

SPECIAL BENCH.

Before Tek Chand, Abdul Qadir and Bhide JJ.

MUHAMMAD HASHAM—Petitioner

versus

THE CROWN—Respondent.

Civil Reference No. 13 of 1932.

Indian Stamp Act, II of 1899, Sections 23 and 57: Document purporting to be a receipt bearing one anna stamp—reciting a conveyance of land—whether a deed of conveyance.

A document, bearing a one anna stamp and purporting to be a receipt, contained a recital that a certain sum of money had been paid as consideration for a transaction of sale which had been completed previously and under which possession had been duly delivered to the vendee and that for the balance another receipt would be given when payment was made. The document was described as a receipt and began with the words "*bais tahrir anke*" and wound up with the words "*is waste sanadan tahrir kar dete hain.*"

Held, that the document was a receipt, as it purported to be, and was not a "conveyance" and that it had been properly stamped.

Upendra Nath Banerjee v. Umesh Chandra (1), and *Bageshwari Charan Singh v. Jagarnath Kuari* (2), relied upon.

Case referred, under Section 57 of the Indian Stamp Act, by Mr. Miles Irving, Financial Commissioner, Punjab, Lahore, with his U. O. No. 673-Met., dated the 29th May, 1932, for orders of the High Court.

MOHSIN SHAH, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

TEK CHAND J.—This is a reference under section 57 of the Indian Stamp Act by the Financial Commissioner, Punjab, asking us to decide whether the document (Exhibit P. 3), dated the 13th of August, 1931, executed by Ghulam Mohiy-ud-Din and others in favour of Muhammad Hasham and others is a “conveyance” and, as such, liable to stamp duty under Article 23 of the Indian Stamp Act. The document purports to be a “receipt” and bears a stamp of one anna only. The Collector, Jhelum District, treating it to be a “conveyance” ordered that “Rs. 22-8-0 as deficiency in the stamp duty and Rs. 225 as penalty be recovered” from the petitioner. The petitioner applied to the Financial Commissioner, under section 45 of the Act, for refund of the excess duty and the penalty, urging that the document was a “receipt” and not a “conveyance,” and that the order of the Collector was illegal. The Financial Commissioner was inclined to the view that the order of the Collector was right, but has made a reference to this Court under section 57.

The document is in Urdu and, as stated already, it purports to be a “receipt.” It begins with the words: “*bais tahrir anke*” and recites that the executant had sold land measuring 5 *marlas* and 53 square feet to Muhammad Hasham, son of Allah Ditta, and Muhammad Din, son of Suba, caste *Sheikh* of Domeli for Rs. 1,038-15-3 for building purposes, at the rate of Rs. 200 per *Marla*. Out of the purchase money, Rs. 700 had been received in cash and for the balance another receipt would be given at the time when payment is made. The document further stated that possession of the land had been given to the purchaser and wound up with the words: “*is waste sanadan tahrir kar dete hain.*”

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After examining the wording of the deed and hearing both counsel, I am of opinion that it is a "receipt" which it purports to be, and is not a "conveyance" and that it had been properly stamped. I can find nothing in the document to show that title in the property was being conveyed by the vendor to the vendee by it. On the other hand, the document refers to the sale as a completed transaction under which possession had been delivered to the vendee. The primary object of the execution of Exhibit P. 3, appears to be to record the fact that out of the total purchase price of Rs. 1,038-15-3, a portion, namely, Rs. 700 had been received by the vendor from the vendee and to safeguard the latter against a fresh demand for that sum, rather than to create title in the vendee as owner of the land, which had been done already by an independent transaction altogether.

Counsel for parties have referred us to numerous rulings. I do not, however, think it necessary to discuss them here as the decision in each case turned on the peculiar wording of the document concerned and the circumstances in which it was executed. The principle governing the decision of such cases is well settled and is succinctly given by Mookerji J. in *Upendra Nath Banerjee v. Umesh Chandra* (1), that the test is whether the intention of the parties was that the document should be "the only repository and the appropriate evidence of the transaction." If the Court, after an examination of the whole of the document finds that this is so, it must hold the document to be a conveyance. If, on the other hand, it merely recites a past accomplished fact, the document is not

(1) (1910) 6 I. C. 346.

a conveyance and need not be stamped or registered as such.

The learned Government Advocate has laid emphasis on the fact that in the case before us the document ends with the words—“ *is waste sanadan tahrir kar dete hain.*” These words, however, are found at the end of every receipt and other documents of diverse kinds and do not by themselves indicate that the transaction embodied in the deed is necessarily a “conveyance.”

He further urged that even if it be held that the real object of the parties in executing the document was not to transfer title, it was certainly their intention to “declare” the vendees’ right of ownership in the land, and as such the document should be held to be a “conveyance.” In my opinion this contention is without force. In the case of *Bageshwari Charan Singh v. Jagarnath Kuari* (1), their Lordships of the Privy Council had to consider this question recently, in connection with the analogous provisions of the Registration Act, and Viscount Dunedin, while delivering the judgment, observed that a document, which merely *acknowledges* as a fact that a right is vested in a particular person, is not a conveyance, but it must be shown that a right was *created* by the particular document in question. In such a case it is necessary that the document must contain a “declaration of the will of the parties to cause a change of legal relationship” in respect of the property concerned and not merely a statement of fact that a person has already become an owner thereof.

Applying these tests to the document before us, I hold that it is not a conveyance on which stamp duty

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is payable under Article 23 of the Stamp Act, but that, it is a receipt for Rs. 700 as part payment. I would answer this reference accordingly.

ABDUL QADIR J.
BHIDE J.

ABDUL QADIR J.—I concur.
BHIDE J.—I agree.
A. N. C.

Reference answered in the negative.

APPELLATE CIVIL.

Before Tek Chand J.

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June 28.

KALA SINGH (VENDEE-PLAINTIFF) Appellant
versus
GAHNA SINGH (DEFENDANT) AND LAL CHAND
(VENDOR-PLAINTIFF) Respondents.

Civil Appeal No. 1552 of 1928.

Indian Limitation Act, IX of 1908, section 14 (2): whether applies to applications for execution.

Held, that the wording of sub-section (2) of section 14 of the Indian Limitation Act is comprehensive enough to cover all applications and is, therefore, applicable to *bona fide* applications for execution, if they have been filed and presented in a wrong Court in circumstances described in that section.

Hira Lal v. Badri Das (1), followed.

Jahar v. Kamini Debi (2), *Pandu Dogadu Maliar v. Jamnadas Chhotumal* (3), and *Kakamani Royappa v. Kolla Venkanna of Rajamundry* (4), relied upon.

Ram Raj Dassundhi v. Mst. Umraji (5), dissented from.

Second appeal from the decree of Mr. H. A. C. Blacker, Additional District Judge, Sheikhpura, at Lahore, dated the 8th March, 1928, reversing that of Bawa Kanshi Ram, Senior Subordinate Judge, Sheikhpura, dated the 23rd March, 1927, and dismissing the plaintiff's suit.

(1) (1880) I. L. R. 2 All. 792 (P. C.). (3) (1924) 85 I. C. 778.

(2) (1900) I. L. R. 28 Cal. 238.

(4) (1910) 11 I. C. 338.

(5) (1926) 93 I. C. 292.