

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) v.

BASHARAT-ULLAH AND ANOTHER (PLAINTIFFS).*

1908
March 5.

*Act No. II of 1899 (Indian Stamp Act), sections 40, 44, 48 and 56 et seqq—
Stamp—Improperly stamped document tendered in evidence—Stamp duty
from whom recoverable.*

If a plaintiff produces in Court in support of his claim an unstamped or improperly stamped document, he primarily is the person from whom the requisite stamp duty and penalty may be recovered under section 40 of the Indian Stamp Act, 1899.

THE facts of this case are as follows :—

The plaintiffs produced before the Munsif of Muttra two documents ; one was a conveyance, and the other a receipt. They wished the two documents admitted in evidence in support of their claim. Both the documents were documents executed in favour of the predecessor in title of the plaintiffs. The Munsif, being of opinion that the documents were not properly stamped, impounded them and sent them in original to the Collector, under the provisions of section 38, clause (2) of Act No. II of 1899. The Collector, acting under section 40, clause (1) (b), of the same Act, required from the plaintiffs payment of the proper duty together with a penalty. The plaintiffs did not pay the penalty, and the Collector put in force the provisions of section 48 of the same Act, and attached certain property of the plaintiffs. Thereupon the plaintiffs brought the suit out of which this second appeal has arisen against the Secretary of State for India in Council asking for the release of the attached property and for damages. The Court of first instance (Munsif of Muttra) ordered the release of the attached property and the decree of that Court was confirmed in appeal by the Judge of the Court of Small Causes, Agra, exercising powers of a Subordinate Judge. Both the Courts concurred in holding that the duty and penalty were not recoverable from the plaintiffs, but from the other parties to the deeds in question. The defendant appealed to the High Court contending that the Courts below had erred in holding that the plaintiffs were not liable to pay the stamp duty and penalty required of them.

* Second Appeal No. 590 of 1906 from a decree of Muhammad Siraj-ud-din, Judge of the Court of Small Causes, Agra, exercising powers of a Subordinate Judge, dated the 4th of May, 1906, confirming a decree of Maharaj Singh Mathur, Munsif of Muttra, dated the 31st of August 1905.

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ULLAH.

Mr. A. E. Ryves for the appellant.

Babu Durga Charan Banerji, for the respondents.

KNOX and AIKMAN, JJ.—The plaintiffs, who are respondents to this second appeal, produced before the Munsif of Muttra two documents; one was a conveyance, and the other a receipt. They wished the two documents admitted in evidence in support of their claim. Both the documents were documents executed in favour of the predecessor in title of the plaintiffs. The Munsif, being of opinion that the documents were not properly stamped, impounded them and sent them in original to the Collector, under the provisions of section 38, clause (2) of Act No. II of 1899. The Collector, acting under section 40, clause (1) (b), of the same Act, required from the plaintiffs payment of the proper duty together with a penalty. The plaintiffs did not pay the penalty, and the Collector put in force the provisions of section 48 of the same Act, and attached certain property of the plaintiffs. Thereupon the plaintiffs brought the suit out of which this second appeal has arisen for the release of the attached property and damages. The Court of first instance ordered the release of the attached property and the decree of that Court was confirmed in appeal. Both the Courts concurred in holding that the duty and penalty were not recoverable from the plaintiffs, but from the other parties to the deeds in question. The defendant, namely the Secretary of State for India in Council, comes here in second appeal, and it is contended on his behalf that the Courts below have erred in holding that the plaintiffs were not liable to pay the stamp duty and penalty required of them.

In our opinion, this appeal must prevail. Section 40, clause (1) (b), is silent as to the person from whom the payment of the proper duty and penalty is to be required. If the Collector required it from the wrong person, his procedure was open to review, as provided by Chapter VI of this Act. No step was taken to review the Collector's order. Therefore the Collector was acting within the authority given him by section 48 in ordering the attachment. Further, we are of opinion that as it was the plaintiffs who wished the documents admitted in evidence in support of their claim, they are the persons from whom the Collector, in the first instance, can recover the duty and penalty

required before the documents can be admitted in evidence. The provisions of section 44 are important as showing that when any duty or penalty has been recovered from any person in respect of an instrument, and some other person was bound to bear the expense of providing the proper stamp, the person from whom the duty and penalty has been recovered shall be entitled to recover from such other person the amount of the duty and penalty so recovered. We decree the appeal and dismiss the suit with costs in all Courts.

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ULLAH.

Appeal decreed.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir
William Burkitt.*

1908

March 10.

AMIR BEGAM (PLAINTIFF) v. THE BANK OF UPPER INDIA, LIMITED
(DEPENDANT).*

Civil Procedure Code, sections 306, 293—Execution of decree—Sale in execution—Non-payment by purchaser of deposit required by law—Fresh sale—Claim by decree-holder for difference of price on resale.

Certain immovable property was put up to auction in execution of a decree and purchased by A. B, but the purchaser did not at once make the deposit required by section 306 of the Code of Civil Procedure, and the property was subsequently—but not “forthwith”—put up again to auction and sold for a considerably less sum to the decree-holder. *Held* that the first sale was not merely irregular, but no sale at all, and that the decree-holder was not entitled to claim against the first purchaser under section 293 of the Code, compensation for the loss resulting on the second sale. *Intizam Ali Khan v. Narain Singh* (1) followed.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *Abdul Majid*, for the appellant.

Mr. *B. E. O'Connor*, for the respondent.

STANLEY, C.J., and BURKITT, J.—The facts of this case are these. The Bank of Upper India held a decree for sale of the property of Afzal Shah, Dost Muhammad Khan and Amir Muhammad Khan. In execution of that decree they attached and advertised for sale the property of their judgment-debtors. The plaintiff, Musammat Amir Begam, who is the wife of Afzal Shah, authorized one Haidar Shah to purchase for her out of the property

* First Appeal No. 29 of 1906 from a decree of Muhammad Shah, Subordinate Judge of Aligarh, dated the 30th November 1905.