17 B. 687 (F.B.).

1892
SEP. 29.

FULL BENCH.

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Before Mr. Justice Parsons, Mr. Justice Telang and Mr. Justice Candy.

17 B. 687 (F.B.).

PRALHAD LAKSHMANRAV NIKANE (*Plaintiff*) *v.* VITHU AND ANOTHER (*Defendants*).* [29th September, 1892.]

Stamp—Money-bond—Endorsement of transfer—Sections 13, 14 *and* 34 *of the Indian Stamp Act* (I *of* 1879).

The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under s. 34 of the Indian Stamp Act (I of 1879).

THIS was a reference made by Rao Saheb Sakharam Mahadev Karandikar, Subordinate Judge of Devgad in the Ratnagiri District, under s. 49 of the Indian Stamp Act (I of 1879).

The defendants Vithu and Atma executed a simple money-bond in favour of one Ramshet Vitshet Khadaya, who subsequently transferred his interest in the bond to plaintiff Pralhad Lakshman Nikane. The instrument of transfer was written on the back of the impressed stamp-paper on which the principal bond was written. A question having arisen as to whether the instrument of transfer required to be stamped, the Subordinate Judge submitted the following question for decision :—

"(1) Whether the instrument of transfer on which the plaintiff has sued, can be stamped by this Court as per s. 34 of the Stamp Act I of 1879."

[688] The opinion of the Subordinate Judge was in the affirmative.

There was no appearance of parties.

OPINION.

TELANG, J.—It appears to us that the endorsement of transfer in this case cannot be treated as falling within the exemption allowed by the proviso to s. 13, which in terms extends only to "any endorsement which is duly stamped or is not chargeable with duty." *Ex concessis* the endorsement in this case is *not* duly stamped and *is* chargeable with duty. It must, therefore, be held to fall under the principal clause of s. 13, which forbids a second instrument being written upon a paper on which one instrument has already been written. The second instrument being thus written in contravention of s. 13 must under s. 14 be deemed to be unstamped. And then s. 34 and its provisos, which apply to all unstamped instruments, whether actually or only constructively so, must come into operation. This appears to us to be the true construction of the sections. But in *In the matter of Hanmapa* (1) the opinion is expressed that the Collector ought to refuse to stamp the endorsement, because it is made in contravention of s. 13. That seems to indicate that in such a case the power to set the matter right by the enforcement of a penalty, as provided elsewhere in the Act, does not apply. As at present advised, we are not prepared to go as far as this. It would be equivalent to adding another sanction to the rule laid down in s. 13 besides the sanction provided in s. 14. We think that that is not a correct construction of the Act. We have consulted Sargent, C.J., upon the point, and he authorizes

* Civil Reference No. 13 of 1892.

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us to say that he agrees in the view now expressed, and that in *Hanmapa's* case it was not the intention of the Court to decide the point which has here arisen. The answer to the question put by the Subordinate Judge must be in the affirmative.

Order accordingly.

17 B. 689.

[689] APPELLATE CIVIL.

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

FARDUNJI ASPANDIARJI (*Original Opponent*), *Appellant v.* NAVAJBAI (*Original Applicant*), *Respondent.** [29th September, 1892.]

Letters of administration, grant of—Deceased having no property or fixed place of abode within district—Jurisdiction of the District Judge—S. 240 of the Indian Succession Act (X of 1865).

A District Judge cannot grant letters of administration to a Parsi if the deceased had not at the time of his death a fixed place of abode or any property within his district. See s. 240 of the Indian Succession Act, X of 1865.

APPEAL from an order of J. B. Alcock, District Judge of Surat.

One Aspandiarji died after making a will of his property bequeathing a legacy to his daughter Jaiji, who had possession of part of his estate at Surat. The will was proved and Jaiji received her legacy. Afterwards Navajbai, widow of Mancherji Aspandiarji (son of the testator), brought a suit against Jaiji in the Subordinate Judge's Court at Surat for the administration of Aspandiarji's estate. Jaiji died pending that suit. Navajbai thereupon presented an application to the District Court at Surat under s. 222 of the Indian Succession Act (X of 1865) for the grant to her nominee Thakardas of letters of administration to Jaiji's estate.

The opponent Fardunji Aspandiarji, a brother of Jaiji, contended that the Court had no jurisdiction to grant the application, inasmuch as Jaiji left no property within the jurisdiction of the District Court at Surat, and that she resided at Bombay.

The District Judge of Surat granted the application, observing: "Jaiji had possession of part of Aspandiarji's estate in Surat. She gets nothing under his will except a legacy, which she has received; the will having been proved and the estate administered in Surat. This Court, therefore, has jurisdiction to make an order under s. 222."

The opponent appealed against the order.

Govardhanram M. Tripathi, for the appellant:—The application can only be granted under the provisions of s. 240 of the Indian Succession Act. Jaiji owned no property of her own at [690] Surat, nor was she a resident there. The mere circumstance that the administration suit is going on at Surat, and that Jaiji was in possession of Aspandiarji's property at Surat, could not give to the District Judge the jurisdiction to entertain the application for administration to Jaiji's estate.

Manekshah J. Taleyarkhan, for the respondent.

JUDGMENT.

SARGENT, C.J.—The Court of Surat, in which the suit to administer the estate of Aspandiarji has been brought, had no jurisdiction to grant

* Civil Reference No. 84 of 1892.