

13 B. 281.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt. Chief Justice, Mr. Justice
Nanabhai Haridas, and Mr. Justice Birdwood.

IN THE MATTER OF HANMAPA AND OTHERS.*

[31st July, 1888.]

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Stamp Act, I of 1879, ss.6 and 13, and art. 38. sch. I—Constructions.

The document marked A was a document on a three-rupee stamp paper executed by Hanmapa to one Venkatidas purporting to convey to him certain immoveable property absolutely, for the consideration of Rs. 275. On the same deed of sale Ramapa, the undivided nephew of the executant, endorsed his consent to the sale.

Held, that the endorsement of consent and the conveyance were several instruments employed to complete a transaction within the contemplation of s. 6 of the Stamp Act I of 1879, and the consent ought to have been written on a separate stamp paper of the value of one rupee.

The document B was a document on a ten-rupee stamp paper executed by the executant Mallapa to one Devapa, whereby Mallapa, after reciting the fact of his having adopted Devapa, constituted him the heir to his interest in the undivided family property, and declared him to be the sole owner thereof as the executant's adopted sons. On the same document Balva, the mother of Devapa, and his father Parmeshvarapa endorsed separately their consent to the adoption.

Held, that B itself was not an instrument conferring an authority to adopt and, therefore, not chargeable under art. 38 of sch. I of Act I of 1879 or under any other article. The endorsements, therefore, were not chargeable with any stamp duty.

[Doubted, 17 B. 687.]

[282] REFERENCE by W.H. Propert, Commissioner, S. D., under s. 46 of the Stamp Act I of 1879.

The Commissioner, S. D., referred the following question for the High Court's decision:—

What was the correct amount of Stamp duty to which the endorsements of consent on the two documents A and B are severally liable?

The Commissioner was of opinion that the endorsement of consent on the sale-deed A is liable to a stamp duty of one rupee under s. 6 of the Stamp Act, inasmuch as the two instruments, *viz.* (1) the deed of sale executed by Hanmapa to Venkatidas, and (2) the endorsement of consent of Ramapa on the deed are employed in this case for completing the transaction of sale: and that the endorsement of consent on document B is liable to a stamp duty of 8 annas under cl. (c) of art. 5 of sch. I of the Stamp Act.

" Document A.

Stamp Rs. 3.

" To VENKATIDAS BALLADAS of Betgeri, taluka Gadag.

" Deed of sale executed by Hanamappa bin Chinappa, of Betgeri, taluka, Gadag, to the following effect:

" I owe you Rs. 225, balance on account of old account, and Rs. 50 taken now from you in cash for my maintenance. In all for Rs. 275.

* Civil Reference No. 10 of 1888.

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I give you in sale the following described cooking house, vacant ground, and rooms acquired by myself and of my share situated in the village of Betgeri, taluka Gadag, in the district of Dharwar.

(Description of the property with boundaries, &c.)

* * * * *

"In this manner the ground and rooms have been sold to you for the said sum of Rs. 275, and the property has also been given in your possession. Neither I, nor my heirs, nor executors under [283] a will, have claim over the said property. I execute this of my own free will and pleasure.

"Dated 3rd April, 1887.

"Mark of HANAMAPPA BIN CHINAPPA."

Assent to the above (deed) by Ramappa bin Chinappa to the following effect:—

"I have my assent to the above deed of sale executed by my uncle Hanamappa bin Chinappa in your favour on account of a house and vacant ground of his share.

"Mark of RAMAPPA BIN CHINAPPA."

"Document B.

Stamp Rs. 10.

"To DEVAPPA BIN GURAPPA of old Hubli, taluka Hubli.

"Deed of adoption executed by Mallappa bin Irbassappa of old Hubli, taluka Hubli to the effect:—

"At present I have neither male nor female issue by my wife. You are the youngest son of my brother Gurappa. Your father Gurappa is already dead. You and your two brothers are his three sons. You being the youngest of three of you I have taken you in adoption according to the customs of our caste with the consent of your mother Balva kom Gurappa and of my brother Parmeshvarappa, and have executed this deed of adoption. Your dead father, Parmeshvarappa and myself were brothers, and until this time we have been living together. We are not yet separated. Out of three of us I am the eldest brother. Hereafter you will be the heir to my whole 1/3rd share of the property that will come to me. You should behave like a son born of me. Also you should take care of myself and my wife. You should take in your possession all the property of my share as if you were the sole owner, and should enjoy it from generation to generation. Besides yourself no one shall have a claim over it. You are the sole owner of it. You [284] thus being my son from this day I have executed this deed of adoption of my own free will and pleasure.

"Dated 18th August, 1887.

"Signature of MALLAPPA BIN IRBASSAPPA."

Admission of consent to the above executed by Balva kom Gurappa to the following effect:—

"You are my own son. My brother-in-law, i.e., your adoptive father Malappa, being without issue asked me to give you in adoption, and I,

therefore, with pleasure give you in adoption to him. Hereafter you are to behave as if you are his son, and I have no right over you. You are his son, and I execute this admission of consent with pleasure.

"Dated as above.

"Mark of BALVA KOM GURAPPA."

Admission of consent to the above executed by Parmeshvarappa bin Irbassappa to the following effect:—

"My elder brother Mallappa has taken you in adoption, and has made you heir to the share of all his property that will come to him. I have my consent to it.

"Dated as above.

"Signature of PARMESHVARAPPA BIN IRBASSAPPA."

There was no appearance for the parties.

OPINION.

Per Curiam:—The conveyance (Ex. A) and the written assent by Ramappa are employed by the parties to the sale to complete the transaction. Whether Ramappa's assent was necessary, might be a difficult question of law and fact. But the parties must be deemed to have considered it was necessary, and therefore to have employed the conveyance and assent to complete the transaction as contemplated by s. 6 of the Stamp Act; and as they are "several" instruments, of which the conveyance is the principal one, the case falls under s. 6, and the assent by Ramappa, if written on a separate piece of paper, would, therefore, require a one-rupee stamp. But as it has been written on the [285] same piece of paper as the conveyance, it would appear from s. 13 that the Collector ought to refuse to stamp it.

Exhibit B is not an instrument conferring an authority to adopt, and is not, therefore, chargeable under art. 38 of sch. I of the Act or under any other article of the Act—*In the matter of Ambai* (1). The endorsements below it cannot, therefore, be chargeable with stamp duty.

13 B. 285

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

YEKNATH AND OTHERS (*Original Defendants*), *Appellants v. WARUBAI* (*Original Plaintiff*), *Respondent*.* [3rd September, 1888.]

Minors' Act, XX of 1864—Minor—Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property—No such necessity for appointment of guardian of person—Age of majority—Indian Majority Act, IX of 1875—Limitation.

The Bombay Minor's Act XX of 1864 does not, in terms, provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that until the certificate is issued there is no such appointment of the guardian of the property as will extend the age of minority from eighteen to twenty-one. But it is different as regards the appointment of a

* Second Appeal No. 294 of 1886.

(1) *Supra* 13 B. 280.