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

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KRISHNAJI SADASHIV RANADE (*Plaintiff*) *v.* DULABA (*Defendant*).* [5th March, 1891.]

Stamp—Stamp Act (I of 1879), sch. I, art. 22—Civil Procedure Code (Act XIV of 1882), s. 62—Copy of a document filed with the plaint—Attestation by the Court or its officer—Stamp duty.

Article 22 of sch. I of the General Stamp Act (I of 1879) does not apply to a copy contemplated by s. 62 of the Civil Procedure Code (Act XIV of [688] 1882), the attestation of which copy by the Court or its officer being not made on the application of the owner of the copy, but solely in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying the book entry when produced at the hearing.

[R., 26 B. 522.]

THIS was a reference made by Rao Saheb Bhao Yashavant Gupte, Subordinate Judge of Sangameshvar, in the Ratnagiri District, under s. 49 of the General Stamp Act (I of 1879).

The question submitted to the High Court was :—

"Whether copies or extracts of entries in account books and other similar books which a Civil Court has to attest under s. 62 of the Code of Civil Procedure do not fall within art. No. 22 of the first schedule of the Stamp Act."

The reference was as follows :—

"In Suit No. 401 of 1890, which has been brought in this Court for the recovery of *that* dues, the plaintiff has filed with his plaint * three extracts * * of certain entries in his *pahankardas* (appraisement books) to show the particulars of the crops grown by the defendant on certain lands forming part of his *khotki* estate during the years in suit. The extracts in question, which have been attested by the Clerk of this Court as correct, are written on plain paper, and the question arises whether they can be allowed to be placed on the record, unless they are adequately stamped under the above-mentioned article of the Stamp Act.

"I am humbly of opinion that they cannot be so placed on the record, unless they are stamped under that article, since such copies and extracts are not exempted from the payment of the stamp duty chargeable under the Act, and the remarks made by their Lordships in the case of *Harichand* v. *Jivna Subhana* (1) seem also to support the view that copies intended to be used in evidence in the course of a suit are not to be received on plain paper. It has been usual, however, so far to receive such copies on plain paper, and I feel considerable doubts about the correctness of my view, particularly as it is opposed to the practice obtaining in several of the Courts.

"[689] The question is of some importance and of frequent occurrence. * * * *

* Civil Reference No. 21 of 1890.

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"My opinion is that the question hereby referred should be answered in the affirmative."

Shantaram Narayan, (Government Pleader), for the Government:—The Clerk of the Court attests copies filed along with the plaint to show that they are correct. Such copies are required to be made under s. 62 of the Civil Procedure Code, and would be certified copies.

[SARGENT, C. J.—Such a copy is annexed to the plaint for the purpose of identifying the original. The copy cannot be used in evidence. It is the original only that will go in as evidence.]

We rely on art. 22, sch. I of the Stamp Act. The case of a power of attorney is similar to the present one. The original power of attorney is filed along with the plaint; subsequently the original is taken back, and a copy of it is kept on the record of the case to certify its correctness, yet such a copy is required to be stamped.

[CANDY, J., referred to ss. 141 and 144 of the Civil Procedure Code.]

These sections contemplate a later stage of the suit when the originals have done their function, while the originals of the copies filed along with the plaint have again to appear at a further hearing of the suit. The present case may be likened to affidavits and powers of attorney. The High Court circular order on p. 19 of the Circular Orders of the Bombay High Court supports our contention.

Vasudeo Gopal Bhandarkar (*amicus curiæ*) for the plaintiff was not called upon to address.

Vishnu Krishna Bhatavdekar for the defendant was not called upon.

JUDGMENT.

SARGENT, C.J.—We do not think that art. 22 of sch. I of the Stamp Act applies to a copy contemplated by s. 62 of the Civil Procedure Code, the attestation of which by the Court or its officer is not made on the application of the owner of [690] the copy, but solely in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying the book entry when produced at the hearing.

BIRDWOOD, J.—I concur; and would only wish to add that, in my opinion, art. 22 of sch. I of the Stamp Act can apply only to certified copies held at the time when they become chargeable with stamp duty by the persons by whom the stamp duty thereby provided is payable. When a plaintiff produces the copy referred to in s. 62 of the Code of Civil Procedure, he does so, not in order that it may be admitted in evidence or substituted for the original entry on the record, but merely with a view to its being filed, when attested as correct, and referred to at the hearing, when the original entry is produced under s. 138, for the purpose of identifying that entry. When it has been attested and filed for that purpose, it is no longer held by the plaintiff. It is held by the Court, under the express direction of the law; and no stamp duty can, while it is so held, be levied in respect of it from the plaintiff.

CANDY, J.—I concur in holding that the copy of an entry in a shop-book or other book in the possession or power of the plaintiff, which copy is under s. 62 of the Civil Procedure Code attested and filed by the Court, is not a "copy certified to be a true copy by or by order of any public officer" under art. 22, sch. I of the Indian Stamp Act, 1879.

If a plaintiff sues upon a document in his possession or power, he is compelled, under s. 59, to produce it in Court when the plaint is presented,

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and at the same time to deliver the document or a copy thereof to be filed with the plaint. But if such document is an entry in a book, it might be obviously inconvenient for the Court to file the whole book with the plaint. Therefore, under s. 62 the Court is compelled—there is no discretion in the matter—to forthwith mark the document for the purpose of identification, and after examining and comparing the copy with the original, and attesting the copy if found correct, the Court must return the book to the plaintiff and cause the copy to be filed.

[691] At the hearing of the suit the plaintiff must produce the book containing the entry on which he sues, and the entry must be duly proved.

The object of the copy, which has been filed, is to provide that the entry in the book has not been tampered with since the filing of the suit. Directly the entry has been proved, the copy is no longer required. It is, in my opinion, impossible to hold that the Legislature intended such a copy, attested and filed for such purposes, to be treated as a certified copy subject to a duty under the Stamp Act.

I think that it is necessary to clearly show that our order on the reference in question is limited to the case as above described.

It appears from the Subordinate Judge's letter of reference that, in the case in which he made the reference, the plaintiff had filed with his plaint extracts of certain entries in his appraisement books, to show the particulars of the crops grown by the defendant on certain lands forming part of his *khotki* estate during the years in suit. It is evident that, strictly speaking, the plaintiff—a *khot* landlord suing for rent—was not suing on these entries in the appraisement books, which were simply "evidence in support of his claim," and, therefore, should have been merely entered in a list annexed to the plaint (s. 59). But as the plaintiff did, apparently, file the entries with his plaint, and as the question actually submitted by the Subordinate Judge is simply whether copies, "which a Civil Court has to attest under s. 62 of the Code of Civil Procedure, do not fall within art. 22 of the first schedule of the Stamp Act," the answer should, I think, be in the negative.

These remarks seem necessary, because in another portion of his referring letter the Subordinate Judge says "the question arises whether they (the extracts from the appraisement books) can be allowed to be placed on the record, unless they are adequately stamped." If that be so, then the Subordinate Judge has not correctly stated the question which at the commencement of his letter he says he has submitted to the High Court. If the appraisement book is taken to be an "account in current use" [692] under the provisions of s. 141A. the question may arise whether the copies of the entries "examined, compared, and attested in the manner mentioned in s. 62," and which "form part of the record" under s. 142A, do require to be stamped. It must be understood that we have not answered that question.