

Sunil Kumar Sahu vs Smt. Awadhrani on 31 August, 2010

Writ Petition No.8224/2010

31.8.2010

Shri Akshay Sapre, Advocate for the petitioner.

Shri S. Arora, Advocate for the respondent No.1.

This petition is directed against order dated 17.2.2010 by 4th Additional District Judge, Sagar in civil suit No.45- A/2009 by which the trial court permitted plaintiff to adduce secondary evidence, in respect of a photo-stat copy of a document Annexure P-4 'Ikrarnama' dated 12.4.1992.

Learned counsel appearing on behalf of petitioner submitted that the document Annexure P-4 of which original is stated to be lost was insufficiently stamped. The nature of the document is an agreement relating to deposit of Title- Deed for security of the loan and required 2 % stamp duty of the amount of loan. It is submitted that the amount of loan as per the document is Rs.20,000/- and as per the provisions prevailing in the year 1992, the stamp duty was payable at the rate of Rs.2% i.e. Rs.400/-. As the document of which photo-copy Annexure P-4 has been permitted in secondary evidence was insufficiently stamped, secondary evidence of such document cannot be permitted. Reliance is placed on a judgment of Apex Court in Hariom Agrawal Vs. Prakash Chand Malviya, 2007 (8) SCC 514.

Learned counsel for the respondent No.1 resisted the contentions which were raised by learned counsel for the petitioner, that Annexure P-4 is a photo-copy of an agreement which was insufficiently stamped.

To appreciate rival contentions of the parties, it would be appropriate if document Annexure P-4 is reproduced for ready reference.

*bdjkjukek bdjkjukek fy[k fn;k m/kkjhs ds #i;k okLrs ,ot esa ,sls fd eSa nsosUnz dqekj [kjs ru; Jh HkS;kyky [kjs fuoklh &frydxat okMZ] lkxj rglhy ok ftyk lkxj us ,srs fd vo/kjkuh ifRu ckcwyky fuoklh&frydxat okMZ] lkxj okykxa dks fd ,d IyKV eSus AA nsosUnz us AA Jhefr vo/kjkuh ds uke dk ,d IyKV fxjoh j[kk vkSj mldh jftLVh vki esjh euHkjrj gsrq dtZ dh lqj{kk esa vkids IyKV dh tks jftLVh gS og vki esjs ikl j[ksaxh vkSj eSa mlds ,ot esa vkidks iSlk nsosaxs A IyKV dh jftLVh ds ,ot esa dtZ 20]000 #i;s chl gtkj #i;s ns jgk gw vkSj eSa vo/kjkuh ds IyKV dh jftLVh tks vo/kjkuh ds uke ls eSus vius ikl j[kyh gS] dtZ ds #i;ksa dh tc vo/kjkuh eq>s okil dj nsosaxh rks eSa mudh jftLVh okil dj nwaxk A ;fn vo/kjkuh dtZ ds #i;k okfil djus es cn;kfUr djsxh rks eSa U;k;ky;hu dk;Zokgh gsrq olwyh ds fy, ck;/; jgwaxk] ftlds leLr izdkj ds gtsZ & [kpsZ dh nsunkj vo/kjkuh jgsxh A vr% iw.kZ gks'kksgokl esa LosPNkiwoZd ;g bdjkjukek fy[k fn;k rkfd lun jgs ,oa oDr ij dke vkos A okdye nsosUnz dqekj [kjs eqdke] lkxj] fnukad 12-04-1992A^ From the perusal of the aforesaid it appears that for the transaction for the security of loan amount, documents of plot were placed with the plaintiff. The relevant provision as was in the statute rule with effect from 15th October, 1990, 2% of the amount of loan was the appropriate stamp duty payable on such an agreement under Article 6 of Schedule-I A of the Stamp Act as amended by the Indian Stamp Act M.P. Act (2) of 1990.

In view of the specific provision, the stamp duty payable on such agreement was Rs.400/- and not Rs.100/- as stated to be affixed on the original document Annexure P-4.

Now, the questions arises whether the document which was insufficiently stamped, a photo-copy of such document can be admitted as secondary evidence. This question has been considered by Apex Court in Hariom Agrawal (supra) wherein the Apex Court considering the question held that :

"10. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the document for the purposes of the Stamp Act. There is no scope for the inclusion of the copy of the document for the purposes of the Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Stamp Act, 1899."

In view of the aforesaid, the Apex Court has settled the law that the copy of the instrument which was on insufficient stamp cannot be admitted as secondary evidence under Section 65 of the Indian Evidence Act. So the photo-copy of Annexure P-4 was not admissible in the secondary evidence as its original was not adequately stamped. It is also in dispute that no such original is in existence and Annexure P-4 is fabricated one but this question is not decided in this petition.

In view of the aforesaid, trial court erred in granting permission to the respondent No.1 to lead secondary evidence of document Annexure P-4 which is unsustainable under the law and is set aside. This petition is allowed. Petitioner is entitled to costs of this petition from the respondents.

C.C. as per rules.

(Krishn Kumar Lahoti)
Judge

(S.C. Sinho)
Judge

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