

FULL BENCH

Before Mr. Justice G. H. Thomas, Chief Judge, Mr. Justice Ziaul Hasan, and Mr. Justice A. H. deB. Hamilton

1939
November,
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HIMAYAT ULLAH (APPLICANT) *v.* PARBHOO DAYAL
AND OTHERS (OPPOSITE-PARTY)*

Stamp Act (II of 1899), sections 38, 40 and 60—Impounding of document by court as insufficiently stamped—Collector certifying under section 40 that it is duly stamped—Reference by court thereafter to High Court—Reference whether maintainable under section 60.

The proper time for a court to make a reference to the High Court under section 60 of the Stamp Act is before it passes an order impounding a document. If a court impounds a document as insufficiently stamped and the Collector on receipt of it certifies under section 40(1) of the Stamp Act that it is duly stamped, such certificate under section 40(2) is conclusive evidence of the matter stated therein and the court cannot thereafter reopen the question by making a reference to the High Court, *Sita Ram v. Gaya Din* (1), followed.

Mr. R. N. Shukla, for the applicant.

THOMAS, C. J., ZIAUL HASAN and HAMILTON JJ.:
This reference by the learned Munsif of Kheri purports to be under section 60 of the Stamp Act (II of 1899).

In a Small Cause Court Suit (no. 1660 of 1936 *Himayat Ullah v. Parbhu Dayal and others*), the plaintiff brought a suit on the basis of a promissory note and a receipt, Exs. 1 and 2. It appears that the promissory note was executed by one Mahraj Bahadur in favour of Chhote, defendant no. 4, who transferred his rights to Himayat Ullah by making the following endorsement on the receipt Ex. 2:

“Today the 23rd July, 1936, I having sold the claim including interest under the pronote for Rs.100 due against Mahraj Bahadur to Himayatullah . . . received its full consideration. The aforesaid vendee will have the right to

*Civil Reference (under Stamp Act) no. 5 of 1938, made by Mr. Brij Nath Zutshi, Munsif, Kheri, under section 60 of the Stamp Act, dated the 19th May, 1938.

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recover the entire pronote amount including interest from Mahraj Bahadur to which I will have no objection.”

The learned Munsif held that the above endorsement amounted to a sale of an actionable claim and not a mere negotiation of a promissory note. He therefore ordered it to be impounded. The plaintiff paid the duty and penalty and the document was admitted in evidence. After the case had been decided the impounded document was sent to the Collector under the provisions of section 38 of the Stamp Act for necessary action, who obtained the opinion of the Stamp Officer, which is as follows:

“The endorsement on the pronote is exempt from stamp duty under section 14 (proviso) and Exemption 1(a), Article 62 of Schedule I of the Stamp Act. The Impounding Officer has wrongly realized Rs.11 . . .”

The Collector accepted the opinion of the Stamp Officer and directed that the learned Munsif may be accordingly informed.

In the opinion of the learned Munsif the opinion of the Stamp Officer is incorrect.

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.

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.”

The reference before us does not fall under section 60(1), and so 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 which was to be paid in respect of this instrument. In our opinion the proper time for making the

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reference was before the learned Munsif passed the order impounding the document. Under section 40(1) of the Stamp Act when the Collector . . . receives 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:

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“(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 supported in the above view by a Full Bench decision of this Court reported in *Sita Ram v. Gaya Din* (1). 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. The amount of Rs.11 which has been realized by the Impounding Officer will be returned to the plaintiff as pointed out by the Stamp Officer.

Reference rejected.

(1) (1939) I.L.R. 14 Luck., 227, F.B.