

Kartar Singh v. Mohinder Singh (Pandit, J.).

Ram vs. Sayyad Mohammad (4) where the opposite view as accepted by the Travancore-Cochin High Court in *Kochuponchi Varughese's case* (2) (*supra*) and the cases cited therein for the aforesaid reasons was not followed. I am in respectful agreement with the view taken in *Buta Ram's case* (4). The executing Court erred in relying on *Kochuponchi Varughese's case* (2).

(6) The revision petition is consequently allowed with costs and the condition attached to the order releasing the property from attachment whereby the petitioners were directed to pay Rs. 3,000 before the attachment was lifted is set aside.

N.K.S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

KARTAR SINGH,—Petitioner

versus

MOHINDER SINGH,—Respondent

Civil Revision No. 508 of 1970.

November 12, 1970.

Evidence Act (I of 1872)—Section 65—Indian Stamp Act (II of 1899)—Section 35—Document inadmissible being not duly stamped—Secondary evidence regarding contents of such document—Whether legally permissible.

Held, that no secondary evidence can be permitted to be led regarding a document, which itself is not admissible in evidence. According to section 35 of the Indian Stamp Act, no instrument chargeable with duty is admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by public officer, unless such instrument is duly stamped. If the original of a document is inadmissible under section 35 of the Act being not duly stamped, no secondary evidence regarding its contents can, under section 65, of evidence Act be given.

(Para 5)

Petition under Section 115, Civil Procedure Code, for revision of the order of Shri Bakshisha Kaur, Sub-Judge, 1st Class, Nabha, dated 24th April, 1970, disallowing the application for permission to lead secondary evidence of the alleged rent note.

H. S. SANGHI, ADVOCATE, for the petitioner.

NAGINDER SINGH, ADVOCATE, for the respondent.

JUDGMENT

PANDIT, J.—(1) Mohinder Singh filed a suit against Kartar Singh for possession of a shop, situate in Bhadson, Tehsil Nabha. The plaintiff's allegations were that he had given the said shop to the defendant on a monthly rent of Rs. 17 in 1964, for six months, when the latter executed a rent note in his favour on 23rd October, 1964. Later on, the rent was increased to Rs. 20, which the defendant went on paying up to the month of October, 1968. The period for which the said shop had been given on rent to the defendant had expired. The plaintiff further alleged that the shop was required by him for his personal needs and it was also averred by him that the arrears of rent were due from the defendant.

(2) The suit was contested by the defendant. After the plaintiff had concluded his evidence in the case and the defendant had started producing his evidence, the latter made an application to the Court that he be permitted to produce secondary evidence with regard to the rent-deed, which was executed by him in favour of the plaintiff in the month of October 1965, in which the rent was fixed at Rs. 20 per month and that deed was not being produced by the plaintiff. According to him, the said rent note had been written in the Bahi of the plaintiff.

(3) This application was resisted by the plaintiff. According to him, no rent-deed was executed in 1965 and the rent had been orally increased from the original rent of Rs. 17 to Rs. 20 per month. He stated that the defendant could not be allowed to lead secondary evidence regarding the alleged rent note, because even the alleged original rent note was inadmissible in evidence as it required stamp duty and registration.

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(4) By her order dated 24th April, 1970, the trial Judge rejected the application of the defendant and held that he could not be allowed to lead secondary evidence of the alleged rent note. Against this decision, the present revision petition has been filed by Kartar Singh, defendant.

(5) After hearing the counsel for the parties, I find that there is no merit in this petition. It is undisputed that no secondary evidence can be permitted to be led regarding a document, which itself is not admissible in evidence. The alleged rent note in the Bahi of the plaintiff, undoubtedly, required stamp duty. According to section 35 of the Indian Stamp Act, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by public officer, unless such instrument is duly stamped. There are certain exceptions given in this section, but the present case is not covered by any of them. That being so, the alleged rent note was inadmissible in evidence. If the alleged original is itself inadmissible in evidence, then no secondary evidence regarding its contents can under the law, be given. In *Ladha Ram Lakhi Ram Arora v. Hari Chand and others* (1), Bhide, J., observes that where the entry as to a mortgage is made in an ordinary Bahi and is not duly stamped though required by the Stamp Act, the secondary evidence of the contents of the entry is wholly inadmissible. Similar view was taken by Teja Singh, J., in *Mt. Halima and another v. Emperor* (2), where it was held that if a document that was required to be stamped was not stamped and was not forthcoming, no secondary evidence regarding the contents, thereof could be admitted in evidence and if the secondary evidence was admitted under the erroneous impression that it was admissible, it should be altogether ruled out.

(6) That being so, the impugned order passed by the trial Judge was in accordance with law. It might also be mentioned that in the written statement filed by the defendant, he had categorically stated that the execution of any rent-deed in favour of the

(1) A.I.R. 1938 Lah. 90.

(2) A.I.R. 1947 Lah. 306.

plaintiff was wrong and denied. In face of this averment, it is not understood as to how later on he took up the plea that he had executed a rent note in the Bahi of the plaintiff in October, 1965.

(7) In view of what I have said above, this petition fails and is dismissed, but with no order as to costs.

N.K.S.

APPELLATE CIVIL

Before H. R. Sodhi, J.

JAGAT SINGH AND OTHERS,—Appellants

versus

JOGINDER PAUL AND OTHERS,—Respondents.

Second Appeal From Order No. 48 of 1970

November 17, 1970.

Code of Civil Procedure (V of 1908)—Section 2 and Order 32 Rule 2—Suit filed by minor without a next friend—Trial Court ordering plaint to be taken off the file—Such order—Whether amounts to rejection of plaint so as to make it appealable.

Held, that the word 'reject' implies a refusal to receive or accept. Same is the implication when a plaint is ordered to be taken off the file under order 32 rule 2 of Code of Civil Procedure. All that is intended is that the Court declines to accept the plaint presented to it in the name of the minor when he is not suing through a next friend. An order though professed to have been passed under order 32 rule 2 of the Code, must be considered to be one rejecting the plaint or dismissing the suit and it is appealable as a decree within the meaning of section 2 of the Code. (Para 4)

Second Appeal from the order of the Court of Shri R. L. Garg, Additional District Judge, Jullundur, dated 25th May, 1970, reversing that of Shri Darshan Singh Chhina, Sub-Judge, II Class, Jullundur, dated 7th February, 1968, setting aside judgment and decree of the trial court and remanding the case with the direction that it would proceed with in accordance with law.

A. L. BAHRI, ADVOCATE, for the appellants.

R. L. AGGARWAL AND G. C. GARG, ADVOCATES, for respondent No. 1 only.