

1873  
July 21.

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[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 87 of 1873.*

ANTA'JI NILKANTH *et al.* ..... *Appellants.*

JANA'RDAN VA'SUDEV *et al.* ..... *Respondents.*

*Stamps—Regulation XVIII. of 1827, Sec. 10—Act XVIII. of 1869—Stamping an instrument after its execution.*

Under Regulation XVIII. of 1827, a party has a right to have stamped, on payment of the prescribed penalty, an instrument executed before 1st January 1870, and a Civil Court should receive such instrument in evidence on being stamped, and cannot reject it on the ground of intention by the party to evade the stamp duty.

THIS was a special appeal from the decision of E. T. Candy, Extra Assistant Judge of Ratnagiri, reversing the decree of the Subordinate Judge of Málwan.

The facts of the case, in so far as they are material, are briefly as follow :—

The plaintiffs, members of the same family as the defendants, sued to obtain their share in certain ancestral lands. The defendants, *inter alia*, pleaded that under the terms of a deed of partition, executed in 1843, the plaintiffs were precluded from bringing their claim. This deed was received by the Court of first instance without any objection being taken either by the Court or the plaintiffs. On appeal an objection raised against it, on the ground that it was not stamped, was allowed, and the instrument being thus left out of consideration, the Court, on the remaining evidence in the case, decreed for the plaintiffs' claim.

The special appeal was heard by MELVILL and WEST, JJ.

*Shivshankar Govindrám* for the appellants.

*Ghanashám Nilkant* appeared for the special respondents.

PER CURIAM:—It appears that the deed of partition was admitted without objection in the Court of first instance, but in appeal an objection was taken to it on the ground of want

of stamp. An offer was thereupon made to pay into Court the amount of stamp duty and penalty, but the Assistant Judge refused to allow the defect to be thus remedied, because he was not satisfied that the omission to execute the deed on paper, bearing the proper stamp, did not arise out of an intention to evade payment of the proper stamp (Act XVIII. of 1869, Sec. 20). But it is to be observed that the instrument in question was executed, while Regulation XVIII. of 1827 was in force; and we think that, under that Regulation, a party has a right to have an instrument stamped on payment of the prescribed penalty. The Regulation does not, like the later Stamp Acts, forbid the execution of instruments on unstamped paper, but merely says that they shall not be valid unless stamped; and any instrument originally unstamped, may be subsequently presented to the Collector for the purpose of being stamped. A person who, while the Regulation was in force, executed an instrument on unstamped paper committed no offence against the stamp law, and only ran the risk of having to pay more for his stamp than he would otherwise have paid. There can, therefore, be no reason for imputing, in such cases, an intention to evade payment of the proper duty, and the ground assigned by the Assistant Judge for his refusal to receive the deed of partition in evidence, on payment of the proper stamp duty and penalty, is inappropriate, and must be considered erroneous in law.

We, accordingly, reverse the decree of the Assistant Judge, and remand the case in order that the deed of partition, if held proved, may be received in evidence, after payment of the proper stamp duty and penalty.

The Assistant Judge has not laid down the points for determination as required by law. This should be done at the rehearing of the appeal.

*Reversed and remanded.*

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ANTA'JI NIL-  
KANTH.v.  
JANA'RDN  
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