

## APPELLATE CIVIL.

Before Chief Justice Scott, Mr. Justice Batchelor  
and Mr. Justice Chabhal.

GANPAT KIRPARAM, PLAINTIFF, v. SUPDU KIRPARAM  
AND OTHERS, DEFENDANTS.\*

1908.

June 23.

*Stamp Act (II of 1899), section 2, clause (15)—Partition—Undivided brothers—Documents purporting to be lists of properties—Each document signed by the brothers excepting the one retaining it—Each document formed the title of the brother retaining it with respect to his share—Instrument of partition—Stamp.*

Four undivided brothers made four lists of the family property. Each list was signed by three brothers and not by the fourth, who retained it. A question having arisen whether the lists constituted a partition between the brothers and required to be stamped as such under the Stamp Act (II of 1899),

*Held*, that the four documents formed, when read together, an instrument of partition within the meaning of section 2, clause 15, of the Stamp Act (II of 1899). Each document formed the title of the brother retaining it against the other three brothers with regard to the property which came to his share when the partition was effected.

CIVIL reference by W. Doderet, Commissioner, C. D., under section 57 of the Stamp Act (II of 1899).

The facts were as under :—

Ganpat, Supdu, Dagdu and Jairam were four Hindu brothers and were possessed of considerable family property consisting of lands and outstandings. On the 8th November 1903 they made four lists of the outstandings due to the family. Each list was signed by three of the brothers and was retained by the other, who did not sign it. On the 20th June 1904 they made similar lists relating to family lands. Under the lists, the outstandings were almost equally divided among the four brothers and the lands were divided into four equal shares. Each of the said lists relating to outstandings began thus :—

List in respect of division (effected) amongst kinsmen. The following are (the particulars of) the *asamis* (constituents) that came to the share of (name of one brother) out of (names of three brothers).

The concluding words in each list were as follows :—

We have taken and received the mortgage-deeds, the money-bonds, the sale-deeds which came to (our) shares after the sales and the sums which came to

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(our) shares under the Ruzu Khatas appertaining to the abovementioned list. The 3rd of Kartik Vadya in the Shak year 1825 (8th November 1903).

Signatures of three brothers.

Subsequently Ganpat brought a suit, No. 384 of 1906, against his three brothers in the Court of the Second Class Subordinate Judge of Chálisgaum in the Khándesh District, to have the account books in the hands of defendants 1 and 2 of their undivided moveable and immoveable property examined and to recover his share in the income of the family property which had remained undivided. At the trial the said lists were produced in Court for the purpose of showing that though there was no actual partition of the family property between the parties, there was separation of interest and rights. The Subordinate Judge treated the lists as instruments of partition and demanded the requisite stamp duty and penalty for them. The parties, however, compounded the case and declined to pay the stamp duty and the fine. The Subordinate Judge, thereupon, impounded the lists and forwarded them to the Collector for adjudication under Chapter VI of the Stamp Act (II of 1899). The Collector, being doubtful as to the exact nature of the lists, made a reference to the Commissioner, C. D., under section 56 (2) of the Stamp Act. The reference was made in the following terms:—

The papers of the suit show that on Kartik Vadya 3rd, Shake 1825, lists No. 1 which show the shares of *kanja rothas* were prepared and, it was at this time that the parties began to live separate from each other. Again lists No. 2 which show the division of survey numbers were prepared on Jositha Shudha 7th, Shake 1825. This shows that the partition was made from time to time and it is still incomplete and this is the reason why they sue each other.

Another thing is that if we look to each *gáti* separately we find there signatures of three brothers and an endorsement acknowledging receipt of the property; while the fact is that the property has gone to the share of that brother whose signature it does not bear. In these circumstances it is difficult to decide if these are partition deeds or mere *gáti*s intended to be useful for the final partition, and I feel doubt as to the amount of duty with which these documents are if at all chargeable \* \*. Hence this reference is made.

The Commissioner, C. D., made a reference to the High Court under section 57 of the Stamp Act, stating "that on the analogy of the Bombay High Court judgment in the case

of *Nilkant Ganesh v. Maruti bin Kesu*<sup>(1)</sup> the lists of money-bonds and lands prepared by the four brothers and referred to by the Collector do not amount to an instrument of partition." The question referred for decision was as follows :—

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Whether lists of money-bonds and lands prepared under the circumstances mentioned therein by four brothers of a Hindu family whereafter they began to live separately are to be treated as partition-deeds and charged as such or whether they are mere *yadis* intended to be useful for final partition?

*M. V. Bhat* for the plaintiff:—If each list be looked at separately we find on each three signatures of three brothers and an endorsement acknowledging receipt of the property, while the fact is that the property mentioned in the list was assigned to the share of that brother whose signature does not appear on it. Therefore the lists are not an instrument of partition, but an acknowledgment by all the brothers of the fact of past partition. An acknowledgment of partition is distinct from an instrument of partition: *Sakharam Krishnaji v. Madan Krishnaji*<sup>(2)</sup>, *Vishnu Lakshman v. Gorind Mahadev*<sup>(3)</sup>, *Nilkant Ganesh v. Maruti bin Kesu*<sup>(1)</sup>. We, therefore, submit that the lists do not require to be stamped as an instrument of partition.

*R. W. Desai* for the Government of Bombay:—The language of the lists clearly shows that they evidence a partition of the joint family property: *Reference under Stamp Act, s. 46*<sup>(4)</sup>. The lists constitute an instrument of partition within the meaning of clause (15) section 2 of the Stamp Act (II of 1899).

*Scott, C. J.*:—We are of opinion that the four documents which have been referred to us form, when read together, an instrument of partition within the meaning of section 2, clause (15) of the Stamp Act. Each document forms the title of the brother retaining it against his three brothers with regard to the property which comes to his share upon the partition effected (so far as we can see) upon the 8th of November 1903, the date which the documents bear.

*Order accordingly.*

G. B. R.

(1) (1893) P. J., p. 203.

(2) (1881) 5 Bom. 232.

(3) (1895) P. J., p. 257.

(4) (1891) 15 Mad. 151.