

## REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava  
and Mr. Justice E. M. Nanavutty

SUNDAR LAL v. THAKUR GANDHARP SINGH

Stamp Act (II of 1899), section 2(5)—Bond—Agreement—Satta deed—Document stipulating supply of goods and providing for payment of damages in case of breach, whether an agreement or a bond.

1936  
February, 20

A document described as a *satta* and stipulating for the supply of a certain quantity of goods of a particular quality at a fixed rate during a specified period and providing for the payment of damages at a certain rate in case of breach of agreement, cannot be treated as a bond within the meaning of the definition given in section 2, clause (5) of the Stamp Act and must be treated as an agreement, *Gisborne & Co. v. Subal Bowri* (1), relied on.

The Government Advocate (Mr. H. S. Gupta), for the Board of Revenue.

SRIVASTAVA and NANAVUTTY, JJ.:—This is a reference made by the Deputy Commissioner of Kheri under section 61 of the Indian Stamp Act. The question is whether a document described as a *satta* is to be treated as an agreement or as a bond for the purpose of payment of stamp duty. The terms of this document are that the executant Sunder Lal agreed to supply Thakur Gandharp Singh, in whose favour the document was executed, 700 kachcha maunds of sugarcane juice at the rate of Rs.37 per hundred maund from the month of Pus till Phagun 1340 Fasli. He was paid half of the price at the time of the execution of the document and it was agreed that he would receive one-fourth of the price when he started working the pressing machines and the remaining one-fourth when the work was finished. The document also contains several provisions as regards the quality of the juice to be supplied and also a condition for payment of damages at the rate

\*Civil Reference (under Stamp Act) No. 4 of 1935, made by Mr. H. E. Barlow, I.C.S., Deputy Commissioner of Kheri.

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of 2 annas per maund in case of breach of agreement. The Munsif of Kheri before whom the document was produced in a Small Cause Court suit treated it as a simple agreement and recovered the deficiency of annas four in the stamp duty and Rs.5 by way of penalty from the party who had produced it. The learned Deputy Commissioner of Kheri is of opinion that it should be stamped as a bond and has accordingly made this reference.

We are of opinion that the document in question cannot be treated as a bond within the meaning of the definition given in section 2, clause (5) of the Stamp Act and must be treated as an agreement. The distinction between a bond and an agreement was pointed out by GARTH, C.J. in *Gisborne & Co. v. Subal Bowri* (1) and the following passages from that judgment may be usefully quoted:

“The definition of a bond in section 5 of the Act is precisely what we understand by a bond in England, and it is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages.

Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance a suit for damages; and by section 74 of the Indian Contract Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty, as the Judge at the trial considers reasonable; but he is entitled to that compensation whether he proves any actual damages or not.

The remedy upon a bond is very different. The plaintiff in the case of a simple money bond recovers the sum named in the bond, or in the case of a bond conditioned for the performance of covenants, he recovers

(1) (1881) I.L.R., 8 Cal., 284.

the actual damage which he can prove that he has sustained. In either case not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it, and the amount recoverable for the breach of it, is also different."

In the present case the executant Sundar Lal did not undertake any obligation to pay any money to Thakur Gandharp Singh. The only reference to payment of money contained in the instrument is the reference for payment of the price of the sugarcane juice by Gandharp Singh to Sundar Lal. No doubt Sunder Lal undertook the obligation of supplying sugarcane juice on the terms stated in the document. The provision as regards his liability for damages in case of a breach of agreement and the other terms of the document show that the document is rather in the nature of an agreement than a bond. We are accordingly of opinion that the stamp duty and the penalty realised by the Munsif was sufficient.

We answer the reference accordingly.

## APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty*

PANDIT HAR NARAIN (DEFENDANT-APPELLANT) *v.* PANDIT  
SIDH NATH (PLAINTIFF-RESPONDENT)\*

1936  
March, 10

*Transfer of Property Act (IV of 1882), section 51, Scope of—Permanent lease—Lessee not excluded from benefit of section—Lessee making improvements on land in good faith—Lessee, whether can believe himself to be owner and entitled to compensation—Phrase "believing in good faith that he is absolutely entitled", meaning of.*

There is no valid reason for excluding a permanent lessee from the benefit of section 51, Transfer of Property Act. So long as he pays the rent due on his lease, the lessee can consider himself to be the absolute owner of the land perpetually leased to him, and he can honestly believe that he is the owner

\*Second Civil Appeal No. 207 of 1934, against the decree of Saiyid Shaukat Husain, Subordinate Judge of Unao, dated the 28th of February, 1934, upholding the decree of Babu Gopal Chandra Sinha, Munsif, North, Unao, dated the 14th of September, 1933.

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