1897.

ANTU v. VISHNU

In the present case the defendants Nos. 2 and 3 came into possession pending the former litigation and are as much bound by the final order made in it as is the defendant No. 1. It is, moreover, the defendant No. 1 who is urging his own act in letting the defendants Nos. 2 and 3 into possession to defeat the jurisdiction of the Mámlatdár. The defendants Nos. 2 and 3 do not appear to take any objection to the plaintiffs' proceedings. I would make the rule absolute. Costs, costs in the cause.

PARSONS, J.:—I see no illegality in the plaintiff suing in the Mámlatdár's Court for possession on the ground of illegal ouster, joining as defendants in his suit not only the person who he alleges has illegally ousted him, but also the other persons who after the ouster have obtained possession from the person who ousted him and are in possession at the time of suit. The date and cause of action would be that of the original ouster, while the subsequent transfer of possession to the other defendants would be a mere narration of the circumstances under which the cause of action arose as against those defendants. To hold the contrary would be to greatly detract from the benefit of the Act, for if the plaintiff were to sue only the persons actually in possession, they might plead that they had not ousted the plaintiff, and if he sued only the person who had ousted him, the other persons might in execution say that, as they were not parties to the decree, they could not be ousted under it. We make the rule absolute. Costs to be costs in the cause.

Rule made absolute.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, Mr. Justice Parsons and Mr. Justice Candy.

1897.

January 21.

HARIBAI, PLAINTIFF, *v.* KRISHNARAV GOPAL, DEFENDANT.*

Stamp—Stamp Act (I of 1879), Secs. 33, 34, 35, 37 (*a*) (*b*), 45 *and* 50—*Collector's decision that an instrument is chargeable with duty not conclusive—Duty of Civil Court—Practice—Procedure.*

The decision of the Collector under clause (*b*) of section 37 of the Indian Stamp Act (I of 1879), that a particular instrument is chargeable with duty

* Civil Reference, No. 9 of 1896.

and is not duly stamped, is not final and conclusive. If his decision under that clause is not obeyed, and the duty and penalty are not paid, any Civil Court before which the document may come has the duty cast upon it under section 33 of examining it and of determining for itself whether it is duly stamped or not, and if not, of taking the steps laid down in sections 33, 34 and 35, that decision being subject to revision under section 50.

REFERENCE by Ráo Sáheb B. S. Joshi, Subordinate Judge of Karád in the Sátára District, under section 49 of the Stamp Act (I of 1879).

The will of one Haribai was presented for registration as a will. The Sub-Registrar, however, on perusing it considered that it operated otherwise than as a will and should be stamped, and he impounded it under section 33 of the Stamp Act (I of 1879) and sent it to the Collector under clause 2 of section 35.

The Collector having obtained the decision of the Revenue authority under section 45 of the Stamp Act as to its chargeability required the payment of stamp duty and penalty according to that decision (see section 37) and detained the document pending the payment.

In this suit the defendant pleaded that the debt in respect of which he was sued by the plaintiff was originally due by him to Haribai, but had been remitted by the terms of her will. It became necessary, therefore, to refer to the document, and the Subordinate Judge having required its production, the Collector sent it to the Court with a kárkun. The Subordinate Judge on examining the document was of opinion that it was a will and was not chargeable with duty. By letter he requested the Collector to allow the will to remain with the record of the suit. The Collector having refused, the Subordinate Judge submitted the following question to the High Court:—

"1. Whether the Collector's decision that the instrument in question is chargeable with duty is binding on this Court? and if not,

"2. Whether the instrument is chargeable with duty, and if so, what is the amount of duty leviable on it?"

The opinion of the Judge on the first question was in the negative and on the second that the instrument (being a will) was not chargeable with duty.

1897.

HARIBAI v. KRISHNARAV.

Ráo Sáheb *Vasudev J. Kirtikar* (Government Pleader) appeared for Government (the Collector) :—The Revenue authorities held that the document required to be stamped. Their decision under section 45 is final and binding. The Collector acts under sections 33, 35, 37 and 39 of the Stamp Act, 1879. Until the stamp duty is paid, the document must remain impounded.

Some portions of the document in question operate as a gift and some as a release. Therefore the document requires to be stamped.

Shamrav Vitthal for the defendant :—The question is whether the Commissioner's decision is binding on the Civil Court. The document was produced before the Subordinate Judge and he was entitled to deal with it under the Evidence Act. The Commissioner's decision is final only for fiscal purposes. Under section 162 of the Evidence Act it is open to the Civil Court to decide the question of admissibility of a document in evidence. If the Legislature had intended that the decision of the Commissioner should be final for all purposes, they would have made a provision to that effect. There is no provision in the Stamp Act making the Collector's decision as to impounding a document final.

The document is clearly a will. No doubt it contains recitals of completed transactions, but it came into force after the death of the testatrix.

PARSONS, J. :—The following two questions have been referred to this Court by the Subordinate Judge :—

1. Whether the Collector's decision that the instrument in question is chargeable with duty is binding on this Court? and if not,

2. Whether the instrument is chargeable with duty, and if so, what is the amount of duty leviable on it?

The reference has been made under the Stamp Act, but it has been argued, and we deal with it, as made both under the Stamp Act and under section 617 of the Code of Civil Procedure.

It appears that the instrument in question was presented for registration as a will, and that the Sub-Registrar impounded it under section 33 of the Indian Stamp Act, 1879, as it appeared

to him that the instrument was not duly stamped, and sent it to the Collector under the 2nd clause of section 35. The Collector under section 37, having first obtained the decision of the chief controlling Revenue authority under section 45, required the payment of stamp duty and penalty according to the decision of the chief controlling Revenue authority, and detained the instrument pending the payment. In a suit filed in the Subordinate Court of Karád the Subordinate Judge required the production of the instrument, and the Collector sent it with a kárkun. The Subordinate Judge perused the document and was of opinion that the instrument was a will and was not chargeable with duty, and he has asked us the above two questions.

In regard to the first, it must be remarked that while the Act makes the certificate of the Collector given under clause (*a*) of section 37 conclusive evidence, there is nothing in it which provides that his decision under clause (*b*) shall be final or conclusive. If his decision is complied with, and the duty and penalty paid, then under section 39 the instrument will be admissible in evidence, but nothing is said in the Act as to what shall be done if the decision is not obeyed and the duty and penalty not paid. It appears to us that under these latter circumstances a Civil Court before whom the instrument may come has the duty cast upon it, under section 33, of examining the document and of determining for itself whether the instrument is duly stamped or not, and, if not, of taking the steps laid down in sections 33, 34 and 35, whatever decision it may come to being subject to revision under section 50. We, therefore, answer the first question in the negative. We answer the first part of the second question also in the negative. The instrument in question is clearly a will, and it does not become a deed of gift or a release or a deed of assignment merely because some past acts of disposition are recited in it.

Order accordingly.