

to you for Rs. 125; but being in want of money, I have this day relinquished title to the land in your favour, in consideration of an additional sum of Rs. 50, received from you. Hence you may enjoy the land without disturbance from generation to generation. As I have, at this time, no stamp with me, and cannot execute a deed of sale, I have executed this memo. in your favour. At my leisure, transfer the *kháta* of the land to your name and then take back the memo. I shall not fail to do so. I have received the aforesaid sum of Rs. 175 in cash in the presence of the writer and the attesting witnesses. The aforesaid agreement binds me and my heirs. Until the land is transferred to your name, I shall pay the assessment, and you should keep the boundary-marks in good repair according to the Government rules. This is the memo. given in writing on 18 March, 1885, A. D. Written by Bháu Dattatraya Talghatti of Kakhandki.

“Witnesses—

Mártand Jiváji.

One anna receipt stamp.

Nágapa Bhojápa.

SINA'PA'YA BIN RA'MA'PAYA HARIDA'S.”

PER CURIAM:—We are of opinion that the instrument is a conveyance, of which the amount of the consideration, calculated according to section 24 of Act I of 1879, is Rs. 175, and that it is also an agreement to pay assessment until the land conveyed is transferred in the Collector's books to the purchaser. The stamp duty leviable in respect of the conveyance would be Rs. 2, and in respect of the agreement 8 annas.

Order accordingly.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood
and Mr. Justice Candy.*

VASANJI HARIBHA'I, PETITIONER.*

18.

February

Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award, effect of—Division of the property in severalty—Partition deed—Clause 11, Section 3 of the General Stamp Act (I of 1879).

The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators,

Held that the instrument was an agreement to divide the property in severalty, and was, therefore, a partition deed within the definition in clause 11 of section 3 of the General Stamp Act (I of 1879).

* Civil Reference, No. 1 of 1891.

THIS was a reference made to the High Court by H. E. M. J. Commissioner, N.D., under section 46 of the General Stamp Act (No. 1 of 1879).

The reference was made in the following terms :—

“(1) An application was made to the Collector of Surat under section 30 of the Stamp Act for the opinion of that officer as to the duty chargeable on a document already stamped with R. 1 (one) of which the following is the translation :—

“(2) The 9th of *Jeth Vad* of the *Samvat* year 1946, the day of the week Wednesday (corresponding to) the English date the 11th of June, 1890. We, the undersigned inhabitants of mauje Degaum, taluka Chikhli, of our own accord and free will, enter into an agreement as follows :—We all are the descendants of Sai Vasanji and have lived as members of an undivided family up to date. Of us, on the one side, there are in all two, one Nichhábhái and another Vasanji, (who are the sons) of Sai Hari-bháí, and on the other there are in all three, one Ratanji, another Náranji and third Makanji, who are the sons of Khushálbháí, who is the son of Prágji Sai. There having arisen differences among the sharers of both these parties, we all, in order to effect a division and disposition of our moveable and immoveable property and effects, outstandings and debts and all other things, passed a reference on stamped paper on the 2nd of February, 1890, to four respectable persons (namely) Vasanji Dullabhbháí of the town of Navsári, Dayálji Monbhái of Palsána, Bhimbháí Govandji of Variáv and Makanji Kanthádji of Eru, and invested them with full powers to give a final decision (in the matter). Thereupon they unanimously gave a written award on the 9th of February, 1890. Admitting the same, we all, on the 10th of June 1890, of our free will and accord, came to an amicable settlement among ourselves and entered into an agreement to give and receive to and from one another (a little) more or less of property and cash (than what was awarded by the arbitrators' award ?) and to make (some) alterations in the disposition thereof. In order to get the arbitrators' award amended accordingly we tendered a written *kabuláyat* (*i. e.* consent) under the signa-

tures of us five to the above-mentioned arbitrators on the 11th June, 1890. Thereupon the arbitrators entered the amend at the foot of the award given by them and passed a decision on the 11th of June, 1890. We bind ourselves by this agreement to divide moveable and immoveable property and effects, outstandings and debts and all other things according to the amended award, and give and receive to and from one another possession thereof. To this no manner of objection proceeding from any one shall be allowed, and yet should any one raise it, the same is certainly null and void by virtue of this (agreement), and all the costs incurred thereby shall have to be borne by the person who raises the objection. We have entered into this agreement of our free will and accord and in our sound mind and conscious state. The same is duly agreed to and admitted (by us). The hand-writing of Gulabbhai Haribhai.

Signatures.

Attestations.'

“(3) The Collector passed an order, stating that the document was a partition deed, and should be stamped accordingly, and that under section 27 of the Act all the details of the property should be set forth.

“(4) The applicant, who is one of the signatories to the agreement, has, therefore, applied to the Commissioner (the Collector having declined to draw up a case for reference to the Commissioner under section 45) to refer the case to the High Court under section 46.

“(5) The applicant, represented by Mr. Balavantrao Tripurashankar, pleader of the District Court at Surat, argues that under *Amarsi v. Daya*⁽¹⁾ the award referred to in the agreement, which is the subject of this reference, and which has not been produced, would only become a partition deed if signed by the parties, and that the decision in *Ramen Chetty v. Mahomed Ghose*⁽²⁾ shows that a document must be taken as it stands without reference to any other document referred to it. He points out that, if the parties chose, the award itself, if unsigned by them, could be filed in Court under section 523, Civil Procedure Code, in which case the result would be that it would bind the parties,

(1) I. L. R., 9 Bom., 50.

(2) I. L. R., 16 Cal., 432.

they would have all the advantage of a partition with a Rs. 5 stamp. A further document, binding the parties to carry out the award, is a miscellaneous agreement and only liable under clause I, 5 (i) of the Stamp Act to a stamp of 8 annas. In the award being legally binding, the further agreement was unnecessary and need not have been written or referred to the collector. The award itself is not produced.

(6) It seems clear that if the law be as stated, partition deeds and the stamp duty thereon will cease to exist, as the partition deed can be drawn up in the form of an award signed by a third person as arbitrator and filed in Court, being written only on an 8-anna stamp. The question is, therefore, one of importance.

(7) It seems to me in this particular instance that the words 'we bind ourselves by this agreement to divide moveable and immoveable property and effects, outstandings and debts and all other things according to the amended award and give and receive to and from one another possession thereof,' amount, whether the parties meant or not, to a partition deed, and for all I know, the award itself may not be duly stamped, and if this agreement were passed it would then be attached to the agreement (award as an appendix and the stamp duty evaded.)

Branson (with *Ráo Sáheb Vásudev Jagannáth Kirtikar*) for the petitioner:—The question to be determined is whether a document of the executants of which thereby agreed to be bound by the award of certain arbitrators for partition, is a partition deed and whether it requires to be stamped, as such, under clause 11 of section 3 of the Stamp Act. The Commissioner is of opinion that such an agreement is a partition deed and should be stamped as such. We contend that under the present agreement the parties merely agreed to be bound by the terms of the award. The agreement was unnecessary, and it did not effect partition. The award bears the requisite stamp of Rs. 5. Parties may agree to be bound by a decree for partition, but such an agreement by itself would not effect partition. It is the decree that would effect partition. Such an agreement, therefore, cannot be liable to a stamp duty for a partition deed. It would be merely an agree-

ment to abide by the terms of the decree—*Reference under Act, Sec. 49*⁽¹⁾.

Shántarám Núrāyan, (Government Pleader), who appeared for the Government, was not called upon to address the Court.

PER CURIAM:—The instrument is an agreement to divide property in severalty, and is, therefore, a partition deed within the definition in clause 11 of section 3 of Act I of 1879.

Order accordingly.

(1) I. L. R., 7 Mad., 385.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

LAKSHMAN DÁDA'JI, (ORIGINAL DEFENDANT), APPELLANT, *v.*
DÁMODAR ÁMBADÁ'S, (ORIGINAL PLAINTIFF), RESPONDENT.*

Decree—Execution—Order in execution that defendant pay money into Court—Appeal by plaintiff against order—Payment into Court by defendant—Refusal of plaintiff pending appeal to take money out of Court—Attachment of the money so paid in by another creditor of defendant—Payment to him—Subsequent application by plaintiff in execution for payment to him—Effect of his previous refusal.

In execution of a decree against the defendant obtained by the plaintiff, an order was made, directing the defendant (*inter alia*) to pay into Court the sum of Rs. 140-8-0. Both parties appealed against this order, but pending the appeals the defendant paid the amount into Court. The plaintiff, however, refused to take it, on the ground that he had appealed against the order under which it was paid in, and the Court subsequently passed an order that the money should be returned to the defendant. But before this could be done, the money was attached by a third person, (Ganpatráo Dámodar), in execution of his decree against the defendant, and a few days afterwards the money was paid over to him. Shortly afterwards the appeal against the order directing the defendant to pay Rs. 140-8-0 to the plaintiff was heard, and the order was confirmed. Thereupon the plaintiff applied in execution (*inter alia*) for payment of the sum of Rs. 140-8-0. The defendant contended that he had already paid it. The Subordinate Judge directed the defendant to pay this sum into Court within one month. The defendant appealed to the District Court, who confirmed the order of the Subordinate Judge. The defendant then appealed to the High Court.

Held, that the orders of the lower Courts should be reversed. When the defendant paid the Rs. 140-8-0 into Court in execution of the decree the Court held the money on account of the plaintiff, and the plaintiff, who had not obtained

* Second Appeal, No. 65 of 1890.