

The police might no doubt have declared the procession to be an unlawful assembly and called upon it to disperse but because they did not exercise that power the petitioner is not relieved from his duty.

WORT, J.—I agree. It has been argued that by reason of the provisions of section 30A of the Police Act, which gives Magistrates, District Superintendents and Inspectors of Police power to stop any procession which violates the conditions of a license, the licensee is thereby excused from controlling the persons who may have joined the procession and over whom the licensee states he has no control. This, however, is clearly fallacious. The section referred to gives the power to the officers mentioned to stop a procession in spite of the procession having been licensed, and thus gives them a power which they otherwise would not have in law as already indicated. This does not excuse a licensee from strictly complying with the conditions of his license, and, in the view which I take of the facts of this case and of the law, the conditions of the license were broken and the licensee was, therefore, properly convicted.

1927.

MAHANTH
BABA
BADRI DAS
v.
KING-
EMPEROR.

MULLICK,
A.C.J.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, JJ.

JAGDIP SINGH

v.

FIRANGI SINGH.*

1927.

May, 18.

Stamp Act, 1899 (Act II of 1899), section 36—document admitted after objection, whether admissibility can be challenged subsequently.

Section 36 of the Stamp Act 1899 which enacts—

Where an instrument has been admitted in evidence such admission shall not, except as provided in section 61, be called in question at any

*Appeal from Original Decree no. 227 of 1924, from a decision of Babu Ashutosh Mukerjee, Subordinate Judge of Patna, dated the 27th August, 1924.

1927.

JAGDIP
SINGH
v.
FIRANGI
SINGH.

stage of the same suit or proceeding on the ground that the instrument has not been duly stamped,

applies whether the document was admitted with or without objection.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

N. C. Sinha (with him *N. C. Ghosh*) for the appellants.

S. M. Mullick (with him *Md. Hasan Jan* and *S. Deyal*) for the respondents.

KULWANT SAHAY, J.—The suit out of which the present appeal arises was instituted by the plaintiffs appellants for partition of joint family properties, their share being 8 annas.

The defence of the defendants was that there had been a previous partition of all the joint family properties in Assn 1329 and a fresh partition could not be effected. The learned Subordinate Judge has given effect to the contention of the defendants and has dismissed the suit.

The learned Advocate for the appellants does not very properly contest the findings of the Subordinate Judge on the merits: in fact the evidence seems to be overwhelming in support of the findings of fact arrived at by the learned Subordinate Judge. The learned Advocate has, however, taken an objection to the effect that Exhibit B which purports to be a list showing the allotments of the properties to the plaintiffs and the defendants is either a deed of partition or an award. If it is a deed of partition, the document is invalid for want of registration; if it is an award, it is invalid for want of stamp duty, and in either case the document is not admissible in evidence, and if this document is excluded no oral evidence is admissible.

Now looking at the document, Exhibit B, it is clear that it is not a deed of partition, it is not a document executed by anybody, it is not signed by the parties to the partition, and it can in no sense be

1927.

 JAGDIP
SINGH
v.
FIRANGI
SINGH.
KULWANT
SAHAY, J.

treated as a deed of partition. It may be treated as an award of the arbitrators who effected the partition and it ought to have been stamped with the proper stamp duty. But the document has been admitted by the learned Subordinate Judge in evidence and section 36 of the Stamp Act provides that where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

It is contended that objection to the admissibility of the document was taken before the learned Subordinate Judge and section 36 would apply only to cases where a document is admitted without objection. There seems to be no justification for this contention. Section 36 is quite clear that once a document is admitted in evidence, the admission of such a document cannot be questioned whether the document was admitted with objection or without objection. It is, therefore, too late now for the learned Advocate for the appellant to contend that the document cannot be used as evidence in this appeal.

The learned Advocate for the appellant then refers to a passage in the judgment of the learned Subordinate Judge where it is stated that the defendants stated before him that they were ready to take for themselves the share given to the plaintiffs and that the plaintiffs were at liberty to take the shares given to them and he says that such exchange ought to be made now. The offer was made to them in the court below and the respondents refused to accept the offer. Now it is too late for them to compel the defendants to exchange the shares.

There is no substance in this appeal and it must be dismissed with costs.

Ross, J.—I agree.

Appeal dismissed.