

RAJASTHAN HIGH COURT

Ratanlal

Vs.

Daudas

Letters Patent Appeal No. 4 of 1951

(Wanchoo, C.J. and Modi, J.)

07.08.1953

JUDGMENT

Wanchoo, C.J.

1. This is an appeal under Section 18(2) of the Rajasthan High Court Ordinance (No. 15) of 1949 from the judgment of a Single Judge of this Court.
2. The appellant was defendant in the suit. The plaintiffs Daudas and Mohanlal sued for recovery of Rs. 411/- consisting of Rs. 300/- as principal and the rest as interest. The suit was based on document Ex. P-1, dated Baisakh Sudi 11 S. 1997. The defendant contended that the document in question was inadmissible in evidence under Article 1, Schedule I of the Indian Stamp Act, and under the Marwar Stamp Act of 1914 in force on the date of the execution of the document, as it required a stamp of one anna, and as it did not bear the stamp, it could not be admitted under the law in force at the time when it was put in force in Court. This contention was accepted by the trial Court, and the suit was dismissed. There was an appeal to the District Judge, which was also dismissed. Then there was a second appeal to this Court, which has been allowed by the learned Single-Judge. He has held that Article 1, Schedule I of the Indian Stamp Act does not apply, and the document did not require any stamp at all. He admitted the document, and sent the suit back for retrial on the merits. He however, granted permission to the defendant to appeal under Section 18(2) of the Rajasthan High Court Ordinance, and hence this appeal before us.
3. A preliminary objection has been raised on behalf of the plaintiffs respondents that as the instrument has been admitted in evidence by the learned Single Judge, it cannot be called in question at any stage of the same suit or proceeding, and therefore the

appeal should be dismissed, for it in effect calls in question the admissibility of the instrument.

4. Section 36 of the Indian Stamp Act reads as follows:

"Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

5. We are of opinion that the preliminary objection must prevail. The language of Section 36 clearly bars calling in question the admissibility of an instrument on the ground of its being insufficiently stamped at any stage in the same suit or proceeding, once the instrument has been admitted in evidence. The reason behind this section was given by Rankin C.J. in - '*Nirode Basini v. Sital Chandra*',¹ in these words :

"It appears to the that S. 36, Stamp Act makes it reasonably clear that the instrument having once been admitted in evidence is not to be called in question at any stage of the same suitUnder Section 36 it matters nothing whether it was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection. These stamp matters are really no concern of the parties."

6. High Courts are generally agreed that once an instrument is admitted in evidence, that ends the matter, and its admissibility cannot be further questioned at any stage of the same suit or proceeding on the ground that it is not duly stamped. We may cite a few cases in support of this view.

7. In '*Ramasami Chetti v. Ramasami Chetti*',² it was held that the Hundi having been admitted in evidence, even though contrary to law, by the District Judge, no objection could be taken to the decree in second appeal upon that account, and reliance was placed on Section 34(3) of the Stamp Act of 1879, which corresponds to Section 36 of the present Stamp Act.

8. In - '*Brij Raj Saran v. Joti Parshad*',³ the Lahore High Court held that the order of the Single Judge, which amounted to an admission of the instrument in evidence within the meaning of Section 36 of the Stamp Act, could not be questioned in Letters

Patent Appeal. In that case, the trial Court had held an instrument to be a promissory note, and therefore not properly stamped. On appeal a Single Judge of the High Court held that it was not a promissory note, and was admissible in evidence on payment of the necessary stamp duty and penalty. There was a Letters Patent Appeal which was held to be a stage in the suit for purposes of Section 36, and it was held that the order of the Single Judge could not be questioned, once the document had been admitted in evidence.

9. In - '*K.M. Lodhi v. Zia-ul Haq*',⁴ it was held that it was not necessary that the instrument should have been admitted after conscious application of the mind of the court to the question of admissibility, and that if no objection to the admissibility, on the ground of insufficiency of stamp was raised before the instrument was admitted in evidence, such objection could not be subsequently raised.

10. Lastly, we may refer to a case of our Court. In - '*Jahangir Elhan v. Zahur*',⁵ the preliminary objection that the document having been admitted in evidence admissibility could not be called in question was allowed.

11. We may now refer to certain cases relied upon by the appellant to show that Section 36 may not have the far-reaching effect which has been given to it in the cases mentioned above.

12. The first case is - '*Chunilal Tulsiram v. Mulabai*'⁶ where the Bombay High Court held that the admission of a document by mistake could not debar the raising of the question at a subsequent stage, and Section 36 would have no application under these circumstances. That case is, in our opinion, an exception to the general rule laid down in the cases mentioned above. That case deals with a peculiar situation which was this. The instrument had been tendered in evidence and an objection been taken to its admissibility on the ground of insufficiency of stamp. The Judge postponed the decision of that question until the delivery of judgment. In the meantime, the instrument was marked as an exhibit by mistake. In the judgment the Judge decided that the document was inadmissible for want of sufficient stamp, and the question arose whether the Judge could come to that decision after the document had been exhibited. The Bombay High Court held that it was exhibited by mistake, and the Court could always correct its mistake, particularly when it had reserved the consideration of the question whether the document was admissible or not for the stag

of judgment.

13. The next case is - '*Sitaram v. Thakurdas*',⁷ In that case the Nagpur Judicial Commissioner's Court held that the words "admitted in evidence" under Section 36 means admission after conscious application of the mind to the question whether the document is admissible or not. What had happened there was that at the time of hearing evidence it was discovered, when the original books of account were produced, that the stamps had not been cancelled. The copies had, however, been admitted in evidence, and the defect was only discovered when the originals were produced. The facts of that case also were, in our opinion peculiar. If the originals had been admitted evidence without objection, and the defect been discovered at a later stage, S. 36 would have applied but as it seems that only copies were admitted and the defect was discovered as soon as the originals were produced, the admission of the copies could not have the same effect as the admission of the originals. This case also, therefore, does not, in any way, detract from the force of the authorities mentioned above.

14. The appellant also relied on certain cases dealing with S. 35. It is in our opinion unnecessary to refer to those cases because the considerations there are different. The only case where both Sections 35 and 36 are dealt with is - '*Rup Chand v. Beli Ram*',⁸ (H). In that case it was remarked that even though an instrument not duly stamped cannot be admitted in evidence for any purpose whatsoever under Section 35 when once it is admitted a Court is though wrongly, the appellate Court debarred, under Section 33 of the Act, from interfering in the matter.

15. The next case to which reference may be made is - '*Sri Yerri Swami v. Chinna Vannurappa*',⁹ In that case, the defendant had raised a specific plea in his written statement that the promissory notes were inadmissible in evidence being insufficiently stamped and a specific issue on the question was framed. That issue was not decided, but the suit was thrown out on another issue. The documents were, however, marked exhibits. On appeal, the suit was remanded, and it was then urged that as the instruments had been admitted in evidence, the Munsif could not go into the question in view of Section 36 of the Stamp Act.

It was however held that the fact that the instruments were tentatively exhibited did not preclude the Munsif from going into the issue. This case also is, in our opinion, of the same type as the Bombay High Court case reported in - '6 Ind Cas 903 (F)' and

depends upon its own peculiar facts and does not, in any way, throw doubt on the correctness of the view taken in the cases mentioned by us earlier.

16. It is then urged that there is difference between the language of Sections 35 and 36, and that even though the instrument may be admitted in evidence under Section 36, it cannot be acted upon, and therefore no decree can be passed on its basis. The relevant provision of Section 35 is as follows :

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

We are not concerned with the provisos to Section 35, and they are, therefore, not quoted. The relevant words used in Section 35 are :

"Where an instrument has been admitted in evidence....."

The words "acted" upon, registered, or authenticated" have not been used in S.

36. Their absence however is immaterial for the words in Section 35 themselves show that an instrument can be admitted in evidence for any purpose and this would include the passing of a decree on its basis. It is not necessary to press into service the words "acted upon" before a decree can be passed on the basis of an instrument. It seems obvious to us that when a court admits an instrument in evidence, it does so for the purpose of using it in the suit or proceeding. There would be no sense in admitting a document in evidence and then refusing to pass a decree upon it. Therefore, even though the words "acted upon" have not been used in Section 36, it seems to us that the admission of the instrument under Section 36 is for all purposes, and once the document has been admitted, it can be used for any purpose the court thinks proper, and such use cannot be called in question at any stage of the same suit or proceeding. The absence of the words acted upon, therefore, from Section 36 cannot have the effect sought to be put on it by learned counsel for the appellant. All the High Courts have taken the same view on this question, and we may refer to a number of cases in this connection.

17. In - *'Rung Lal Kalooram v. Kedar Nath Kesriwal'*, ¹⁰ Richardson, J. dealing with this question observed as follows :

"Section 36 would be entirely nullified if on the conclusion of the proceeding in which the instrument is admitted, the proceeding could be set aside by a separate proceeding initiated by one of the parties on the sole ground that the person having authority to receive evidence had admitted or acted upon an unstamped or insufficiently stamped document."

18. In - '*Alagappa Chetti v. Narayanan Chettiar*',¹¹, Bundaram Chetty, J. dealing with a similar document, observed as follows at page 767 :

"On a comparison of the wording of Section 42(2), with that of Section 36, it is urged by the learned advocate for the appellant that a distinction between the admission of a document in evidence and the acting upon such a document was recognized by the legislature. I agree that such a distinction does exist, but the question now is whether the wording of Section 36 can be reasonably construed in the manner set forth above.

I am clearly of the opinion that once a document has been admitted in evidence by the lower court under Section 36, such admission cannot be questioned at any later stage of the same suit or proceeding on the ground that the instrument has not been duly stamped and the natural consequences of that admission which has become final must also follow. The appellate Court cannot say that though it has been marked as an exhibit in the case, it would not look into it and would not make use of it in the appreciation of the evidence or would not allow a decree to be passed on such a document."

19. In - '*Venkata Reddi v. Hussain Setti*',¹² the question whether the document may be acted upon for collateral or subsidiary purposes, but not for purposes of passing a decree upon it was considered and Madhavan Nair, J. observed as follows at page 384 :

"The learned Advocate-General sought to draw a distinction, namely, that Section 36 does not apply to cases where the document in question forms the foundation for the suit but only applies to instruments admitted in the course of evidence in support of subsidiary points arising in the case. There is no authority in support of this distinction."

20. In - '*Bhagwandas v. Chhaganlal*',¹³ Lokur J., following - 'Venkata Reddi's case' mentioned above, held that Section 36 of the Indian Stamp Act applied not only to documents admitted in the course of evidence in respect of subsidiary points arising in the suit, but also to cases where the documents in question formed the foundation of the suit, and the argument that although the admissibility of the instrument cannot be questioned, yet it cannot be acted upon, must fail.

21. The reason behind Section 36 is clear. The provisions of the stamp law, by which unstamped or insufficiently stamped instruments are excluded, were never intended to create, or put an end to, the rights of the parties to the suit, but primarily in the interest of the Government revenue. It is perfectly immaterial as between the parties to a suit whether a certain instrument does or does not bear a certain mark which goes to show that the Government dues have been paid. The only thing, which is necessary to be seen as between the parties, is whether the instrument is genuine or not. Government revenue is protected by the provisions of Section 61, and the Legislature obviously intended that the question of admissibility of an instrument in evidence and the consequence following on such admissibility are only to be considered once, and if the instrument was once admitted in evidence that should put an end to all controversy on the question of sufficiency or a insufficiency of stamp so far as parties in that suit were concerned. Section 36, in our opinion, it was intended for this purpose, and by adopting the interpretation which is being urged on account of the absence of the words 'acted upon' in Section 36, we would not be carrying out the intention of the legislature.

22. In a recent case, the Allahabad High Court has also come to the same conclusion. In - *Mt. Bittan Bibi v. Kuntu Lal*,¹⁴ there was a difference of opinion between Dayal, J. and Desai, J. as to the interpretation of the words "admitted in evidence" in S. 36. Desai, J. was of the view that Section 36 only authorised use of an instrument after admission for subsidiary purposes and did not authorise the court to act upon it and pass a decree on its basis. Dayal, J. held otherwise, and the third Judge, to whom the matter was referred, agreed with Dayal, J. We must point out that there is to warrant for the distinction drawn by Desai, J., namely that the instrument having been admitted in evidence could be used for collateral or subsidiary purposes, but not for the purpose of passing a decree on the basis of it.

23. Learned counsel for the appellant cited certain cases to show that documents

insufficiently stamped could not be acted upon. These are, however, all cases under Section 35 and the document was never admitted in evidence to attract the provisions of Section 36. They cannot therefore be authority for the view that even after a document had been admitted in evidence under Section 36, it could not be the basis of a decree.

24. In - '*Chenbasapa v. Lakshman Ramchandra*',¹⁵ it was held that a Hundi, which was not properly stamped, could not be acted upon and a decree could not be passed on its basis. The facts of the case show however that the first court also held that the document was inadmissible in evidence, but it went on to pass a decree on the basis of certain admissions made by the defendant that the money had been lent to him. It was in those circumstances that it was held that the suit having been based on Hundis, which were inadmissible in evidence, no decree could follow on mere admissions of the defendant.

25. In - '*Sohan Lal Nihal Chand v. Raghu Nath Singh*',¹⁶ it was held that where a pro-note was inadmissible for want of stamp, no decree could be passed on its basis even if execution was admitted. In that case also, the first court held that the pro-note was inadmissible in evidence and no question of the application of Section 36 arose.

26. The last case, to which reference may be made, is - '*Gopi Mal v. Vidya Wanti*',¹⁷ In that case it was held that admitting in evidence and acting upon are distinct matters, and that a court in executing an unstamped partition decree acts upon it under Section 35, and this could not be done. It cannot be denied that for purposes of Sections 35 and 42 of the Indian Stamp Act, acting upon is different from admission into evidence, and a document, if it is inadmissible under Section 35, can only be admitted and acted upon under Section 42(2) on payment of proper duty and penalty. But Section 36 to our mind appears to be an exception to Section 35 and provides for cases where by mistake or otherwise a document insufficiently stamped is admitted in evidence. If it is admitted in evidence once under Section 36, all the natural consequences of such admission by a court must follow, and the court can use all purposes, including the purpose of passing a decree upon it.

27. A document may be filed either as evidence or otherwise. Where it is filed as evidence it is marked as an exhibit by the court or officer authorized to receive evidence. But it may be filed, otherwise as for example as security by an appellant for

costs to the respondent, or security by a judgment-debtor for obtaining stay of execution, or security by officers on their appointment as such for due discharge of their duties, or as a document presented before the sub-registrar for registration. It would not have sufficed to use only the words "admitted in evidence" in Section 35 which provides for both contingencies. Therefore Section 35 uses not only the words 'admitted in evidence' but other word also, namely 'acted upon, registered or authenticated.' But Section 36 deals with only one particular case, namely where the document is tendered evidence. Therefore, the other words, 'acted upon, registered, or authenticated" not required in Section 35, and the intention of the legislature was that such documents, once they have been admitted in evidence, should be used for all purposes for which evidence could be used, and the admission should not be called in question on the ground of insufficiency of stamp at a later stage in the same proceeding.

28. In 'Gopi Mal's case, the matter was different. There was no question of admitting the document into evidence. A partition decree had been passed, and it was to be executed. It should have been stamped, but was not. Therefore, when it was put into execution, an objection was taken that it could not be acted upon and this objection was upheld by the Full Bench in that case. The learned Judges pointed out that there was no question of admitting the decree in evidence under Section 36. It was one those case where the document was filed not for purposes of evidence, but for other purposes, and therefore Section 35 applied to it, and it could not be acted upon, unless it was properly stamped.

29. A careful review, therefore, of the authorities leads us to the conclusion that once an instrument has been admitted in evidence, either after judicial determination of the issue relating thereto, where such issue has been raised, or cause no objection was taken to its admissibility but not by pure mistake, such admission cannot be called in question at any stage of the same suit or proceeding on the ground of insufficiency of stamp.

30. In this case, the learned Single Judge has admitted the instrument by holding that it does not require stamp. Under these circumstances the preliminary objection must prevail, and it is not open to us to consider the question of admissibility again in Letters Patent Appeal. Section 36 of the Stamp Act bars such consideration

31. It was urged by the appellant that there has been no admission so far because the necessary endorsement under Order 13 Rule 4 has not been made on the document. Reliance in this connection was placed on - '*Sadik Husain Khan v. Hashim Ali Khan*',¹⁸ At page 41 their Lordships of the Privy Council condemned the practice followed by some courts of not endorsing the documents as required by Order 13 Rule 4, Civil Procedure Code They pointed out that there was not possible excuse for the neglect of duty impossible by law and added that, with a view to insist on the observance of the wholesome provisions of Statutes, they will, in order to prevent injustice be obliged in future on the hearing of Indian appeals to refuse to read or permit to be used any document not endorsed in the manner required. These observations of their Lordships of the Privy Council certainly show the great importance to be attached to the endorsement required by Order 13 Rule 4, because it avoids all complications at a later stage as to whether a particular document it has been admitted in evidence or not. But their Lordships did not lay down in this case that a document can only be said to be admitted after endorsement under Order 13 Rule 4, and if no such endorsement has been made it cannot be said to have been admitted in evidence. We respectfully agree that it is necessary that the courts should strictly follow the provisions of Order 13 Rule 4; but that has nothing to do with the question whether a document has been admitted in evidence or not. That depends upon the order of the Court, and if there is an order of the court admitting the document, the endorsement under Order 13 Rule 4 is merely the following up of that order.

32. The learned Single Judge in the case before us held that the document did not require stamp, and was admissible in evidence and remanded the case. That order, in our opinion, amounted to admitting the document in evidence. The endorsement under Order 13 Rule 4 would not be made in this Court, but, in due course, would be made when the case reaches the trial court. Where, therefore, a document is held by a court to be admissible in evidence on the ground that it requires no stamp, or on the ground that the stamp on it is sufficient, the document must be deemed to be admitted in evidence on the day the order is passed. It is only in that case in which the court holds that the document is insufficiently stamped and gives time for paying the duty and penalty that the document would be deemed to be admitted on the day on which the duty and penalty is paid. We again emphasize that it is necessary in all such cases that endorsement under Order 13 Rule 4 should be made; but if it is left out by oversight or otherwise, that would not mean that the document was not admitted in evidence when

me order was passed, or when the duty or penalty was paid, as the case may be. We are, opinion that the learned single the document in evidence by his judgment, and Section 36 bars us now from calling in question its admission on the ground of insufficiency of stamp.

33. Lastly, we have to consider an argument which was advanced on behalf of the appellant after the appeal had been reserved for judgment. The argument is that the suit, out of which the present appeal has arisen, was filed on 1-5-1947, when the Marwar Stamp Act of 1914 was in force. That Act had no provision analogous to Section 36 of the present law. It is urged, therefore, that as the right of appeal in a suit or proceeding is a substantive right, which is governed by the law as it existed at the time when the suit was filed, the right of appeal accrued to the appellant in this case on 1-5-1947, and that right could not be taken away by the repeal of the Marwar Stamp Act of 1914 and its replacement by a new law containing the present S. 36.

34. We are of opinion that there is no force in this argument. It is undoubtedly well settled that the right of appeal is a substantive right, and cannot be taken away unless there is express provision to that effect in the amending statute, or unless such an intention follows by necessary implication from the terms of the amending statute. It is also well settled that the right of appeal depends upon the law which was in force on the date on which the suit was filed. We may refer to - '*Ram Singha v. Shankar Dayal*',¹⁹ and - '*Kirpa Singh v. Rasalldar Ajaipal Singh*',²⁰ in this connection. It is not necessary to multiply authorities as the principle is so well known. Further, it is also well settled that provisions of a statute dealing with merely matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, while provisions, which touch a right in existence at the passing of the statute, are not to be applied retrospective in the absence of express enactment or necessary intendment. Reference may be made to - '*Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commr., Delhi*',²¹

35. The question, therefore, which falls for consideration, is whether these principles apply to the present case. In the first place, it may be pointed out that Section 36 of the Stamp Act, with which we are concerned, has nothing whatsoever to do with the right of appeal. It neither confers any right of appeal on anybody, nor takes away any right of appeal. Whatever right of appeal the appellant had when the suit was filed in May

1947 was under the Code of Civil Procedure, and Section 36 of the Stamp Act has not affected that right. The argument, therefore, that Section 36 takes away the right of appeal, which the appellant had on 1-5-1947, is fallacious and cannot hold water even for a minute.

36. The only question that remains is whether Section 36 of the Stamp Act, as it now exists, would apply retrospectively even to suits which were filed before the amending statute came into force. This will depend upon whether Section 33 is merely a law of procedure or confers any substantive rights or interferes with any substantive right. A bare perusal of the section will show that it deals purely with matters of procedure, and we cannot see how it can be said to confer any rights on anybody. All that it says is what a court would do in certain circumstances in matters connected with stamps.

37. A somewhat similar question arose in the Calcutta High Court, namely, whether Section 28 of the Stamp Act of 1869 relating to admission applied to documents which were executed previous to the passing of that Act, and it was held as far back as 1874 in - '*Nundun Misser v. Mt. Chittur Buttee*',²² that even where a document was executed before a date when Act 18 of 1869 came into force, it could only be admitted in evidence under the conditions prescribed under the Act of 1869 if it was unstamped. Section 36 of the Stamp Act therefore being merely a law of procedure will apply to all matters which it governs even though the suit, out of which these matters have arisen, was filed, before that section came into force in Rajasthan. Therefore, this Court when considering in this appeal the admissibility of the document in dispute, will have to apply Section 36 which is the law in force at the time when the admissibility comes to be determined. There is no force, therefore, in this point.

38. As the preliminary objection prevails, it is not necessary for us to consider whether the decision of the learned Single Judge that the document did not require stamp is correct or not, and we express no opinion about it one way or the other. We hereby dismiss the appeal with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1930 Cal577

2. 5 Mad 220,
3. AIR 1923 Lah 657
4. AIR 1939 All 588
5. AIR 1952 Raj 129
6. 6 Ind Cas 903
7. AIR 1919 Nag 141
8. AIR 1933 Lah 240
9. AIR 1949 Mad 300
10. AIR 1921 Cal 613
11. AIS 1932 Mad 765
12. AIR 1934 Mad 383
13. AIR 1944 Bom 235
14. AIR 1952 All 996
15. 18 Bom 369
16. AIR 1934 Lah 606
17. AIR 1942 Lah 260 (FB)
18. AIR 1916 PC 27
19. AIR 1928 All 437 (FB)
20. AIR 1923 Lah 627 (FB)
21. AIR 1927 PC 242
22. 21 WR 446 (Cal)