

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Wallace.

VENKANNA (FIRST DEFENDANT), APPELLANT,

v.

PARASURAM BYAS AND THREE OTHERS (PLAINTIFF
AND OTHERS), RESPONDENTS.*

1929,
February 1.

Civil Procedure Code (V of 1908), O. XIII, r. 4—Admission of document by the trial Court, time for—Sec. 2 (20)—“Signed” not including stamping of initials of the judge.

If a trial judge had not considered the admissibility of a document proved before him, the mere endorsement thereon under Order XIII, rule 4, Civil Procedure Code, does not preclude him from considering its admissibility at a later stage of the case.

Semble—Though “signed” includes, according to section 2 (20), Civil Procedure Code, “stamped,” “initials” of the judge cannot be “stamped.”

APPEAL against the Order of the Court of the Subordinate Judge of Rajahmundry in A.S. No. 98 of 1926 preferred against the decree of the Court of the Principal District Munsif of Rajahmundry in Original Suit No. 550 of 1924.

The necessary facts appear from the Judgment.

Ch. Raghava Rao for appellant.

P. Somasundram for respondents.

JUDGMENT.

PHILLIPS J.—In this case, the plaintiff (first respondent) sued on a hundi which was proved by the first defendant. Subsequently a clerk of the Court stamped the usual endorsement as to the production and admission in

* Civil Miscellaneous Appeal No. 241 of 1927.

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evidence of the document and the District Munsif's initials were affixed to this endorsement by a rubber stamp. Whether that was done by his own hand or by some one else does not appear. The District Munsif on a consideration of the document held that it was not duly stamped and therefore inadmissible in evidence and rejected it. The Subordinate Judge relying on *Sugappa v. Govindappa*(1) held that when the District Munsif had admitted the document and made the endorsement required by Order XIII, rule 4, of the Civil Procedure Code, it was not open to him to subsequently reject it, and remanded the suit for disposal. The first defendant now appeals against this Order.

Under Order XIII, rule 3,

“the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”

Prima facie, therefore, it would appear that the District Munsif was justified in rejecting this document, but it is contended for the respondents that when the endorsement mentioned in Order XIII, rule 4, has been made upon a document—an endorsement which purports to admit the document in evidence—it is not open to the Court to subsequently reject it. This argument would seem to involve that the mere mechanical act of endorsement is sufficient to constitute admission in evidence and that a judicial consideration of its admissibility cannot be had after such endorsement has been made, and this in effect amounts to a contention that the admission of a document in evidence may be done by a purely mechanical act.

In the first place, it is very doubtful whether, in the present case, the provisions of Order XIII, rule 4, have

(1) (1902) 12 M.L.J., 351.

been completed with, for the endorsement under that rule must be signed or initialled by the Judge. Under section 2 (20), Civil Procedure Code, "signed" includes "stamped" but there is no provision that initials may also be stamped. In the present case the Judge's initials were placed on the document by means of a rubber stamp and certainly the placing of such a stamp by a third person could not amount to initialling by the Judge, and it is not at all clear as to whether the stamp was affixed by the Judge himself or by a third person. I however think it is unnecessary to enquire as to who affixed the rubber stamp because it appears to me that the authorities are clear that a document is not deemed to have been admitted in evidence until the Judge has applied his mind to a consideration of its admissibility. The mere endorsement under Order XIII, rule 4, does not necessarily imply such consideration and in the present case it is clear from the District Munsif's judgment that he had not considered the admissibility until after the endorsement had been made. This view has been held in *Chummilal v. Mula Bai*(1) and also by the Punjab Chief Court in *Sundar Das v. Peoples' Bank of India, Ltd.*(2) and the Nagpur Chief Commissioner's Court in *Sitaram v. Thakurdas*(3). The case in *Sugappa v. Govindappa*(4) is no authority to the contrary, for there it was held that although the Judge might have intended to reject the document yet in fact he had not rejected it but admitted it in evidence. *Dasichanar v. Ram Autar Singh*(5) would perhaps appear to support the respondents' case, for it is stated that the documents were admitted in evidence and exhibited and subsequently stamped; the District Munsif removed them from the

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(1) (1910) 12 Bom. L.R., 466.

(2) (1912) 16 I.C., 834.

(3) (1919) 50 I.C., 781.

(4) (1902) 12 M.L.J., 351.

(5) (1923) 71 I.C., 476.

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record of the evidence; but the facts, as is so often the case in these unauthorized reports, do not appear in the report and what exactly had been done by the District Munsif to admit these documents in evidence is not stated. As section 36 of the Stamp Act prohibits the rejection of a document once it has been admitted in evidence, even in a subsequent stage of the same suit, it is clear that, under that section, objection could not be taken when there had been such admission. What has to be determined in each case is whether there has been an "admission" or not. This case of the Patna High Court, *Dasichanar v. Ram Autar Singh*(1), does not discuss this point, but it appears to have been assumed that the documents had been properly admitted in evidence. That, I hold is not the case here, and therefore the District Munsif was justified in rejecting the document.

The appeal must therefore be allowed and the District Munsif's decree restored with costs both here and in the lower Appellate Court.

WALLACE, J.

WALLACE, J.—I agree and have nothing to add.

N.R.

(1) (1923) 71 I.C., 475.
