

NAGPUR HIGH COURT

Paiku Kashinath

Vs

Gaya (Nagpur)

Hidayatullah, J.

17.02.1948

ORDER

Hidayatullah, J.

1. This is an application for revision of an order dated 22nd January 1946 passed by Mr. M.V. Gokhale, Additional Civil Judge, Class II, in civil Suit No. 78A of 1940, decided on 13th February 1943.

2. During the trial of the case two documents Exs. P-3 and D-2 were produced. They were exchange deeds concerning immovable property. The Court did not impound these documents and proceeded to judgment which was delivered on 13th February 1948. After this an appeal was filed and disposed of on 12th February 1944.

3. On 27th July 1945 the Court reopened the case to impound the documents and passed the following order:

27-7-1945. Record received from the District Judge Amraoti with a note of irregularities for impounding documents, Ex. P-3 and Ex. D-2. Mr. Elkunchwar for plaintiff and Mr. Katpatal for defendants called. Issue notices free of costs to the parties concerned for payment of stamp duty and penalty. Case for 15th August 1945.

Sd. M.V. Gokhale

A.S. J., IIClass.

On 22nd January 1946 the Court passed an order impounding the document and ordered the parties to pay the stamp duty and the penalty imposed giving them one month in which to pay it. Each of the applicants was ordered to pay half the amount ordered to be recovered from them. Against this order the present application for revision has been filed. The contention is that the two documents did not effect' any transfer but merely recorded the fact of a transfer that had already taken place. It was also contended that the Court below being functus officio after signing the decree had no jurisdiction to impound

the document and to order the recovery of the stamp duty and the penalty.

4. Puranik J. before whom the case came in motion issued notice to the Advocate-General. At the hearing Mr. W.B. Pendharkar, Additional Government Pleader, appeared to show cause. He contended on the authority of *In re Narayandas*¹ and *Lokmat Motor Service v. New Lokmat Lodging*² that no notice ought to have issued to the Advocate-General and he requested that he be discharged. Though the question concerns revenue no provision exists for such notices and in many cases the Court is left without assistance to the detriment of the State. However, at my request Mr. Pendbarkar argued the case and I am grateful to him for his assistance.

5. There is no doubt that a Court has no jurisdiction to reopen a case to impound a document after the decree is signed and action under Section 61, Stamp Act, alone is possible after that (stage. The lower Court had no jurisdiction to proceed in the way it did: see *Chunduri Panakala Rao v. Penugonda Kumaraswami*³ Reference under Stamp Act, Section 46, 8 Mad. 564 F.B. and *Collector, Ahmednagar v. Rambhau*⁴ and the cases cited in these rulings.

6. It was argued that I have no jurisdiction under Section 115, Civil Procedure Code to revise the order. The matter presents some difficulties. However, the learned Judge purported to reopen the case and has in fact passed an order in the civil suit itself. That is enough to give me jurisdiction. What would have happened if he had drawn up separate proceedings, I need not discuss. I follow respectfully the line adopted in *Chunduri Panakala Rao v. Penugonda Kumaraswami A.I.R. (24) 1937 Mad. 763(supra)* and set aside the order of the lower Court. Since I decide this application on this preliminary point, I do not pronounce any opinion upon the merits of the case. The application for revision is allowed. Parties will bear their own costs.

¹ A.I.R. (30) 1943 Nag. 97

³ A.I.R. (24) 1937 Mad. 763

² A.I.R. (32) 1945 Nag. 178

⁴ A.I.R. (17) 1930 Bom. 392