

first schedule of the Limitation Act applied and that therefore the period of limitation must be taken to be three years from the date of the decree. We cannot however accept this argument for a moment. The case of *Bisheshwar Gir Goshain v. Satish Chandra Chatterji* (1) relied on by him does not lay down the correct law on the subject, in view of the decisions in *Lalta Prasad v. Brahma Din* (2) and *Tajammul Husain v. Bande Raza* (3).

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Ziaul
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 and
 Yorke, JJ.

We therefore decree the appeal with costs and setting aside the order of the learned Civil Judge send back the case to him for proceedings with the appellant's application for the preparation of a final decree.

Appeal allowed.

FULL BENCH

Before Mr. Justice G. H. Thomas, Chief Judge, Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke.

SITA RAM (APPLICANT) v. GAYA DIN (OPPOSITE PARTY)*

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Stamp Act (II of 1899), sections 40 and 60—Court impounding document and sending it to Collector—Collector certifying it to be duly stamped—Court, whether can reopen question of stamp by making reference to High Court—Reference to High Court about stamp after the Collector's certificate, whether maintainable.

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Where a court impounds a document as being insufficiently stamped and sends it to the Collector and the Collector certifies under section 40(1) of the Stamp Act that it is duly stamped, the certificate is, under section 40(2), conclusive evidence of the matters stated therein, and the court cannot subsequently reopen the question by making a reference to the High Court. The proper time for making a reference to the High Court under section 60(1) of the Stamp Act is before it passes the order impounding the document.

THOMAS, C. J. and ZIAUL HASAN and YORKE, JJ.:—
 This reference, dated the 15th of July, 1938, by the

*Civil Reference No. 6 of 1938, made by Braj Nath Zutshi, Esq., Munsif of Kheri, under section 60 of the Stamp Act, dated the 15th of July, 1938.

(1) (1929) Oudh, 117.

(2) (1930) I.L.R., 5 Luck., 290.

(3) (1920) 7 O.L.J., 538.

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learned Munsif of Kheri, purports to be under section 60 of the Stamp Act (II of 1899).

In a Small Cause Court suit *Sita Ram v. Gaya Din*, the plaintiff brought the suit on the basis of an agreement for the supply of sugarcane juice which is commonly called "sattu." The agreement was written on 4 annas stamp paper. The learned Munsif decreed the suit of the plaintiff on the 1st of December, 1936. The Munsarim on the 16th of October, 1936, on the back of the plaint made a report that the agreement was insufficiently stamped. In his opinion the proper stamp was 8 annas. The Munsarim on the 13th of January, 1937, that is after the suit had been decreed, made another report that the court had not passed any order on the report which was made on the 16th of October, 1936, on the back of the plaint. This undoubtedly was due to an oversight, the learned Munsif should have decided this point at the time when he decided the suit. The Munsif passed the following order on the 13th of January, 1937:

"Let the exhibit 1 (be) impounded and sent to the Collector for necessary action."

The Collector obtained the opinion of the Stamp Officer, which is as follows:

"Under 9 All. 585 (F.B.), *vide* example (c) in note to section 2(5) 'Bond', the document for the supply of sugarcane juice is 'a bond' and not an agreement. It is therefore sufficiently stamped under article 15 of Schedule I of the Stamp Act. The document may be so endorsed and the Impounding Officer informed accordingly."

The Collector on receipt of this opinion gave the following certificate:

"Certified that this document is properly and sufficiently stamped under article 15, Schedule I of the Stamp Act."

In the opinion of the learned Munsif the opinion of the Stamp Officer is incorrect and the document in question is an agreement, and not a bond, and it falls under Schedule I, article 5 of the Stamp Act.

In our opinion it is not necessary for us to decide this question as we are of opinion that the reference made by the learned Munsif is incompetent.

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Section 60(1) of the Stamp Act provides:

"If any court, other than a court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue authority, he would, under section 57, refer the same."

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The reference before us does not fall under section 60(1), and as far as we have been able to find out, there is no other section which covers this reference. There was no doubt in the mind of the court as to the amount of duty to be paid in respect of this instrument. The proper time for making the reference was before the learned Munsif passed the order impounding the document.

Under section 40(1) of the Stamp Act "when the Collectorreceives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be."

Under clause (2) of the same section "every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein". By this reference the learned Munsif is really asking us to open the question which has become conclusive. We are therefore of opinion that under the circumstances the reference is not competent, and we have no jurisdiction to entertain it.

We accordingly reject the reference and direct that the papers be returned to the court concerned.

Reference rejected.