

## APPELLATE JURISDICTION. (a)

*Regular Appeal No. 16 of 1862.*CHINNAIYA NÁTTÁN ..... *Appellant.*MUTTUSVÁMI PILLAI ..... *Respondent.*

An agreement on a 24 rupees-stamp paper between A, who had obtained from Government the ábkári form of a certain taluk, and B stipulating that, in consideration of Rupees 2,000 advanced by B for payment of deposit, the whole management should reside in B, that the parties should each have a half-share and be respectively entitled and liable to profit and loss in respect of his share; that they should account with one another for the sums laid out by B and should settle annually the accounts of profit and loss upon the half share:—*Held*, to be a partnership agreement and to be sufficiently stamped under Act XXXVI of 1860, clause 20, schedule A.

In determining the stamp to be affixed to a document, the state of things at its execution is alone to be regarded.

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THIS was a regular appeal from the decision of E. W. Bird, the Acting Civil Judge of Negapatam, in Original Suit, No. of which was brought for damages for the breach of an agreement in Tamil dated the 8th of June 1861. The defendant had obtained from the Sarkár the ábkári rent in the taluk at Chiyáli, for five years from fasli 1271 (1861,) and in consideration of rupees 2,000, transferred one-half share thereof to the plaintiff. At the same time he executed the agreement in question of which the following is a translation.

“ On the 8th June 1861 this agreement has been granted to Chinnaiya Náttán son of Parayár Chinnatambi Náttán residing in Chekkáchi by Muttusvámi Pillai residing in Arasur of the said taluk.

“ I have rented the ábkári farm for five faslis from 1st July of 1271 [1861] fasli up to the 30th June of the fasli 1275 [1866], and I have reserved half (share) for myself and have given you the other half and received from you the sum of 2,000 rupees. As I have received this sum of two thousand rupees for the purpose of depositing the same, and have given you half a share in this contract, you yourself shall enjoy the profits and loss appertaining to your half share. You yourself and not I, shall have right to obtain machal-kás during these five faslis respecting that contract for toddy and arrack shops; to employ servants; to manage all the

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affairs connected with the contract, to incur all the expenses thereof ; to cancel bazar (contracts) and to dismiss servants, &c., and to make other arrangements respecting my half share as well as your own half. If I take others as joint partners for my half share I shall be responsible for them, they shall not interfere with your management of the business of the whole of the contract, and you need not be answerable to them. If you receive money and pay every month to the sarkár, I shall admit the same as per account. I shall pay for my moiety whatever amount may be asked for. The amount of expenses that may be incurred by you during these five faslis shall be deducted and the accounts respecting the remaining profits and losses shall be examined by me on the 30th June of every falsi.

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To this end, I Muttusvámi Pillai have granted this agreement to Chinnaiya Náttán.

(Signed) Muttusvámi Pillai's signature.

I, Pattur Pacheperumál Náttán of the said ta'aluk, know."

The above document was on a 24-rupees stamp paper.

The Civil Judge, considering that the contract required an optional stamp, that the plaintiff was therefore under section 14 of Act XXXVI of 1860 (a) entitled to sue for rupees 3,000 only, and that the suit was accordingly within the jurisdiction of the Principal Sadr Amin, rejected the plaint.

*Mayne* (with him *Rangaiya Nayudu*) for the appellant the plaintiff. First, the Civil Judge was wrong in law in holding that the contract sued on required an optional stamp. Secondly, he was wrong in law in holding that the contract was insufficiently stamped, since it was either a deed of partnership, or a sale of a share in a contract, and in either point of view was sufficiently stamped.

(a) This section enacts that "no larger sum shall be recoverable in any Court of Justice by reason of any deed, instrument or writing for which an optional stamp is indicated to be proper by the said schedule than the largest sum for which, if specially stated in a deed, instrument or writing of the same denomination, the stamp actually used under the option so given, would be of sufficient value. And no such deed, instrument or writing shall be held by any Court of Justice to be valid in respect to any sum of money larger than that for which the stamp on the said deed, instrument or writing would be sufficient."

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*Branson*, for the respondent, the defendant. First, the agreement is neither a deed of partnership nor a contract for the sale of a share in a contract. If it were either it would contravene the policy of Regulation I of 1820 ( " A Regulation for rescinding Regulation I of 1808 and for prescribing the rules under which arrack, toddy, and other spirituous and fermented liquors shall be manufactured and sold within the territories subject to the Presidency of Fort St. George, without the limits of the jurisdiction of the Supreme Court of Madras." ) Secondly, the Civil Judge was right in treating the agreement as requiring an optional stamp.

*Mayne* replied.

The Court delivered the following

JUDGMENT :—The plaintiff sued for damages for a breach of contract.

The Civil Judge rejected the plaint because he considered the contract subject to an optional stamp ; and the plaintiff therefore, under section 14 of Act XXXVI of 1860, being entitled to sue for rupees 3,000 only, the suit was properly within the jurisdiction of the Principal Sadr Amin.

In determining the stamp to be affixed to a document, the state of things at its execution has alone to be regarded.

For the plaintiff it has been argued that the deed is either a deed of partnership, or an agreement for the sale of a share of a contract ; and in either point of view was sufficiently stamped. For the defendant it was contended that it could not be considered as a deed of partnership, nor an agreement for the sale of a share of a contract : that a deed for either of these purposes, would be contrary to the policy of Regulation I of 1820, and that it was properly dealt with as a document bearing an optional stamp.

The document was executed by the defendant, who had obtained from Government the *ábkári* farm of the *ta'áluk* of *Chiyáli*. It stipulates that, in consideration of rupees 2,000 advanced by the plaintiff for payment of deposit, the whole management should reside in the plaintiff ; that the parties should each have a half share, and be respectively entitled and liable to profit and loss in respect of his share ; that they should account with one another for the sums laid out by

the plaintiff, and should settle annually the accounts of profit and loss upon the half share. The document does not purport to transfer to the plaintiff a separate and distinct property in either shops or trees; but provides that the shares shall remain undivided under the plaintiff's sole management, subject to an account by which the profit and loss of the half share is to be ascertained. In terms it seems to us to provide for a partnership between the parties in respect of the subject-matter of the whole undivided contract, each sharing the profit and loss in equal proportions; and we are of opinion therefore that the document in question is a deed of partnership, and is sufficiently stamped under Clause 20, Schedule A of Act XXXVI of 1860.

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We do not consider that the Court can now properly decide whether the agreement is contrary to the policy of Regulation I of 1820. This is an objection, which, if thought tenable, the parties may make at the hearing. The single question before us is, the correctness or incorrectness of the course taken by the Civil Judge in refusing to allow the case to be heard at all.

We reverse the decision of the Civil Judge; direct him to readmit the suit upon his file, and decide it upon the merits; and order that the costs of the present appeal be costs in the cause.

*Appeal allowed.*

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