in writing, it comes within Art. 5 of Sch. I and that it ought to have been admitted in evidence after being impounded under s. 33 of the Stamp Act, clause (a) of the proviso to s. 35 being not applicable, as the instrument is sought to be used not as a promissory note.

I will take up the first point pressed before me. It is no doubt a well established proposition that the mere fact, that a document is an acknowledgment of a debt, would not make it liable to stamp duty. To bring it within Art. 1 of Sch. I of the Stamp Act it must be written or signed by the debtor in order to *supply evidence of a debt*, that is to say, the document must be given by the debtor to the creditor *with the intention* of supplying evidence of the debt. In such a case, the instrument of acknowledgment must be carefully examined in connection with circumstances to ascertain whether it had been signed to supply

1935

*Jogendra
Chandra Banerji*
v.
*Shacheendra
Kumar Seal,*
R. C. Mitter J.

1935

*Jogendra
Chandra Banerji*
v.
*Shacheendra
Kumar Sheel.*
R. C. Mitter J.

evidence of a debt, and if the conclusion arrived at is that it was, then and then only would it come within Art. 1 of Sch. I: *Mulji Lalá v. Lingu Makáji* (1); *Ambica Dat Vyas v. Nityanund Singh* (2); *Galstaun v. Hutchison* (3) and *Surjimull Murlidhar Chandick v. Ananta Lal Damansi* (4). To bring a document under Art. 5 of Sch. I, the document must be an agreement or a memorandum of an agreement. Thus where there is a series of transactions between two parties and in the books of the creditor the advances made from time to time are entered on the debit side and the payments made from time to time are entered on the credit side, and six-monthly balances struck therein and signed by the debtor and the balances carried over, although the entries in those books signed by the debtor can be used as acknowledgment under s. 19 of the Limitation Act, they would require no stamp duty either under Art. 1 or Art. 5 of Sch. I. This, in my judgment, is the effect of a series of decisions of this Court beginning with the case of *Brojender Coomar v. Bromomoye Chowdhrani* (5). See *Brojo Gobind Shaha v. Goluck Chunder Shaha* (6); *Nund Kumar Shaha v. Shurnomoyi* (7) and *Galstaun v. Hutchison* (8). But this does not clear the path of the plaintiff, for, in my judgment, a defectively stamped promissory note cannot be used in evidence as an acknowledgment of a debt.

This leads me to the consideration of the second point urged on behalf of the plaintiff. The Allahabad and the Madras High Courts have held that a defectively stamped promissory note can be used as an acknowledgment under s. 19 of the Limitation Act. I cannot agree, because, in my judgment, it nullifies s. 35 of the Stamp Act, and is, moreover, against the principle formulated in some decisions of this Court passed under the Stamp

(1) (1896) I. L. R. 21 Bom. 201.

(2) (1903) I. L. R. 30 Cal. 687.

(3) (1912) I. L. R. 39 Cal. 789.

(4) (1923) I. L. R. 46 Mad. 948.

(5) (1878) I. L. R. 4 Cal. 885.

(6) (1882) I. L. R. 9 Cal. 127.

(7) (1887) I. L. R. 15 Cal. 162.

(8) (1912) I. L. R. 39 Cal. 789.

Act of 1879. The cases of the Allahabad and Madras High Courts directly in point are *Kanhaya Lal v. Stowell* (1); *Gopala Padayachi v. Rajagopal Naidu* (2); *V. R. Rakhuppan Ambalam v. C. Suppiah Ambalam* (3) and *Randhir Singh v. L. Thaman Lal* (4). The cases of *Govind Singh v. Bijay Bahadur* (5) and *Kesavaramayya v. Visamsetti Venkataratnam* (6) do not directly deal with the question now before me. In the first mentioned case a receipt and a defectively stamped promissory note were executed on the same date. The receipt was admitted as an acknowledgment but the promissory note was excluded, and in the last mentioned case the promissory note, which was used as acknowledgment, had not been defectively stamped but being made payable to bearer was hit by s. 26 of the Indian Paper Currency Act (II of 1910). The decision of the majority of Judges in *Kanhaya Lal's* case (1), in my judgment, cannot be of any assistance. The document there in question was executed while the Stamp Act of 1869 was in force. Art. 5 of that Act corresponds with Art. 1 of the present Act and s. 18 of that Act with s. 35 of the present Act. The terms of s. 18 were different from the terms of s. 35 of the present Act, the words "for any purpose" after the phrase "be admitted in evidence" were not there, being first introduced in the Stamp Act of 1879. The proviso (a) to s. 33 does not authorise the Court to impound a promissory note defectively stamped. The opening words of s. 35 are perfectly general and a document defectively stamped cannot be admitted in evidence for any purpose. Where a defectively stamped document can be impounded it can be used in evidence after the requisite stamp has been levied, but where it cannot be impounded, *e. g.*, a promissory note or other documents excepted in proviso (a) to s. 35, and the deficiency in stamps cannot be made up by that process, it cannot be admitted in evidence for any

1935

*Jagendra
Chandra Banerji*
v.
*Shacheendra
Kumar Sheal.*
R. C. Mitter J.

(1) (1881) I. L. R. 3 All. 581.

(2) [1926] A. I. R. (Mad.) 1148.

(3) [1930] A. I. R. (Mad.) 485.

(4) [1934] A. I. R. (All.) 951.

(5) [1929] A. I. R. (All.) 980.

(6) [1926] A. I. R. (Mad.) 452.

1935

*Jogendra
Chandra Banerji*
v.
*Sh. Jhendra
Kumar Sheel.*
—
R. C. Miller J.

purpose, even for a collateral one. This, in my view, is the effect of the decisions in the case of *Manick Chand v. Jomona Doss* (1) and *Mulji Lalai v. Lingu Makaji* (2), which decisions though given under the Act of 1879 I have no hesitation in following. I, accordingly, hold that the document sought to be used in this case as an acknowledgment cannot be impounded and being a defectively stamped promissory note cannot be used in evidence as an acknowledgment. For the aforesaid reasons, I discharge the Rule with costs, hearing fee one gold *mohur*.

Rule discharged.

G. S.

(1) (1840) I. L. R. 8 Cal. 645.

(2) (1896) I. L. R. 21 Bom. 201.