

Bidyut Sarkar & Anr.
v.
Kanchilal Pal (Dead) Through Lrs. & Anr.
(Civil Appeal Nos. 10509-10510 of 2013)
28 August 2024
[Vikram Nath and Prasanna B. Varale, JJ.]

Issue for Consideration

Issue arose as regards admissibility of the insufficiently stamped agreement to sell.

Headnotes[†]

Stamp Act, 1899 – ss.35, 36, 40 and 42 – Instruments not duly stamped inadmissible in evidence, etc. – Suit for specific performance of contract based on agreement to sell, filed by the respondent no. 1 against the defendant no. 1-owner of the property – Trial court dismissed the suit on the finding that the agreement to sell not admissible in evidence being insufficiently stamped – Appeal thereagainst by the respondent no. 1 allowed by the High Court – Appellants, in whose favour the defendant no. 1 had executed the sale deed filed cross objections against the findings of the trial court recorded against them, dismissed by the High Court – However, as regards admissibility of the agreement to sell it was held that as the respondent no. 1 had accepted that he would pay the deficient stamp duty and penalty as assessed by the collector, the trial court erred in dismissing the suit on the ground that the agreement to sell, could not be enforced being executed on insufficiently stamped paper – Correctness:

Held: No reason to disagree with the findings of the trial court regarding the inadmissibility of the agreement to sell – Document, being insufficiently stamped, was rightfully barred from being admitted as evidence in the absence of the requisite stamp duty and penalty being paid and certified by the Collector – As the document was found to be insufficiently stamped and was marked as exhibit with objection and that objection having not been removed or cured, no benefit of s.36 could be extended to the respondent no.1 – High Court did not consider the statutory provisions and only proceeded to rely upon the statement of the respondent

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no.1 that he had accepted to deposit the deficiency in stamp duty and penalty, if any, imposed by the Collector – Even till date, the respondent no.1 has not made any efforts before the Collector to get the deficiency and penalty determined on the impounded document and to clear the same – As a result, the document remains inadmissible in evidence under the express bar imposed by s.35 – Failure to resolve the deficiency in stamp duty prevents the document from being considered as admissible and valid in evidence – Thus, until the necessary stamp duty and penalty are duly paid and endorsed by the Collector, the instrument remains legally barred from being admitted in evidence – High Court failed to recognize that an insufficiently stamped document can only be admitted into evidence after the deficiency in stamp duty and any applicable penalty has been duly paid and cleared – This lapse of procedure not properly addressed by the High Court – As the document is foundational to the suit, the failure to comply with the statutory requirements renders the entire claim unenforceable – Respondent no. 1 cannot claim relief on the basis of a document that has not satisfied the legal requirements for admissibility – Thus, the impugned order of the High Court set aside and that of the trial court dismissing the suit restored. [Paras 21-27, 30, 32, 33]

Case Law Cited

Ram Rattan (dead) by L.Rs. v. Bajrang Lal and Others, AIR 1978 SC 1393; Javer Chand and others v. Pukhraj Surana, AIR 1961 SC 1655 – referred to.

List of Acts

Stamp Act, 1899.

List of Keywords

Instruments not duly stamped; Admissible in evidence; Suit for specific performance of contract; Agreement to sell; Insufficiently stamped; Cross objections; Deficient stamp duty and penalty.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10509-10510 of 2013

From the Judgment and Order dated 05.12.2008 of the High Court of Calcutta in FA No. 282 of 2006 and COT No. 2304 of 2005

Digital Supreme Court Reports**Appearances for Parties**

Subrata Dutt, Ms. Shipra Ghose, Advs. for the Appellants.

Shubhayu Roy, Rohit Dutta, Ms. Shalini Kaul, Ms. Priyata Chakraborty, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

1. These appeals, by defendant nos.2 and 3, have been filed assailing the correctness of the judgment and order dated 05.12.2008 whereby the Division Bench of Calcutta High Court allowed the First Appeal No.282 of 2006, titled Kanchilal Pal vs. Sashti Charan Banerjee & Others, and after setting aside the judgment of the Trial Court dismissing the suit of the respondent no.1, proceeded to decree the suit for specific performance of the contract in favour of plaintiff-respondent no.1. Hereinafter will deal with the parties as they have been referred in the Trial Court.
2. Relevant facts giving rise to the present appeals are as follows:
 - 2.1. Sashti Charan Banerjee-respondent no.2, was admittedly the owner of the property in dispute. According to the appellants, respondent no.1 filed a suit for specific performance registered as Title Suit No.123 of 1999, Kanchilal Pal vs. Sashti Charan Banerjee and two others in the Court of Civil Judge (Senior Division), Barasat, for a decree of specific performance of contract dated 29.03.1999. The plaint allegations are as follows:
 - a) Defendant no.1 is the owner of property in question being Premises No.126, Rajkumar Mukherjee Road, Calcutta, 700035, within the JL No.5, Paragona Calcutta, Khatian No.2292 bearing Plot Nos. 2477 and 2478 measuring about 7 cottahs, $7\frac{1}{2}$ Chittack of land, including the structures thereon.
 - b) Defendant no.1 intended to sell the premises in question for which the plaintiff agreed to purchase the same for a consideration of Rs.3,00,000/- (Rupees three lakhs only). The plaintiff was required to develop the property/premises in question while dividing into plots and to sell the same to different persons within the period of one year and,

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after realizing sale consideration from the proposed purchasers, shall pay the balance amount of Rs.2,90,000/- (Rupees two lakhs ninety thousand only) whereupon defendant no.1 would transfer the land in favour of the plaintiff or his nominees, as the case would be.

- c) An advance amount of Rs.10,000/- (Rupees ten thousand only) is said to have been paid in cash to defendant no.1. The plaintiff was also empowered to make a settlement for ejectment of the tenants residing in the premises in question and take possession from them. The plaintiff was also authorized to carry out development work and to make construction of common passage, drain, etc. in the meantime and to collect money from the proposed buyers of the plots to be developed.
- 2.2. In due course, a sale deed would be executed by defendant no.1 in favour of the nominees or the plaintiff and in such sales, the plaintiff would be a confirming party. The said exercise was to be completed within one year. In case defendant no.1 fails to execute the sale deed, the plaintiff or his nominees would be at liberty to file a suit for specific performance.
- 2.3. It was further provided in the agreement that, in case the plaintiff fails to pay the amount as agreed within the time stipulated i.e. one year, the agreement to sell would be treated as cancelled.
- 2.4. Further, according to the plaint, the plaintiff has spent an amount of Rs.2,00,000/- (Rupees two lakhs only) for construction of common passage, drain, etc. and has also contacted with the tenants to purchase part of the property in question measuring three cottahs and that they would pay an amount of Rs.1,20,000/- (Rupees one lakh twenty thousand only), out of which the plaintiff had received Rs.50,000/- (Rupees fifty thousand only) from one of the tenants. The plaintiff also claimed to be in possession. He also requested defendant no.1 to deliver the original title deeds, which defendant no.1 did not oblige.
- 2.5. The tenants, on 20.05.1999, came to the plaintiff and showed him letter of an advocate and, after going through the same, the plaintiff learnt that defendant no.1 had already transferred the property in question vide sale deed dated 03.05.1999 in favour of defendant nos.2 and 3 (appellants). The plaintiff thereafter

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made inquiries and again approached defendant nos.1 to 3 to execute the sale deed in his favour but as they declined, he was compelled to institute the suit on 21.05.1999.

- 2.6. It is also averred in the plaint in paragraph 10 that the plaintiff was always ready and willing to perform his part of the contract.
3. Defendant no.1 filed his written statement denying the plaint allegations. A separate written statement was filed by defendant nos.2 and 3. Defendant no.1 in his written statement stated that he had entered into an agreement to sell dated 10.03.1999 in favour of defendant nos.2 and 3 and had also executed a registered deed of conveyance on 03.05.1999 in favour of defendant nos.2 and 3 for valuable consideration received by him and, also handed over possession to them. Thereafter, a letter of atonement dated 18.05.1999 was served on the tenant of the premises in question on behalf of all the three defendants through their advocates which was duly received by them informing them about the transfer of title from defendant no.1 to defendant nos.2 and 3.
4. It is further stated in the written statement of defendant no.1 that plaintiff approached him on 24.03.1999 with a proposal to purchase the said property, however, defendant no.1 declined the said proposal informing him that he had already entered into an agreement to sell with defendant nos.2 and 3. The plaintiff, however, continued with his insistence to purchase the property and in that respect on 29.03.1999 at about 04:30 PM, the plaintiff compelled defendant no.1 to accompany him to the machine shop of Ajit Bhattacharjee, where under threat and pressure and surrounded by about ten persons, he was compelled to sign some papers against his will. He was not even allowed to read the papers, and he was threatened not to disclose such incident to any person, including police. Despite the same, defendant no.1 reported the matter to the police on the basis of which G.D. Entry no.713 was made at the Talatola Police Station on 07.04.1999. The plaintiff, along with his men and agents, tried to cut the trees over the property in question on 03.04.1999, which being illegal and unlawful, was again reported to the police station at Baranagar and registered vide G.D. Entry no.496 dated 04.09.1999.
5. Defendant no.1 also moved an application under section 144(2) Code of Criminal Procedure, 1973, before the Executive Magistrate at Barrackpore, which was registered as M.P. Case No.894 of 1999.

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The defendant also informed the Chairperson, Baranagar Municipality, through advocates' letter dated 12.04.1999, against the illegal acts of the plaintiff over the suit property.

6. Further, defendant no.1 also lodged a criminal case no. C/1335 of 1999 before the Chief Metropolitan Magistrate under sections 384/341/34 Indian Penal Code, 1860 which was still pending at the time of filing of the written statement. It was further stated in the written statement of defendant no.1 that on 23.04.1999, the plaintiff came to his house and threw some xerox copies of papers with a bundle of currency notes of Rs.10,000/- (Rupees ten thousand only) and threatened him with dire consequences if he discloses anything to the police. It was only then that defendant no.1 came to know of the alleged agreement to sell dated 29.03.1999, which he was compelled to sign under circumstances already stated above.
7. It is also averred in the written statement that defendant no.1 tried to return the amount of Rs.10,000/- (Rupees ten thousand only) to the plaintiff by way of cheque which he received but later returned. Despite best efforts, defendant no.1 could not return the amount of Rs.10,000/- (Rupees ten thousand only) to the plaintiff.
8. It was further averred that plaintiff was land speculator and promoter. He wanted to grab the suit property by hook or crook. The plaintiff joined hands with the tenants and tried to create obstructions from inspecting the premises in question by defendant nos. 2 and 3. Defendant nos.2 and 3 also lodged a complaint in that regard, being G.D. entry no.1434 dated 03.04.1999 at the Baranagar Police Station.
9. In para-wise reply, defendant no.1 denied the plaint allegations, however, accepted the execution of sale deed dated 03.05.1999 in favour of defendant nos.2 and 3. On such averments defendant no.1 sought that suit deserves to be dismissed.
10. Defendant nos. 2 and 3 in their written statement also denied the plaint allegations and more or less reiterated the same facts as pleaded in the written statement of defendant no.1. In addition, it was stated that defendant nos. 2 and 3 filed Title suit No.235 of 1999 in the Court of Civil Judge (Junior Division), Sealdah, against the plaintiff of which the plaintiff had full knowledge.
11. Based upon the pleadings of the parties, the Trial Court framed the following issues:

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- 1) Is the suit maintainable in its present form and law?
 - 2) Has the plaintiff any cause of action to file this suit?
 - 3) Is the suit barred by limitation?
 - 4) Was there any concluded contract in between the plaintiff and the defendant no.1 on 29.03.1999 regarding sale of the 'A' schedule property by defendant no.1 in favour of the plaintiff?
 - 5) Was the defendant no.1 compelled to put signature under threat and compulsion by the plaintiff and his associates at Dharamtala Street, Kolkata?
 - 6) Are the defendant nos. 2 & 3 bona fide purchasers for value of the suit premises without notice?
 - 7) Is the agreement of sale dated 29.03.1999 which has marked as Exbt.1 with objection be admitted in evidence?
 - 8) Is the plaintiff entitled to get the benefit of section 36 of the Indian Stamp Act?
 - 9) Is the plaintiff ready and willing to perform his part of the contract inviting Section 16(c) of the specific Relief Act?
 - 10) Was there any part performance of the said contract?
 - 11) Is the plaintiff entitled to get relief as prayed for?
 - 12) To what other relief/reliefs, if any, is the plaintiff entitled?"
12. The parties led evidence, both documentary and oral. The plaintiff examined himself as PW-1 and proved the agreement to sell dated 29.03.1999 which was although marked as Exhibit-1 but with objections, as defendant no.1 had raised an objection regarding the said agreement to sell being not properly stamped. On behalf of the defendants, defendant no.1 examined himself as DW-1, whereas on behalf of defendant nos.2 and 3, their father entered the witness box as DW-2. Various documents on behalf of the defendants were proved by the respective witnesses.

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13. The Trial Court decided all the issues relating to maintainability of the suit, cause of action, limitation, validity of agreement to sell dated 29.03.1999, defendant nos.2 and 3 being *bona fide* purchasers or not, readiness and willingness of the plaintiff to perform his part of the contract, in favour of the plaintiff and against the defendants. However, the Trial Court dealt in detail with regard to the admissibility of the agreement to sell dated 29.03.1999 and whether the plaintiff was entitled to get the benefit of section 36 of Indian Stamp Act, 1899¹. The Trial Court dismissed the suit of the plaintiff on the finding that the agreement to sell dated 29.03.1999 was not admissible in evidence as the defendants had raised objections regarding the same. Once the same was held not admissible, the suit for enforcement of the same was held liable to be dismissed.
14. Aggrieved by the same, the plaintiff filed an appeal under section 96 of the Code of Civil Procedure, registered as Appeal from Original Decree No.282 of 2006. Further, defendant nos.2 and 3 filed cross-objections against the findings of the Trial Court recorded against them, which was registered as COT No.2304 of 2005. The Division Bench of the Calcutta High Court allowed the First Appeal and dismissed the cross-objections. The Division Bench affirmed the findings recorded by the Trial Court on all issues already decided in favour of the plaintiff and accordingly dismissed the cross-objections. However, with regard to issue of admissibility of the agreement to sell dated 29.03.1999, the Division Bench was of the view that as the plaintiff had accepted that he would pay the deficient stamp duty and penalty as may be assessed by the competent authority/collector, the Trial Court had erred in dismissing the suit on the ground that Ex.-1-the agreement to sell, could not be enforced being executed on insufficiently stamped paper.
15. Aggrieved, the present appeals have been preferred by defendant nos.2 and 3 against the judgment of the High Court in allowing the first appeal of the plaintiff and further on dismissing their cross-objections.
16. Learned counsel for the appellants has not only challenged the findings of the High Court on the admissibility of the agreement to sell dated 29.03.1999 but also the concurrent findings of both the

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courts on other issues regarding the validity of agreement to sell, circumstances under which it was executed and defendants 2 and 3 not being *bona fide* purchasers for value.

17. Upon considering the submissions, we are of the view that the findings of the High Court regarding the admissibility of the agreement to sell dated 29.03.1999 were neither based on a detailed consideration of the relevant statutory provisions nor supported by established legal principles. It appears that the High Court, without thoroughly examining the applicable legal provisions, cursorily concluded that the document would be admissible simply because the plaintiff had expressed willingness to pay the deficient stamp duty and any penalty imposed by the competent authority or the Collector. However, it is evident that the plaintiff made no concrete effort to initiate or pursue the necessary proceedings before the competent authority or the Collector to determine the deficient stamp duty and penalty. The High Court, therefore, failed to recognize that an insufficiently stamped document can only be admitted into evidence after the deficiency in stamp duty and any applicable penalty has been duly paid and cleared. This lapse of procedure was not properly addressed in the High Court's judgment.
18. At the time of deposition of the plaintiff on 07.03.2003, he stated in his examination-in-chief while referring to the agreement to sell dated 29.03.1999, that this was the original agreement to sell executed by defendant no.1 Sashti Charan Banerjee in his favour in respect of the suit property and it had the signature of defendant no.1 on all pages which he had signed in his presence. The agreement to sell was drafted by Prasanta Pal and typed by Neel Kamal Mallick in his presence. He paid Rs.10,000/- (Rupees ten thousand only) to defendant no.1 as per the said agreement and it was marked as Ex.-1 with objection. He further stated that he was ready to deposit the deficient stamp duty as per order of the Collector. The Trial Court marked the document as Ex.-1 with objection which is also reflected in the Exhibit list similarly. Simultaneously, the Trial Court in the order sheet dated 07.03.2003 noted the said document as Ex.-1 with objection and had further issued notice to the Collector to assess the deficient stamp duty and penalty as per the provisions of section 40 of the Stamp Act and to submit the report accordingly. Further, a copy of the order dated 07.03.2003, along with xerox copy of the disputed agreement to sell dated 29.03.1999, was sent to the

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Collector vide letter no.63 dated 28.03.2003. However, no reply was received from the Collector till the date the judgment was delivered by the Trial Court.

19. The Trial Court thereafter proceeded to consider the statutory provisions of the Stamp Act namely sections 35, 36, 40 and 42. After discussing the same in detail, it proceeded to hold that the document was inadmissible in evidence, as the plaintiff failed to further pursue the proceedings before the Collector resulting into non-determination of the deficiency and the penalty and consequently, the non-deposit of the deficiency and penalty, which could have been determined by the Collector. The High Court, unfortunately, has not considered the statutory provisions and only proceeded to rely upon the statement of the plaintiff that he had accepted to deposit the deficiency in stamp duty and penalty, if any, imposed by the Collector. It would be worthwhile to mention here that even till date, the plaintiff has not made any efforts before the Collector to get the deficiency and penalty determined on the impounded document and to clear the same.
20. The relevant provisions of the Stamp Act, namely, sections 35, 36, 40 and 42 are reproduced hereunder:

“35. Instruments not duly stamped inadmissible in evidence, etc. —

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:

Provided that—

(a) any such instrument [shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

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- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;
- (c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (5 of 1898);
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of [(the) (Government)], or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

36. Admission of instrument where not to be questioned. —

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 duly stamped.

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40. Collectors power to stamp instruments impounded. —

- (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable [with a duty not exceeding ten naye paise]

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only or a bill of exchange or promissory note, he shall adopt the following procedure: —

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, [an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

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42. Endorsement of instruments in which duty has been paid under sections 35, 40 or 41—

(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

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(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

- (a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;
- (b) nothing in this section shall affect the Code of Civil Procedure, 1882 (14 of 1882), section 144 clause 3."

21. According to the language of the section 35 of the Stamp Act, instruments not duly stamped would be inadmissible in evidence, and any instrument chargeable with duty would be admissible in evidence only and only if such instrument is duly stamped. The proviso gives illustration as to how the instrument would become admissible upon payment of duty with which it was chargeable or in case of instruments insufficiently stamped, the payment is made to make up such duty along with penalty mentioned therein. It also refers to exceptions where a document could be admissible in evidence under a given situation. As elaborated in clauses (b), (c), (d) and (e) of the proviso, the instrument in question i.e. agreement to sell dated 23.03.1999 does not fall under any exception.
22. Section 36 of the Stamp Act provides for admissibility of an instrument not being questioned if the same had been admitted in evidence on the ground that it is not duly stamped except as provided under section 61 of the Stamp Act. In the present case, the instrument in question was admitted subject to objection as noted in the deposition of the plaintiff (PW-1) and recorded in the order sheet of the Trial Court dated 07.03.2003. As such section 36 of the Stamp Act will not come to the rescue of the plaintiff.
23. Section 40 of the Stamp Act gives power to the Collector to stamp such instruments which have been impounded. The Collector will

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determine the proper duty payable on such instrument along with penalty as provided in clause (b) of section 41.

24. Section 42 of the Stamp Act provides that when duty and penalty, if any, leviable in respect of any instrument has been paid under sections 35, 40 or 41 upon endorsement by the Collector that such duty has been paid, instrument shall thereupon be admissible in evidence.
25. In the present case, the agreement to sell dated 29.03.1999 was found by the Trial Court to be insufficiently stamped. Consequently, the matter was referred to the Collector for determination of proper stamp duty and any applicable penalty. As per the provisions of Section 42 of the Stamp Act, such a document can only become admissible in evidence after deficiency in stamp duty and the penalty, if any, have been assessed by the Collector, and the requisite amounts have been paid. Once the deficiency and penalty are cleared, the Collector is required to certify the document by endorsement, indicating that the required duty and penalty have been paid. Only upon such certification can the document be admitted into evidence and acted upon legally.
26. Despite the Trial Court's referral of the matter to the Collector, no determination regarding the deficiency in stamp duty or penalty was made by the Collector under Section 40 of the Samp Act. As a result, the document remains inadmissible in evidence under the express bar imposed by Section 35 of the Stamp Act. Failure to resolve the deficiency in stamp duty prevents the document from being considered as admissible and valid in evidence. Therefore, until the necessary stamp duty and penalty are duly paid and endorsed by the Collector, the instrument remains legally barred from being admitted in evidence.
27. The argument advanced on behalf of the plaintiff-respondent no.1 is that he would be entitled to get benefit of section 36 of the Stamp Act as the document had been exhibited and admitted in evidence, holds no ground in as much as the document was found to be insufficiently stamped and was marked as exhibit with objection and that objection having not been removed or cured, no benefit of section 36 of the Stamp Act could be extended to the plaintiff-respondent no.1.

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28. In this connection, following cases are cited:

Ram Rattan (dead) by L.Rs. vs. Bajrang Lal and others;²

Javer Chand and others vs. Pukhraj Surana;³

29. The Trial Court had placed reliance upon the aforesaid two judgments and had also extracted the relevant part from the said judgments. The facts in the 1978 case of **Ram Rattan (dead) by L.Rs.**(supra) were quite similar wherein an instrument had been exhibited with objection but therein also the said objection had not been removed or cured. This Court held that such an instrument would not be admissible in evidence and section 36 of the Stamp Act would not be attracted. The relevant paras of this judgement are reproduced below:

“**6.** When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objects in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, Section 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The court, and of necessity it would be trial court before which the objection is taken about

² AIR 1978 SC 1393

³ AIR 1961 SC 1655

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admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting Section 36 (see *Javer Chand v. Pukhraj Surana*) [AIR 1961 SC 1655]. **The endorsement made by the learned trial Judge that “Objected, allowed subject to objection”, clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted.**

7. Mr Desai then contended that where an instrument not duly stamped or insufficiently stamped is tendered in evidence, the court has to impound it as obligated by Section 33 and then proceed as required by Section 35 viz. to recover the deficit stamp duty along with penalty. **Undoubtedly, if a person having by law authority to receive evidence and the civil court is one such person before whom any instrument chargeable with duty is produced and it is found that such instrument is not duly stamped, the same has to be impounded. The duty and penalty has to be recovered according to law. Section 35, however, prohibits its admission in evidence till such duty and penalty is paid. The plaintiff has neither paid the duty nor penalty till today. Therefore, *stricto sensu* the instrument is not admissible in evidence.** Mr Desai, however, wanted us to refer the instrument to the authority competent to adjudicate the requisite stamp duty payable on the instrument and then recover the duty and penalty which the party who tendered the instrument in evidence is in any event bound to pay and, therefore, on this account it was said that the document should not be excluded from evidence. The duty and the penalty has to be paid when the document is tendered in evidence and an objection is raised. The difficulty in this case arises from the fact that

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the learned trial Judge declined to decide the objection on merits and then sought refuge under Section 36. The plaintiff was, therefore, unable to pay the deficit duty and penalty which when paid subject to all just exceptions, the document has to be admitted in evidence. In this background while holding that the document Ext. I would be inadmissible in evidence as it is not duly stamped, we would not decline to take it into consideration because the trial court is bound to impound the document and deal with it according to law."

[emphasis added]

30. We find no reason to disagree with the findings of the Trial Court regarding the inadmissibility of the agreement to sell dated 29.03.1999. The document, being insufficiently stamped, was rightfully barred from being admitted as evidence in the absence of the requisite stamp duty and penalty being paid and certified by the Collector. The High Court, in treating this document as admissible without resolving the stamp duty deficiency, overlooked the statutory mandate under the Stamp Act. As the document is foundational to the suit, the failure to comply with the statutory requirements renders the entire claim unenforceable. Consequently, the suit must be dismissed, as it is based on an instrument that is legally inadmissible as evidence. The plaintiff cannot claim relief on the basis of a document that has not satisfied the legal requirements for admissibility.
31. We need not deal with other arguments on merits regarding the validity of the instrument dated 29.03.1999 and deal with the issue of coercion as alleged by defendant no.1.
32. Accordingly, the appeals are liable to be allowed. The amount of Rs.10,000/- (Rupees ten thousand only) admittedly received by defendant no.1 although under abnormal conditions as alleged by defendant no.1 in the interest of the parties would be liable to be returned to the plaintiff. The said amount has remained with defendant no.1 for almost 25 years right from 1999 till the present. Now that the appellants have purchased the property from defendant no.1, we fasten the liability on the appellants to return the amount to the plaintiff. We quantify the said amount to be a rounded off figure at Rs.5,00,000/- (Rupees five lakhs only) to be paid within a period of three months.

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33. In view of the above the appeals are allowed, the impugned order of the High Court is set aside and that of the Trial Court dismissing the suit is restored. Additionally, it is directed that the appellants shall pay Rs.5,00,000/- (Rupees five lakhs only) to the plaintiff-respondent no.1 within three months from today.

Result of the case: Appeals Allowed.

[†]*Headnotes prepared by:* Nidhi Jain