

1902.
SHIVRAM
v.
BAL.

covenant. Here the seller and the buyer were both coparceners in the joint property, part of which was being sold. The interest of the seller in such property was perfectly known to the buyer, who was well aware that though the contract was performed and he was put in possession of the land sold to him, his possession could only be protected by the action of the Court in subsequent partition proceedings. The liability to partition in regard to this land was one which could not be removed by the seller, as was well known to the buyer : see the remarks of Kay, J., in *Ellis v. Rogers*.⁽¹⁾

We must, therefore, amend the decree of the District Judge by striking out the award of damages, Rs. 62. Defendant must get his cost of this appeal. The order of the lower Appellate Court as to costs in the Courts below will stand.

Decree amended.

(1) (1885) 29 Ch. D. at p. 666.

CIVIL REFERENCE.

Before Mr. Justice Candy, Mr. Justice Fulton, and Mr. Justice Chandavarkar.

KASTUR DANAJI MARWADI (APPLICANT), v. FAKTRIA
HALLA PATIL (OPPONENT).*

1902.
March 12.

Stamp—Indian Stamp Act (II of 1899), schedule I, art. 24—Copy—Extract—Account books—Civil Procedure Code (Act XIV of 1882), sections 141A, 142A.

A copy or extract from an entry in an account book, filed under the provisions of sections 141A and 142A of the Civil Procedure Code, requires no stamp.

REFERENCE made by Ráo Sáheb Janardan Damodar Dixit, Subordinate Judge of Bhiwandi, under section 60 of the Indian Stamp Act (II of 1899).

In a suit brought by the plaintiff to recover certain instalments due upon a bond executed by the defendant, he (plaintiff) produced and proved certain entries from his account books. Copies of these entries were made, certified by the Clerk of the Court and

* Civil Reference No. 1 of 1902.

placed on the record, under sections 141A and 142A of the Civil Procedure Code (Act XIV of 1882).

The practice of the Subordinate Court was not to stamp such extracts. The Subordinate Judge, however, felt a doubt as to the correctness of the practice and referred the following questions for the opinion of the High Court :

1. Whether a copy or an extract from an entry in an account book filed under the provisions of sections 141A and 142A, Civil Procedure Code, requires to be stamped under article 24 of the first schedule of Act II of 1899 ?

2. Whether the extract filed requires to be stamped with one stamp or several stamps in respect of the copy of each entry or entries from any one year's account book ?

The Subordinate Judge was of opinion that the copy or extract required to be stamped under article 24 of schedule I of the Indian Stamp Act (II of 1899) ; and that extracts from each year's separate account book should be considered as a copy or extract from one document and stamped with a stamp necessary for one copy or extract.

There was no appearance on behalf of Government or of the parties.

CANDY, J. :—The first question is whether a copy or an extract from an entry in an account book, filed under the provisions of sections 141A and 142A of the Civil Procedure Code, requires to be stamped under article 24 of schedule I of the Stamp Act (II of 1899).

A similar question was put in Civil Reference No. 47 of 1885 with regard to section 141 of the Civil Procedure Code before the amendments of 1888 were introduced. That section simply provided that if the document be an entry in a shop book or other book, the party on whose behalf such book is produced may furnish a copy of the entry which may be endorsed (number and title of the suit, &c.), and shall be filed as part of the record and the Court shall mark the entry, and shall then return the book to the person producing it. The object of marking the entry was apparently for the purpose of identification (section 62). The answer to Civil Reference No. 47 of 1885 is to be found in *Harichand v. Jivna Subhana*.⁽¹⁾ The Court held that copies

(1) (1887) 11 Bom. 526.

1902.

KASTUR
v.
FAKIRA.

furnished under section 141 were not certified "by or by order of any public officer," and, therefore, they were not chargeable with any stamp duty under the Indian Stamp Act (I of 1879), schedule I, article 22. To ascertain their accuracy the Clerk of the Court seems *subsequently* to have compared them with the original entries and found them to be correct—a fact which he certified below them under his own hand and seal of the Court. Whether this would render the copies liable to payment of any Court fee must depend upon the question whether the originals were liable to any stamp duty, and that would depend on whether they were acknowledgments within the terms of article 1 of schedule I of the Stamp Act.

The *ratio decidendi* in the above case was apparently that when the copies were furnished they were not certified, and that the *subsequent* certificate by the Clerk of the Court did not bring the documents within the terms of article 22 of schedule I of the Stamp Act.

Sections 141, 141A, 142, 142A of the present Civil Procedure Code were substituted for the original sections 141, 142 by the Civil Procedure Code Amendment Act, 1888. The principal amendment is in section 141A (3), which provides that when a copy of an entry is furnished, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 62, mark the entry and cause the book to be returned. In short, the section provided for the Court doing what the Clerk of the Court had done in the case above quoted.

In Civil Reference No. 21 of 1890 (*Krishnaji Sadashiv Ranade v. Dulaba*⁽¹⁾) the question was whether copies of entries in account books which a Civil Court has to attest under section 68 of the Civil Procedure Code fall within article 22 of schedule I of the Stamp Act, 1879 (article 24 of the present Stamp Act). The Court answered the question in the negative. The reason given by Sargent, C.J., was that the attestation of the copy was not made on the application of the owner of the copy, but solely in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying the book entry when produced at the hearing. Birdwood, J., held that article 22 can

(1) (1891) 15 Bom. 687.

apply only to certified copies held at the time when they become chargeable with stamp duty by the persons by whom the duty is payable; and he noticed that when a plaintiff produces the copy referred to in section 62, he does so *not in order that it may be admitted in evidence or substituted for the original entry on the record.*

The present question refers to copies which under section 142A have been substituted for the originals under section 141A and form part of the record of the suit. It is clear that the copies or extracts are not chargeable under the law for the time being in force relating to Court fees, for not being acknowledgments they are not liable to stamp duty under the Stamp Act. Also, it is clear that these copies have been certified to be true by a public officer. Also, they do not come within the exemption set forth at foot of article 24 of the present Stamp Act (II of 1899). So far, then, article 24 would seem to be applicable.

But I think that on the principle *stare decisis* we should hold that article 24 does not apply to copies which when furnished do not require to be stamped. It is quite true that a copy under sections 141A and 142A is admitted in evidence and forms part of the record of the suit; but Birdwood, J., who in the case of *Krishnaji Sadashiv Ranade v. Dulaba*⁽¹⁾ drew attention to this point, was also a party to the judgment in *Harichond v. Finna Subhana*,⁽²⁾ and, as shown above, the foundation of the judgment in the earlier case was the fact that when the copies were furnished they were not certified, and the subsequent certificate did not bring them within the terms of the article. The amendment of the law, providing for the subsequent certificate, would not change this fact. Having regard to the provisions of the Stamp Act regarding instruments, the Court cannot see that the copy is duly stamped when furnished. After it has been furnished, it is examined, compared and attested, and then it forms part of the record of the suit. There is apparently a distinction between a copy substituted for the original under section 141A—the copy when furnished is not certified—and the copy substituted for the original under section 144—the copy when delivered must be certified.

1902.

 EASTUR
 v.
 FAKIRIA.

(1) (1891) 15 Bom. 687.

(2) (1887) 11 Bom. 536.

1902.

KASTUR

v.

FAKIRIA

For these reasons I would hold that copies furnished under section 141A do not come within article 24 of schedule I of the Stamp Act, 1899.

CROWE, J. :—I am of opinion that no stamp is necessary under article 24 of Act II of 1899 in the case mentioned.

Under section 141A of the Civil Procedure Code the party producing the entry is entitled to file a copy of the entry. The Court is required to cause the copy to be examined, compared and attested. It was not certified by or by order of any public officer to be a true copy or extract when so produced.

FULTON, J. :—I concur.

FULL BENCH.

APPELLATE CIVIL.

Before Mr. Justice Fulton, Mr. Justice Crowe, and Mr. Justice Chandavarkar.

1902.

March 20.

RAMKRISHNA RAMCHANDRA (ORIGINAL PLAINTIFF), APPELLANT, v.
SHAMRAO YESHWANT AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

Hindu Law—Adoption—Grandmother succeeding to her grandson—Divesting of estate by adoption.

Where a Hindu grandmother succeeds as heir to her grandson who dies unmarried, her power to make an adoption is at an end.

Where a Hindu dies, leaving a widow and a son, and that son himself dies leaving a natural born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived.

SECOND appeal from the decision of Ráo Bahádur A. G. Bhavé, First Class Subordinate Judge, A. P., at Sholápur, confirming the decree passed by Khán Sáheb R. M. Gimi, Subordinate Judge of Bársi.