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MADHAVAN NAIR J.

admitted in the course of evidence in support of subsidiary points arising in the case. There is no authority in support of this distinction. We therefore hold that it is not now open to the appellants to argue that Exhibit J should be rejected on the ground that it is a promissory note and was insufficiently stamped at the time of its production.

The next question relates to the merits of the case. Basing his arguments on some of the findings of the lower Court, the learned Advocate-General was able to put forward a case *prima facie* somewhat strong; but on closer examination of the facts it will be found that the appeal has no merits to support it.

[His Lordship discussed the evidence and agreed with the conclusions of the Subordinate Judge and dismissed the appeal with costs.]

G.R.

APPELLATE CIVIL.

Before Mr. Justice Jackson.

1934, January 26.

VENKATAKRISHNA REDDI (PLAINTIFF), PETITIONER,

v.

BATCHA REDDI (DEFENDANT), RESPONDENT.*

Indian Stamp Act (II of 1899), *sec.* 36—*Understamped promissory note admitted in evidence—Effect of—Such document admitted by trial Court as an acknowledgment—If could be treated as a promissory note by appellate Court.*

When once a document has been admitted, the question of its admissibility on fiscal grounds is finally set at rest under section 36 of the Indian Stamp Act. Where a trial Court admits

* Civil Revision Petition No. 1193 of 1930.

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an understamped promissory note merely as an acknowledgment, it is open to the appellate Court to treat it as a promissory note.

Gopala Padayachi v. *Rajagopala Naidu*, A.I.R. 1926 Mad. 1148, dissented from.

Venkata Reddi v. *Hussain Setti*, (1933) I.L.R. 57 Mad. 779, followed.

PETITION under section 115 of Act V of 1908, praying the High Court to revise the decree of the District Court of South Arcot, dated 12th September 1929 and passed in Appeal Suit No. 127 of 1929, preferred against the decree of the Court of the District Munsif of Cuddalore in Original Suit No. 465 of 1928.

T. E. Ramabhadrachariar for petitioner.

T. V. Ramanathan and *T. D. Srinivasachariar* for respondent.

Cur. adv. vult.

JUDGMENT.

Plaintiff sues defendant for Rs. 300 on the allegation that he advanced this amount to defendant who agreed to repay it at twelve per cent interest. "In support of this" he executed a document understamped for a promissory note. The District Munsif admitted the document as an acknowledgment, found the agreement to be proved and decreed the suit.

The District Judge disbelieved the story of the prior agreement and held it to be an ordinary promissory note transaction. Accordingly he dismissed the suit.

In revision it is pleaded that he was not entitled to reverse the decree on the mere ground of an improper admission of the promissory note.

The lower Court dismissed the suit because it did not believe the evidence of the prior contract,

not on the mere ground that the document was improperly admitted ; and if the Deputy Registrar had read the papers he would never have admitted this civil revision petition.

Now two points are taken. Firstly, that the cause of action was merely the defendant's possession of plaintiff's money under a contract which had become void, and the money was recoverable under section 65 of the Contract Act. That is not the case which plaintiff brought to Court ; for he pleaded a definite agreement, and only failed because the Judge thought his evidence false.

Secondly, that, having found it to be a promissory note transaction, the Judge should have decreed it as such. Again this fails on the short ground that it is not plaintiff's original plea. A party cannot plead an antecedent debt and acknowledgment, and then complain of gross irregularity because he is not given a decree upon a promissory note.

The argument in this Court has ranged over the question whether when the trial Court admits an understamped promissory note merely as an acknowledgment, the appellate Court can treat it as a promissory note. In the light of what has been stated above this question is merely academic but it requires an answer because the cases cited are not consistent. The correct view of the law is undoubtedly that once a document has been admitted, the question of its admissibility on fiscal grounds is finally set at rest. The appellate Court may apply its mind to the nature of the document unfettered by any extraneous consideration. But in *Gopala Padayachi* v. *Rajagopala Naidu*(1) it

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(1) A.I.R. 1926 Mad. 1148.

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has been ruled by a single Judge that the appellate Court is not bound under section 36 of the Stamp Act to admit the document any further or for any other purposes than the lower Court has admitted it. Of course it was never suggested that the statute bound the Court to go further; what is meant is that under the statute if the lower Court has admitted a document say as an acknowledgment, the appellate Court is free to refuse to consider whether it is a promissory note. It may take the view of the lower Court as final not only as regards the admissibility but as regards the character of the document. As observed just above this passage:

"I am not at present prepared to go further and admit the respondent's contention that, once it has been admitted it can be used for any purpose."

Then as the learned Judge points out the Full Bench decision in *Devachand* v. *Hirachand Kamaraj* (1) is against him, but he satisfies himself that he can distinguish that case. It is, however, indistinguishable. In the Bombay case the lower Court admitted a khata as a bond, and the appellate Court was asked to treat it as a promissory note. In the Madras case the document was admitted as an acknowledgment and the appellate Court was asked to treat it as a promissory note. Bombay agreed, Madras refused; and both cannot be right. It is not easy to discover the principle upon which the Madras ruling is founded. Starting with the general presumption that an appellate Court has an unfettered mind, how can it be said that when the Judge picks a certain document out of the record which he holds to be a promissory

(1) (1889) I.L.R. 13 Bom. 449 (F.B.).

note, he is constrained to rule that it is an acknowledgment? In his dissenting judgment in *Devachand* v. *Hirachand Kamaraj*(1) BIRDWOOD J. frankly reverts to the question of admissibility, and refuses to admit the khatas as promissory notes because they are not stamped as such, and are

"waste paper absolutely inadmissible in evidence" (page 474).

And that seems to be the only possible reason for the rejection; but it drives a coach and four through a whole mass of statutory and case law.

As the point was academic yet not without practical interest, I consulted my learned brother ANANTAKRISHNA AYYAR J. and his note is so valuable that I have no hesitation in placing it upon this record.

He says :—

It seems to me that when the principle underlying the section is properly appreciated, the answer to the question is clear. As remarked by BOWEN L.J., in a similar matter relating to stamp objection, "the rule has a historic origin."

Section 31 of the Common Law Procedure Act, 1854—17 and 18 Vict. C. 125—enacted as follows:—

"No new trial shall be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient or that the document does not require a stamp."

Order XXXIX, rule 8 of the Rules of the Supreme Court (England) 1883, enacts as follows:—

"A new trial shall not be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient or that the document does not require a stamp."

Accordingly, it was held in *Blewitt* v. *Tritton*(2) by the Court of Appeal that "where a Judge trying an action, without a jury, rules that the stamp upon any document is sufficient, or that the document does not require a stamp, the decision is

(1) (1889) I.L.R. 13 Bom. 449 (F.B.). (2) [1892] 2 Q.B. 327.

final, and no appeal lies to the Court of Appeal by way of application for a non-suit, or to enter judgment, or for a new trial."

It was in that case that BOWEN L.J. stated that "the rule has a historic origin".

After quoting the provisions of section 31 of the Common Law Procedure Act, 1854, his Lordship observed as follows:—

"The Courts put on that enactment the construction that the Legislature intended that that should not be done indirectly which could not be done directly and that the decision of the Judge that a stamp was sufficient must be final in all cases."

The observation of WILLES J. in *Siordet* v. *Kuczynski*(1) to the following effect is then referred to:—"When once a document has passed the ordeal of an investigation at *Nisi Prius* as to its liability to stamp duty or the sufficiency of the stamp, it should be subjected to no further discussion"; and the learned Lord Justice concluded the discussion as follows:—"I therefore come to the conclusion that the rule intended that the decision of the Judge in favour of the sufficiency of the stamp should be final and not open to review."

Lord ESHER M.R. and KAY L.J. were also of the same opinion.

As observed by WILLES J. in *Siordet* v. *Kuczynski*(1): "It may be otherwise, if the Judge rules against the admissibility of the document and the party offering it in evidence prefers to take the opinion of the Court, ..."

Therefore, as remarked by WILLIAMS J. in the same case: "If there is enough to induce the Judge to admit the document at *Nisi Prius*, I think the Legislature intended that his decision should be final, but that, if the Judge ruled against its admissibility, the party aggrieved has the right of appeal with a view to have the document admitted." See also *Mander* v. *Ridgway*(2) and *Lowe* v. *Dorling*(3); [*Sharples* v. *Rickard*(4)—appeal lies if document be rejected].

This principle has been evidently followed by the Indian Legislature also.

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(1) (1855) 17 C.B. 251; 139 E.R. 1067.
(2) [1898] 1 Q.B. 501.
(3) (1905) 74 L.J. K.B. 795.
(4) (1857) 2 H. and N. 59; 157 E.R. 24.

The ruling of the Full Bench of the Bombay High Court in *Devachand* v. *Hirachand Kumaraj*(1) was given under section 34 of the Stamp Act I of 1879. There were various rulings of the Indian High Courts to the effect that "when a document was once admitted as evidence overruling the plea raised on ground of insufficiency of stamps, the question could not be raised in the appeal Court."; see *Khoob Lall* v. *Jungle Singh*(2), *Enayetoolah* v. *Shaikh Meajan*(3) and *Reference under section* 46 *of the Indian Stamp Act*(4).

A Full Bench of five learned Judges of our High Court held in *Reference under section* 46 *of the Indian Stamp Act*(4): "Where a document has been admitted in evidence as duly stamped, such admission could only be called in question by the appellate Court under section 50"; that is, only with a view of levying penalty.

The reasoning is found in *Enayetoolah* v. *Shaikh Meajan*(3), where the learned Judges observed as follows:—"We think that the provisions of the stamp law by which unstamped or insufficiently stamped documents are excluded were never intended to create or put an end to the rights of the parties to a suit, but primarily in the interests of the Government revenue. It is perfectly immaterial as between the parties to a suit whether a certain document does or does not bear a certain mark which goes to show that the Government dues had been paid. The only thing which is necessary to be seen as between them is whether the document is genuine or not." The Court accordingly held that "where a document is admitted by the first Court as not requiring a stamp, its admissibility cannot be questioned in appeal." Section 35 uses the words "no instrument chargeable with duty shall be admitted *for any purpose* unless such instrument is duly stamped." The inference from the wide wording of section 36 is that when once a writing has been admitted in evidence, no question of stamp relating thereto could be raised in connection with the same, in those proceedings either in the first Court, or in the Court of appeal in which the same proceedings are continued or carried to. Section 36 removes the bar completely, regarding the admissibility of the document in the case contemplated by it.

(1) (1889) I.L.R. 13 Bom. 449 (F.B.).
(2) (1878) I.L.R. 3 Calc. 787.
(3) (1871) 16 W.R. (Civ. Rul.) 6.
(4) (1885) I.L.R. 8 Mad. 564 (F.B.).

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As remarked by RANKIN C.J. in *Nirode Basini Mitra* v. *Sital Chandra Ghatak*(1), "these stamp matters are really no concern of the parties, and if the objection was taken at the time when the record was made up by the trial Court, there it might be rejected ; if not the matter stopped there."

There are similar observations of MOOKERJEE and BEACHCROFT JJ. in *Sitaram* v. *Ramprasad Ram*(2) at page 90 :—"The document must thus be treated as part of the evidence on the record."

This is the idea underlying various decisions of the Indian High Courts, including decisions of Benches of this Court. It seems to me, therefore, that the observation in *Gopala Padayachi* v. *Rajagopala Naidu*(3) that "the appellate or revisional Court is not bound to admit the document any further or for any other purpose than the lower Court has admitted it", is (speaking with all respect) not tenable, and should not be followed.

For our present purposes it is sufficient to emphasize the dictum of WILLES J.—

"When once a document has passed the ordeal of an investigation at *Nisi Prius* as to its liability to stamp duty, it should be subjected to no further discussion."

Obviously in the light of these rulings an appellate Court cannot say that it would like to interpret a document as a promissory note, but is precluded from so doing because it is not properly stamped.

The latest pronouncement upon the question is the Bench ruling in *Venkata Reddi* v. *Hussain Setti*(4) to which I myself was a party.

"Even assuming that the suit document is a promissory note, it having been admitted in evidence by the payment of a penalty its admission cannot thereafter be called in question."

This really would have been sufficient to decide the question ; but seeing how often it is raised, I have discussed it in full. The civil revision petition is dismissed with costs.

G.R.

(1) (1930) 51 C.L.J. 569.
(2) (1913) 19 C.L.J. 87, 90.
(3) A.I.R. 1926 Mad. 1148.
(4) (1933) I.L.R. 57 Mad. 779.