

the case, and in reversing his decree and remanding we do not by any means express any opinion on the evidence which it is for the lower Appellate, and not for this, Court to appreciate. Costs to abide the result.

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BALA
v.
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Decree reversed. Case remanded.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar, Mr. Justice Batty and Mr. Justice Aston.

SAKHARAM SHANKAR AND OTHERS (PLAINTIFFS) v. RAMCHANDRA BABU MOHIRE (DEFENDANT).*

1902.
December 22.

Stamp—Bill of Exchange—Sufficiency of stamp—Construction of instrument.

In determining the question whether a particular instrument is sufficiently stamped, the Court should only look at the instrument as it stands.

Ramen Chetty v. Mahomed Ghouse⁽¹⁾ and *Royal Bank of Scotland v. Tottenham*,⁽²⁾ followed.

REFERENCE made by R. M. Kennedy, Commissioner, Southern Division, under section 57 of the Indian Stamp Act (II of 1899).

At the hearing of a suit in the Court of the Joint Subordinate Judge at Vengurla, a document was put in evidence, dated 26th October, 1896, purporting to be a *hundi* for Rs. 1,000 payable at sight and stamped with a one-anna stamp. In the course of the evidence in the case it appeared that there was a practice in the district for borrowers of money to give the lenders a document in this form in order to evade higher stamp duty. In giving judgment the Subordinate Judge said :

The evidence and argument in this case has shown that there is a practice in this taluka of giving *hundis* payable on demand when one man borrows, that these *hundis* are not presented for payment, and that the drawer himself repays the amount. It is the very essence of a bill of exchange that not the drawer but some other person on his behalf pays the money and that it should also be presented for payment as soon as possible. If all these implied and oral conditions will be mentioned in a bill of exchange, then it will not be considered a bill of

* Civil Reference No. 18 of 1902.

(1) (1889) 16 Cal. 432.

(2) (1894) 2 Q. B. 715.

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exchange but a bond, or at least a bill of exchange not payable on demand, which requires a higher stamp duty than one required for a bill of exchange payable on demand. The *hundi* sued upon in this case is of a similar nature and first I thought it should be considered not duly stamped. But after consideration of the matter I have come to the conclusion that I cannot consider the document first as it stands not duly stamped. I think when deciding whether a particular document is duly stamped I cannot go outside the document and import conditions therein which are brought forth in evidence during the case. I think I should only read the document and decide only from the contents what stamp it should bear. I, however, think that the parties to such transactions are guilty under the Stamp Act, sections 27, 64 (a) and (c) or 68 (c). I believe the matter is of importance as there is a regular practice in this taluka of passing such *hundis* payable on demand when in reality they are not *hundis* payable on demand but instruments of another kind.

The Subordinate Judge submitted the matter to the Revenue Commissioner, S. D., who referred the case to the High Court under section 57 of the Indian Stamp Act (II of 1899).

The reference was heard by a Bench composed of Chandavarkar, Batty and Aston, JJ.

The Government Pleader for the Government:—For the purposes of the Stamp Act (II of 1899) it is permissible only to look at the instrument itself: it is not permissible to import any extraneous evidence to interpret an instrument: see *Ramen Chetty v. Mahomed Ghouse*⁽¹⁾ and *Chandra Kant Mookerjee v. Kartik Charan Chaile*.⁽²⁾

There was no appearance on behalf of either party to the suit.

CHANDAVARKAR, J.:—In our view of the law the Subordinate Judge was right in looking at the document as it stands in determining the question whether it is sufficiently stamped and in treating it as properly stamped as a bill of exchange: see *Ramen Chetty v. Mahomed Ghouse*⁽¹⁾; *Royal Bank of Scotland v. Tottenham*.⁽³⁾ A defect, if any, in the Stamp Act cannot be cured by construing a document to be other than what it is or purports to be.

(1) (1869) 16 Cal. 432.

(2) (1870) 5 Ben. L. R. 108; 14 Cal. W. R. 38 (O. C.)

(3) (1894) 2 Q. B. 715.

The Revenue Commissioner should be informed that in making a reference to this Court under the Stamp Act the original document should be sent with the reference. In this case the original document has not been sent and we have had to look at a certified copy.

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Order accordingly.

TESTAMENTARY JURISDICTION.

Before Mr. Justice Russell.

JEHANGIR RUSTOMJI DIVECHA (APPLICANT) v. BAI KUKIBAI
AND OTHERS (OPONENTS).

1903.

January 15.

*Executor—Will—Probate—Probate granted to some of the executors—
Executors who have not proved may call for inventory and account from
executors who have proved and are managing the estate.*

One Ardeshir R. Divecha, a Parsi inhabitant of Bombay, died in 1900. By his will he appointed his wife, his eldest son and two other persons, of whom the applicant was one, to be his executors, his wife and eldest son being named as managing executors. In 1901 the two latter applied for probate. The other two executors, though called on to join in the application, did not do so. The Court granted probate to the wife and the son, and reserved leave to the other executors to apply. No application was, however, made by them. In 1902 the applicant called upon the managing executors for an inventory and account of the deceased's estate. The applicant had no beneficial interest in the estate. It was contended for the managing executors that the applicant had no right to require an inventory and account from them.

Held, that the applicant was entitled to an inventory and account. The facts that under section 179 of the Indian Succession Act (X of 1865) the property of the deceased vested in the applicant as executor of the will, and that he might at any time apply for probate, gave him an interest sufficient to justify his application.

CITATION issued at the instance of Jehangir Rustomji Divecha, calling upon the opponents, two of the executors of the will of one Ardeshir Rustomji Divecha, to appear before the Judge in Chambers within eight days after service and "then and there to exhibit on oath a true and perfect inventory and a just account of the property and credits of the said Ardeshir Rustomji