

1896.
January 17
and 21.

KENAKAL v. VELAPILLAI.

D. C., Jaffna, 24,476.

Instrument insufficiently stamped—Objection to it when to be taken.

The time to take objection to an instrument on the ground of its being insufficiently stamped is when it is tendered in evidence.

THE facts of the case sufficiently appear in the judgment of
WITHERS, J.

Rámanáthan, S.-G., for plaintiff, appellant.

Dornhorst and Wenilt, for defendant, respondent.

Cur. adv. vult.

21st January, 1896. LAWRIE, J.—

The learned District Judge has pointed out that he sees many difficulties in the plaintiff's way. He presses that it is almost impossible that the plaintiff can proceed, but it would have been well had he framed issues of law and fact, and had he tried these issues and given a judgment on the merits of the action.

It was premature to discuss the meaning of the agreement or the amount of deficiency of the stamps before that agreement was proved or tendered in evidence.

I recommend that the judgment under appeal should be set aside, and that the action should be remitted to the District Court to be proceeded with according to law. I would at the same time urge on these parties the advantage of mutual concession and of a friendly settlement.

Disputes which arise in the course of the performance of religious ceremonies, and the management of temples in which the parties feel deeply interested, cannot be satisfactorily settled by a Court of law, which necessarily has but little knowledge of or no sympathy with the feelings of the opposing parties. In a matter like this it is impossible for the Court to do justice. The parties are to exercise mutual forbearance, or to submit their disputes to the arbitration of those conversant with the customs of the country or learned in the mysteries of the temple.

WITHERS, J.—

This dismissal was premature. On the day of trial, instead of settling the issues to be tried, the District Judge entertained objections to the structure of the plaint, one of which, and that a very material objection, was that an agreement pleaded and relied on in the plaint was not sufficiently stamped.

The time to take objection to an instrument on the ground of its being insufficiently stamped is when it is tendered in evidence.

In most cases that defect may be cured so as to render the instrument admissible. Mr. Dornhorst no doubt pressed upon us that the plaint itself was insufficiently stamped by reason of a certain claim in it not having been valued as the Civil Code and Stamp Ordinance combined require. This may or may not be so, but assuming that it is, the plaintiff may withdraw it from the Court if so advised.

But till the issues are definitively settled in this case I find it somewhat difficult to see how that point can be taken and determined.

I would remit the case for the District Judge to settle the issues which will have to be determined, and proceed to the trial of them. The appellant is entitled to have his costs in appeal. Set aside accordingly.

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WITNESS, J.