

1936

DURGA  
BAKSH  
SINGH  
v.  
CHANDRAPAL  
SINGH

*Srivastava,*  
*C.J. and*  
*Ziaul Hasan,*  
*J.*

Singh, plaintiff) that this transfer was made with the consent of the reversioners, we have it from one of the defendants' own witnesses that it was the slender means of the reversioners that prevented them from recovering the property. Moreover, one such instance by itself is not sufficient to establish a custom in derogation of the general Hindu Law.

We are therefore of opinion that the learned Civil Judge was right in his finding that the defendants have failed to prove the custom of widows' absolute ownership set up by them. The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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## REVISIONAL CIVIL

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*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,  
and Mr. Justice Ziaul Hasan*

BALDEO PRASAD (APPLICANT) v. AJUDHYA PRASAD  
(OPPOSITE-PARTY)\*

1936  
October 21

*Stamp Act (II of 1899), sections 35 and 48—Agreement insufficiently stamped—Deficiency ordered to be made good under section 35 by civil court—Agreement admitted in evidence and decree passed inadvertently—Deficiency in stamp and penalty, if could be realised by civil court under section 35—Collector's power to realise deficiency in stamp and penalty under section 48.*

Section 35 of the Stamp Act which is the only provision by which a civil court is authorised to realise deficiency in stamp is intended to apply before a document is admitted in evidence. Where, however, an agreement is admitted in evidence and a decree passed on it through an oversight without the deficiency in stamp and the requisite penalty having been realised section 35 is wholly inapplicable. Such amount can, however, be then recovered by the Collector under section 48 of the Stamp

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\*Section 115 Application No. 15 of 1935, against the order of S. Shaukat Husain, Civil Judge of Unao, dated the 3rd of January, 1935.

Act. *Khetra Mohan Saha v. Jamini Kanta Dewan* (1), relied on.

Mr. *D. K. Seth*, for the applicant.

Mr. *R. N. Shukla*, for the opposite party.

SRIVASTAVA, C.J., and ZIAUL HASAN, J.:—This is an application in revision against an order of the learned Civil Judge of Unao dated the 3rd of January, 1935.

Ajodhya Prasad, opposite-party, obtained a decree in a pre-emption suit filed by him, and in order to deposit the amount that he was ordered by the decree to pay to the vendee he borrowed a sum of Rs.3,000 from the applicant on the 25th of June 1929, and executed in his favour what purports to be an agreement to mortgage to the applicant the property decreed in his favour in the pre-emption suit. It appears, however, that the amount fixed by the pre-emption decree was not deposited by Ajodhya Prasad, with the result that he did not get the property. Thereupon the present applicant brought a suit for recovery of his money and in support of his claim he filed the agreement referred to. On the 24th of June, 1931, the learned Civil Judge impounded the document as an insufficiently stamped bond and ordered that if the plaintiff wanted to have it admitted in evidence, he should pay Rs.120 as deficiency in stamp plus Rs.12 as penalty. On the 17th of August, 1931, when the suit came on for hearing, the order of the 24th of June, 1931, was somehow or other lost sight of and the court, proceeding on the defendant's admission of execution of the agreement, decreed the suit. When the document was sent to the Collector in due course, a notice was issued to the plaintiff-applicant by the Collector and on the 3rd of January, 1935, the learned Civil Judge passed the following order:

“The order about the realisation of the penalty and stamp duty was passed on 24-6-'31. That order stands. The applicant should comply with it within a week. If

(1) (1927) I.L.R., 54 Cal., 445.

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he does not pay in by that time, the sum will be realised by legal process."

It is against this order that the present application has been filed.

We are of opinion that this application must be allowed. The only provision of the Stamp Act under which a civil court is authorised to realise deficiency in stamp is section 35 of the Act but that provision is obviously intended to apply before a document is admitted in evidence. In the present case, however, the agreement was admitted in evidence and a decree passed on it through an oversight without the deficiency in stamp and the requisite penalty having been paid by the plaintiff-applicant. In the case of *Khetra Mohan Saha v. Jamini Kanta Dewan* (1) it was held that after a suit has been disposed of and the decree signed and sealed, the provisions of section 35 of the Stamp Act were wholly inapplicable. In our opinion the jurisdiction to realise the deficiency in stamp now lies with the Collector under section 48 of the Stamp Act which runs as follows:

"All duties, penalties and other sums required to be paid under this chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue."

This section and section 35 of the Act are contained in the same chapter and as the payment of deficiency and the penalty was ordered by the Civil Judge on the 24th of June, 1931, under section 35, section 48 is applicable and the amount can be recovered by the Collector.

The application is therefore allowed with costs and the lower court's order set aside.

*Application dismissed.*

(1) (1927) I.L.R., 54 Cal., 445.