1933

JAGANNATH v. SHIB NATH

wherein the fraud consisted, as he had been told it was a secret.

In these circumstances their Lordships have no hesitation in holding that this also was a collusive suit, and that the conduct of the fourth and fifth defendants affords ample corroboration of the other evidence that this sale was effected for necessary family purposes. They are therefore of opinion that the appeal should be allowed, the decree of the High Court reversed, and the decree of the Subordinate Judge restored, and they will humbly advise His Majesty accordingly. The plaintiffs respondents will pay the appellants' costs both here and in the High Court.

Solicitors for appellants: *T. L. Wilson and Co.*

Solicitors for respondents Nos. 1 to 11: *Hy. S. L. Polak and Co.*

REVISIONAL CIVIL

Before Mr. Justice Kendall

1933

August, 16

NOOR AHMAD (PLAINTIFF) *v.* IRSHAD GHAUS (DEFENDANT)*

Stamp Act (II of 1899), section 36—Document insufficiently stamped—Admitted in evidence and endorsed by court—Admissibility can not be questioned thereafter—Civil Procedure Code, order XIII, rule 4.

When a document has once been admitted in evidence and initialled by the Judge, under order XIII, rule 4 of the Civil Procedure Code, then by section 36 of the Stamp Act the admission can not be called in question at any stage of the same suit or proceeding on the ground that the document has not been duly stamped. Neither the trial court nor the appellate court has authority to re-open the question and reject such a document as inadmissible in evidence.

Mr. *Mansur Alam*, for the applicant.

The opposite party was not represented.

*Civil Revision No. 153 of 1933.

1933

NOOR AHMAD v. IRSHAD GHAUS

KENDALL, J.:—This is a plaintiff's application for the revision of an order of the Judge of the Small Cause Court of Pilibhit dismissing his suit on the ground that the promissory note on which it was originally based was not admissible in evidence because it had not been properly stamped. The trial court admitted the promissory note which bore a one anna stamp though under the law it should have borne a two anna stamp. It was initialled by the trial court and was produced in evidence. It was not until the defendant pointed out in the course of evidence that a second one anna stamp had been added subsequently to the execution of the promissory note that the court's attention was drawn to this point, and the court thereupon came to the conclusion that the second stamp had been affixed later, and that the promissory note should not have been admitted in evidence.

With reference to section 36 of the Indian Stamp Act, 1899, this was too late a stage at which to take objection to the admissibility of the document. In the case of *Venkateswara Iyer* v. *Ramanatha Dheekshitar* (1) it was held that "where the plaintiff sued on a promissory note and the defendant raised the plea that it was not admissible in evidence on the ground that it was not validly stamped, but no issue was framed on its admissibility and the court of first instance marked it as exhibit unconditionally, the appellate court has no jurisdiction to agitate the question of its admissibility."

It is true that the case quoted above was one in which the question of the admissibility of the document was not apparently pressed until the appeal. A document, however, is admitted in evidence under order XIII, rule 4 of the Code of Civil Procedure, and, when once it has been admitted in evidence, under section 36 of the Indian Stamp Act the admission cannot be called in question at any stage of the same suit or

(1) A.I.R., 1929 Mad., 622.

proceeding on the ground that the instrument has not been duly stamped. It appears to me therefore to be quite clear that the trial court had no more authority to review its own order admitting the document in evidence than an appellate court would have to reverse that order on appeal. This view was taken in the case of *Dasi Chamar* v. *Ram Autar Singh* (1). In another case, *Nirode Basini Mitra* v. *Sital Chandra Ghatak* (2), in which the question was raised in appeal the Bench remarked: "The Judge has entirely failed to see that under section 36 it matters nothing whether it was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection. 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."

In the present case as the court had no power to ignore the document which had been admitted, it was bound on the evidence to decree the plaintiff's suit, and in fact the first part of the judgment which proceeds on the assumption that the document is admissible shows that the court would have decreed it if it had not as an afterthought decided that the document was after all not admissible in evidence. The result is that I allow the application with costs, set aside the decree and order of the trial court and direct that the plaintiff's suit be decreed with costs.

(1) A.I.R., 1923 Pat., 404. (2) A.I.R., 1930 Cal., 577.