

JAYATHUNGA
v.
RANASINGHE AND OTHERS

COURT OF APPEAL
TILAKAWARDANE, J.
CALA NO. 344/2000
DC COLOMBO NO. 21466/MR
MARCH 04, 2002

Stamp Duty Act, No. 43 of 1982, sections 2 (a), 2 (b), 36 and 69 – Stamps Ordinance, No. 22 of 1909, section 36 (b) – Similarity – Is a statement of account chargeable with stamp duty?

Held:

- (1) The documents that have to be stamped are described in the Regulation made under section 69 of Act, No. 43 of 1982, and published in the *Government Gazette* No. 224/3 of 20. 12. 62 and in the amendment to the *Government Gazette* bearing No. 1000/17 of 05. 11. 97. The Statement of Account (P2) is not included with items published in the *Government Gazette*.
- (2) Document P2 was not the document which the cause of action is based upon but is merely a document of evidential value, explaining the liability of the defendant-petitioner to pay such moneys and was to impeach the defence that the defendant-petitioner had duly paid out the consideration that was due.
- (3) In terms of section 36 court could have accepted the document in evidence upon the payment of the penalty.
- (4) P2 falls within section 2 (b) and not within section 2 (a) of the Stamp Duty Act.

APPLICATION for leave to appeal from the order of the District Court of Colombo.

Ikram Mohamed, PC with *Lal Munasinghe* for defendant-appellant.

Nihal Jayamanne, PC with *Noorani Amarasinghe* for plaintiff-respondent.

May 28, 2002

SHIRANEE TILAKAWARDANE, J.

The petitioner in this case has preferred this application seeking leave to appeal from the order of the Additional District Court Judge of Colombo dated 23. 10. 2000 and seeking to set aside the said order marked G. During the trial, on 26. 01. 2000 the 1st plaintiff through her counsel had moved to mark out a statement of account sent by the defendant-petitioner dated 07. 01. 1990 and marked as P2. The counsel appearing for the plaintiff-respondent raised objection on the basis that the document P2 had not been considered in terms of the provisions of the Stamp Duty Act, No. 43 of 1982. The document P2, a statement of expenditure, shows that the defendant had utilized 3.2 million obtained by the sale of premises bearing No. 26/D, 6th Lane, Nawala and had upon the direction of the husband of the 1st plaintiff the defendant had invested the consideration obtained by such sale. In the circumstances the balance part of the consideration after expenditure had been paid out on account of the plaintiff's daughter's marriage, which was now due to the 1st plaintiff and her children who were the legal heirs. It is to be noted that the document P2 was not the document on which the cause of action is based upon but is merely a document of evidential value, explaining the liability of the defendant-petitioner to pay such moneys and was to impeach the defence that the defendant had duly paid out the consideration that was due.

Section 36 (b) of the Stamp Ordinance No. 22 of 1909 is similar to section 36 of the Stamp Act, No. 43 of 1982.

Section 36 (b) of the Ordinance reads as follows:

- (b) "Where any person from whom stamped receipts could have been demanded has given an unstamped receipt and such receipt if stamped would be admissible in evidence against him, then such receipts shall be admitted in evidence against him in payment of a penalty of one Rupee by the person who is tendering it."

Section 36 of the Stamp Act reads follows:

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“Where any person required to give a stamped receipt has given an unstamped receipt and such receipt if stamped would be admissible in evidence against him then such receipts shall notwithstanding anything in section 33 be admitted against him on payment of a penalty of Rs. 5 by the person who is tendering it.”

Accordingly, court could have accepted the document in evidence upon the payment of the penalty.

In this sense it is important to distinguish the document that is likely a surety bond or promissory note which is required to be stamped in terms of Stamp Act.

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The documents that have to be stamped are described in the regulation made under section 69 of the Stamp Duty Act, No. 43 of 1982 and published in the *Government Gazette* No. 224/3 of 20. 12. 82 and in the amendment to the *Gazette* bearing No. 1000/17 of 05. 11. 97. The statement of account as set out in P2 is not included in the items published in the *Gazette*. For these reasons I see no reason to interfere with the order of the learned District Judge dated 23. 10. 2000 whereby he had rejected the objection and held that the said document was not an instrument chargeable with stamp duty in terms of section 2 (a) of the Stamp Duty Act but as a document which falls within section 2 (b) of the said Act. Therefore, I hold that the document is admissible in evidence. Accordingly, the application stands dismissed with costs.

Application dismissed.