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CIVIL.

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## APPELLATE CIVIL.

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

VASANJI HARIBHAI, PETITIONER.\* [9th February, 1891.]

*Award of arbitrators for division of family property—Written argeement to effect division according to the terms of the award, effect of—Division of the property in severalty—Partition deed—Cl. 11, s. 3 of the General Stamp Act (I of 1879).*

The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators.

*Held*, that the instrument was an agreement to divide the property in severalty, and was, therefore, a partition deed within the definition in cl. 11 of s. 3 of the General Stamp Act (I of 1879).

[678] THIS was a reference made to the High Court by H. E. M. James, Commissioner, N. D., under s. 46 of the General Stamp Act I of 1879.

The reference was made in the following terms:—

"(1) An application was made to the Collector of Surat under s. 30 of the Stamp Act for the opinion of that officer as to the duty chargeable on a document already stamped with Re. 1 (one) of which the following is the translation:—

"(2) The 9th of *Jeth Vad* of the *Samvat* year 1946, the day of the week Wednesday (corresponding to) the English date the 11th of June 1890. We, the undersigned inhabitants of mauje Degaum, taluka Chikhli, of our own accord and free will, enter into an agreement as follows:—We all are the descendants of Sai Vasanji and have lived as members of an undivided family up to date. Of us, on the one side, there are in all two, one Nichhabhai and another Vasanji (who are the sons) of Sai Haribhai, and on the other there are in all three, one Ratanji, another Naranji and third Makanji, who are the sons of Khushalbhahi, who is the son of Pragji Sai. There having arisen differences among the sharers of both these parties, we all, in order to effect a division and disposition of our moveable and immoveable property and effects, outstandings and debts and all other things, passed a reference on stamped paper on the 2nd of February, 1890, to four respectable persons (namely) Vasanji Dullabbai of the town of Navsari, Dayalji Monbhai of Palsana, Bhimbhai Govandji of Variav and Makanji Kanthadji of Eru, and invested them with full powers to give a final decision (in the matter). Thereupon they unanimously gave a written award on the 9th of February 1890. Admitting the same, we all, on the 10th of June, 1890, of our free will and accord, came to an amicable settlement among ourselves and entered into an agreement to give and receive to and from one another (a little) more or less of property and cash (than what was awarded by the arbitrators' award?) and to make (some) alterations in the disposition thereof. In order to get the arbitrators' award amended accordingly we tendered a written *kabulayat* (i.e., consent) under the signatures [679] of us five to the above-mentioned arbitrators on the 10th of June, 1890. Thereupon the arbitrators entered the amendments at the foot of the

\* Civil Reference No. 1 of 1891.

award given by them and passed a decision on the 11th of June, 1890. We bind ourselves by this agreement to divide moveable and immoveable property and effects, outstandings and debts and all other things according to the amended award, and give and receive to and from one another possession thereof. To this no manner of objection proceeding from any one shall be allowed, and yet should any one raise it, the same is certainly null and void by virtue of this (agreement), and all the costs incurred thereby shall have to be borne by the person who raises the objection. We have entered into this agreement of our free will and accord and in our sound mind and conscious state. The same is duly agreed to and admitted (by us). The hand-writing of Gulabbhai Haribhai.

Signatures.

Attestations.

" (3) The Collector passed an order, stating that the document was a partition deed, and should be stamped accordingly, and that under s. 27 of the Act all the details of the property should be set forth.

" (4) The applicant, who is one of the signatories to the agreement, has, therefore, applied to the Commissioner (the Collector having declined to draw up a case for reference to the Commissioner under s. 45) to refer the case to the High Court under s. 46.

" (5) The applicant, represented by Mr. Balavantrao Tripurashankar, pleader of the District Court at Surat, argues that under *Amarsi v. Dayal* (1) the award referred to in the agreement, which is the subject of this reference, and which has not been produced, would only become a partition deed if signed by the parties, and that the decision in *Ramen Chetty v. Mahomed Ghouse* (2) shows that a document must be taken as it stands without reference to any other document referred to it. He points out that, if the parties chose, the award itself, if unsigned by them, could be filed in Court under s. 523, Civil Procedure Code, in which case the result would be that it would bind the parties, [680] and they would have all the advantage of a partition with a Rs. 5 stamp. A further document, binding the parties to carry out the award, is a miscellaneous agreement and only liable under sch. I, 5 (i) of the Stamp Act to a stamp of 8 annas. In fact, the award being legally binding, the further agreement was unnecessary and need not have been written or referred to the Collector. The award itself is not produced.

" (6) It seems clear that if the law be as stated, partition deeds and the stamp duty thereon will cease to exist, as the partition deed can be drawn up in the form of an award signed by a third person as arbitrator and filed in Court, being written only on an 8-anna stamp. The question is, therefore, one of importance.

" (7) It seems to me in this particular instance that 'the words' we bind ourselves by this agreement to divide moveable and immoveable property and effects, outstandings and debts and all other things according to the amended award and give and receive to and from one another possession thereof, amount, whether the parties meant or not, to a partition deed, and for all I know, the award itself may not be duly stamped, and if this agreement were passed it would then be attached to the agreement (award as an appendix and the stamp duty evaded)."

*Branson* (with Rao Sahib Vasudev Jagannath Kirtikar), for the petitioner.—The question to be determined is whether a document, the

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(1) 9 B. 50.

(2) 16 C. 432.

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executants of which thereby agreed to be bound by the award of certain arbitrators for partition, is a partition deed and whether it requires to be stamped, as such; under cl. 11 of s. 3 of the Stamp Act. The Commissioner is of opinion that such an agreement is a partition deed and should be stamped as such. We contend that under the present agreement the parties merely agreed to be bound by the terms of the award. The agreement was unnecessary, and it did not effect partition. The award bears the requisite stamp of Rs. 5. Parties may agree to be bound by a decree for partition, but such an agreement by itself would not effect partition. It is the decree that would effect partition. Such an agreement, therefore, cannot be liable to a stamp duty for a partition deed. It would be merely an agreement [681] to abide by the terms of the decree—*Reference under Stamp Act, s. 49 (1).*

*Shantaram Narayan* (Government Pleader), who appeared for the Government, was not called upon to address the Court.

#### OPINION.

*Per Curiam.*—The instrument is an agreement to divide property in severalty, and is, therefore, a partition deed within the definition in cl. 11 of s. 3 of Act I of 1879.

*Order accordingly.*

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#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

LAKSHMAN DADAJI (*Original Defendant*), *Appellant v. DAMODAR AMBADAS* (*Original Plaintiff*), *Respondent*.\* [16th February, 1891.]

*Decree—Execution—Order in execution that defendant pay money into Court—Appeal by plaintiff against order—Payment into Court by defendant—Refusal of plaintiff pending appeal to take money out of Court—Attachment of the money so paid in by another creditor of defendant—Payment to him—Subsequent application by plaintiff in execution for payment to him—Effect of his previous refusal.*

In execution of a decree against the defendant obtained by the plaintiff, an order was made, directing the defendant (*inter alia*) to pay into Court the sum of Rs. 140-8-0. Both parties appealed against this order, but pending the appeals the defendant paid the amount into Court. The plaintiff, however, refused to take it, on the ground that he had appealed against the order under which it was paid in, and the Court subsequently passed an order that the money should be returned to the defendant. But before this could be done, the money was attached by a third person (Ganpatrao Damodar) in execution of his decree against the defendant, and a few days afterwards the money was paid over to him. Shortly afterwards the appeal against the order directing the defendant to pay Rs. 140-8-0 to the plaintiff was heard, and the order was confirmed. Thereupon the plaintiff applied in execution (*inter alia*) for payment of the sum of Rs. 140-8-0. The defendant contended that he had already paid it. The Subordinate Judge directed the defendant to pay this sum into Court within one month. The defendant appealed to the District Court, who confirmed the order of the Subordinate Judge. The defendant then appealed to the High Court.

*Held*, that the orders of the lower Courts should be reversed. When the defendant paid the Rs. 140-8-0 into Court in execution of the decree the Court

\* Second Appeal No. 65 of 1890.

(1) 7 M. 385.