

1937

Present : Maartensz and Hearne JJ.

SADDANATHA KURUKKAL *v.* SUBRAMANIAN *et. al.*

21-22—D. C. Jaffna, 43.

Stamp duty—Appeal from an order made in proceedings under the Trusts Ordinance, No. 9 of 1917, s. 42 (2)—Petition of appeal—Stamp duty—Stamp Ordinance, No. 22 of 1909, s. 4.

A petition of appeal to the Supreme Court from an order made by the District Court in proceedings under the Trusts Ordinance, No. 9 of 1917, must be duly stamped.

Sathasivam v. Vaithianathan (24 N. L. R. 94) followed.

THE petitioner-appellant filed two appeals against two orders made by the District Judge of Jaffna on an application made under section 42 of the Trusts Ordinance, No. 9 of 1917, for the authority of the Court to sell certain property forming part of the subject-matter of a trust of which, he alleged, he was the trustee.

L. A. Rajapakse (with him Soorasangaran), for the respondent—There are various objections to the hearing of this appeal, namely, (1) the petition of appeal has not been stamped, (2) no money has been tendered with the petition of appeal for the Supreme Court Judgment and certificate, and (3) necessary parties have not been made respondents to the appeal.

The property which the petitioner wanted to sell is worth over Rs. 10,000. The petition to the District Court was stamped with Rs. 10 and the affidavit with Re. 1.

The case of *Sathasivam v. Vaithianathan*¹ is in point. Since the petition of appeal has not been stamped the appeal must be dismissed (*Goonesekera v. Silva and another*²).

The following cases were also cited:—*The British Ceylon Corporation v. The United States Shipping Board and the Roosevelt Steamship Company*³; *Attorney-General v. Karunaratne*⁴.

J. E. M. Obeyesekere, C.C. (on notice), for the Attorney-General. The matter is concluded by the judgment in *Sathasivam v. Vaithianathan* (*supra*). Section 116 (1) of the Trusts Ordinance, No. 9 of 1917, deals with the procedure. Where the Trusts Ordinance is silent, the rules of the Civil Procedure Code applies.

[MAARTENSZ J. referred to section 4 of the Stamp Ordinance, 1909]

The liability arises under that section. Under section 116 of the Trusts Ordinance the application is governed by the Civil Procedure Code which together with the Stamp Ordinance require a stamp to be affixed to the petition of appeal calculated according to the value of the subject-matter. The effect of section 116 (3) of the Trusts Ordinance must be considered. The petitions mentioned in that sub-section refer to those mentioned in sections 74, 75, 76.

N. E. Weerasooria (with him S. Subramaniam), for the petitioner-appellant.—*Sathasivam v. Vaithianathan* (*supra*) is not based on the assumption that section 116 of the Trusts Ordinance brings in the rules with regard to stamps. That section merely refers to the procedure. There should not be charges for revenue in these actions.

A petition of appeal may mean a continuation of proceedings initiated by the petition where a stamp of Rs. 10 had been affixed. There is no provision in the Stamp Ordinance for the stamping of proceedings under the Trusts Ordinance. When the Trusts Ordinance came into operation without any express provision requiring stamps, the proceedings under that Ordinance should not be made liable for duty.

[MAARTENSZ J.—In the District Court no stamp other than that required for initiating the proceedings is necessary, but when it comes up in appeal a stamp becomes necessary.]

The District Judge had made an order that only the petition need be stamped and no other stamps were necessary. It had been the practice in that Court.

Cur. Adv. Vult.

November 22, 1937. MAARTENSZ J.—

The petitioner-appellant has filed two appeals numbered 21 and 22 against two orders made by the District Judge of Jaffna on his application under section 42 of the Trusts Ordinance for the authority of the Court to sell certain property forming part of the subject-matter of a trust of which he alleges he is the trustee.

¹ (1922) 24 N. L. R. 94.

² (1918) 5 C. W. R. 135.

³ (1934) 14 Cey. L. Rec. 31.

⁴ (1935) 37 N. L. R. 57.

A preliminary objection was taken to the appeals being heard on the ground that the petitions of appeal have not been stamped, and the appellant had not delivered to the Secretary of the District Court together with his petitions of appeal the proper stamps for the decree or order of the Supreme Court and certificate in appeal, as required by Part II. of Schedule B of the Stamp Ordinance which contains the duties on Law Proceedings.

The appellant contended that under section 116 (3) of the Trusts Ordinance the proceedings initiated by a petitioner were only liable to a stamp duty of Rs. 10.

At the close of the argument at which the Attorney-General was represented, as the question affected the revenue, we intimated that we upheld the objection and that a written judgment would be delivered later.

I am of opinion that the appellant's contention is an untenable one. Sub-section (3) of section 116 of the Trusts Ordinance enacts as follows: "All petitions presented in any Court in any proceeding under this Ordinance shall bear a stamp of ten rupees".

There is nothing in this sub-section from which it could be inferred that the stamp duty payable on proceedings initiated by a petition is limited to a stamp of Rs. 10.

On the other hand sub-section (1) of that section provides that all actions and all proceedings, which would include proceedings initiated by a petition, shall be governed by the enactments and rules relating to Civil Procedure for the time being in force. Bertram C.J. in the case of *Sathasivam v. Vaithianathan*¹, was of opinion that this sub-section brought "into operation the general provisions of the Stamp Ordinance with regard to legal proceedings". This opinion is, I think, applicable to all proceedings whether initiated by petition or otherwise.

Mr. Obeyesekere, who represented the Attorney-General, arrived at the same result in a different way. His argument, shortly stated, was that by the terms of section 116 (1), a petition of appeal in actions and proceedings under the Trusts Ordinance was an appeal in a civil proceeding which by section 4 of the Stamp Ordinance, No. 22 of 1909, was chargeable with duty. Section 4 provides—I quote the relevant passage—that every document mentioned in Part II. of the Schedule "shall be chargeable with duty of the amount indicated in that Schedule as the proper duty", and Part II. of the Schedule provides that every petition of appeal shall be chargeable with duty according to the class of the case in which it is filed.

Whichever way one looks at the matter there can, I think, be no doubt that the petitions of appeal filed in this case were chargeable with stamp duty and the appellant was bound to deliver to the Secretary of the Court with his petitions of appeal the necessary stamps for the decree or order of this Court and certificate in appeal.

It is now settled law that where the necessary stamp duty has not been paid the appeal should be dismissed. In the case of *Hurst et al. v. The Attorney-General*,² the appeal was dismissed as it has not been properly stamped. In the case of *The Attorney-General v. Karunaratne*³, a

¹ (1922) 24 N. L. R. 94.

² 4 C. W. R. 265.

³ (1935) 37 N. L. R. 57.

Divisional Court held that failure to deliver, together with the petition of appeal, stamps for the decree of the Supreme Court and the certificate in appeal is a fatal irregularity.

Counsel for the appellant brought to our notice that it was the practice in the District Court of Jaffna in proceedings under the Trusts Ordinance to stamp only the petition. The appellant is not entitled to indulgence on this ground as the practice which appears to have prevailed in the District Court of Colombo at one time was condemned by Bertram C.J. in the case of *Sathasivam v. Vaithianathan* (*ubi supra*).

I accordingly dismiss the appeal. As the appeals were considered together and the respondents did not incur two sets of costs I am of opinion that the appellant should pay the respondents one set of costs.

We are indebted to Mr. Obeyesekere, who represented the Attorney-General, for the assistance he gave us at the argument of the preliminary objection.

HEARNE J.—I agree.

Appeal dismissed.
