

APPELLATE JURISDICTION (a)

Special Appeal No. 454 of 1865.

SUBRÁYA PILLAI and another.....*Appellants.*
 SRINIVÁSA PILLAI*Respondent.*

Special Appeal No. 455 of 1865.

CHELLA PILLAI*Appellant.*
 SRINIVÁSA PILLAI*Respondent.*

Special Appeal No. 456 of 1865.

DURGA LÁL.....*Appellant.*
 SRINIVÁSA PILLAI.....*Respondent.*

It is open to an Appellate Court to consider the question whether a document which the Court of First Instance has declared to be liable to a Stamp under Act X of 1862, is properly so liable.

THIS was a special appeal from the decision of T. Krist-nasámy Aiyar, the Principal Sadr Amin of Coimbatore, in Regular Appeals Nos. 180, 181 and 191 of 1864, confirming the decree of the District Munsif of Coimbatore in Original Suit No. 189 of 1863.

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The suit was brought for the recovery of $\frac{1}{5}$ share of the profits of an Abkári farm, to which the plaintiff alleged he was entitled as a co-partner. The defendant denied the truth of the plaintiff's claim and alleged that the 1st defendant had obtained a sub-lease to himself of the farm, duly executed by the plaintiff and the 2nd, 3rd and 4th defendants, whereby they renounced all right to share in the profits of the farm. The 1st defendant produced this agreement before the Court of First Instance, but the Munsif decided that it was liable to Stamp-duty and a penalty of Rupees 4,200. The 1st defendant not paying this sum, the document was not admitted in evidence and judgment was given for the plaintiff. The defendants appealed, and the Principal Sadr Amin, although of opinion that the document in question needed no Stamp, decided that he could

(a) Present Holloway and Innes, JJ.

1866. not interfere with the Munsiff's decision upon the point, and
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The defendants preferred the present special appeals.

Mayne and Srinivasa Chariyar, for the appellants, the second and fourth defendants, in Special Appeal No. 454 of 1865.

Rangaiya Naidu, for the respondent, the plaintiff, in Special Appeal No. 454 of 1865.

Rajagopalu Charlu for the appellant, the third defendant, in Special Appeal No. 455 of 1865.

Rangaiya Naidu. for the respondent, the plaintiff in Special Appeal No. 455 of 1865.

Busteed and Rajagopala Charlu, for the appellant, the first defendant, in Special Appeal No. 456 of 1865.

Rangaiya Naidu, for the respondent, the plaintiff, in Special Appeal No. 456 of 1865.

The Court delivered the following judgments.

INNES, J :—The point which we have first to determine in these cases is, whether the Principal Sadr Amin was right in considering himself debarred from re-opening in appeal the question of whether a document, which the Court of first instance had declared to be liable to a Stamp under Act X of 1862, was properly so liable.

The Principal Sadr Amin was guided by Section XVII of Act X of 1862, which gives a Civil Court the power of receiving in evidence, and of finally determining the amount of Stamp-duty and penalty payable upon unstamped documents produced before it, in all cases in which, under Section XV of the Act, a Collector might permit a Stamp to be impressed upon an unstamped document.

Section XV, as will be seen, has application only to documents which under Section II of the Act require a Stamp. So that Section XVII in giving final power to the Civil Court, presupposes that the documents produced are such as require a Stamp, and the finality which it confers

upon the determination of the Court is finality solely in respect of the amount of stamp, to the determination of which the enquiry as to whether the document be one requiring a stamp is merely incidental. But it is further clear from Section II, of Act X of 1862, that that Act is not applicable to the document now before us, which was executed in 1861 prior to the passing of the Act.

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The Act properly applicable is XXXVI of 1860, the document having been executed during the period at which that Act was in force.

The parts of this Act which to some extent correspond with Section XVII, Act X of 1862, are Clauses 4 and 5, Section XIII, and neither in these nor in Clauses 1 and 2, certain provisions of which conferring powers upon Collectors are by the latter part of Clause 5 imported *mutatis mutandis* into Clause 4, is the determination of the Court, before which the instrument is in the first instance produced, declared to be final.

Further, the documents spoken of in Section XIII are clearly such documents as are liable to a stamp, and therefore, even though there were ground for holding that the decision of a Civil Court as to the *amount* of stamp and penalty due upon a document produced before it, and supposed to be liable to a stamp, could not be questioned in appeal, there would still be no reason for the position that the Appellate Court had not the power to question the liability of the document to a stamp.

In regard to the document in question, it appears to me clear that it is a sub-lease and so not liable to a stamp. The parties had obtained the abkári contract for 5 years from Government. By this document they are made to sub-let their 5 years' lease for a payment of 2,260 Rupees per annum, and the whole sum due for the 5 years is by the document acknowledged to be paid. It was argued that this was an assignment of the whole interest, not a sub-lease. But I think that it is not so, for the rights and duties of the lessees in respect of the Government, to whom they continued responsible, were not effectually transferred by this document, though they might have been if the license had been obtained in the names of the sub-lessees.

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Being a sub-lease, it was under Regulation I of 1820 exempted from liability to stamp, and, as I think that the Principal Sadr Amin should have admitted the document in evidence, I would remand the case for that purpose.

HOLLOWAY, J.—I think the document exempted from liability to stamp duty under Regulation I of 1820. Although it is pretty clear that, if the present document could have immediate effect, there would be no sub-renting, because the intention of the parties is clearly to transfer the whole interest and thereby prevent the relation of lessor and lessee, yet the fact plainly is that the original contractors did not cease to be lessees at its execution; they were still liable to the Government, and, as a necessary consequence, the person who was to take the whole interest could be and was no more than their lessee. The document therefore did not require a stamp.

This being so, it is quite clear that the Principal Sadr Amin had power to determine whether it should be received in evidence, and the decision of the High Court in H. M. H. C. Reps. 321(a) contains nothing to the contrary, because the conclusiveness of the decision of the Court is strictly confined to cases of documents requiring stamps. There would be no difference in the decision, if the case is to be decided by the procedure of Act XXXVI of 1860, the Stamp Act in force at the execution of this document—a point of some difficulty in consequence of the peculiar language of Clause I, Section XVII of the repealing Act and of the repealing clause in that Act. All the provisions of the former Act also apply to documents unstamped or insufficiently stamped, when requiring a stamp. In either view the decision of the Principal Sadr Amin is wrong and the case must be remitted to the Lower Court with directions to receive the document, if no objection, other than the absence of a stamp, exists to its reception in evidence.

(a) *Narayana Aiyar v. Suppara Gaundan.*
