

1938

*Present : Poyser S.P.J. and Wijeyewardene J.*CORNELIS APPUHAMY *v.* KIRI BANDA *et al.*

162—D. C. Colombo, 7,569.

Stamp duty—Acknowledgment of debt—Document not given as evidence of debt—Liability to duty—Stamps Ordinance, No. 22 of 1909, Schedule B., Part I., item I., s. 36 (b).

In an action on a mortgage bond the plaintiff, in order to meet a plea of prescription put forward by the defendant, sought to put in evidence a document signed by the defendant in which he acknowledged that the principal sum and interest from a certain date was due. Objection was taken to the document on the ground that it should have been stamped under item I., Part I., Schedule B of the Stamp Ordinance.

Held, that the document did not fall for duty under item I., Part I. of Schedule B, as it was not given with the dominant intent of supplying evidence of a debt and that the document should have been admitted in evidence upon payment of a penalty, if any, under section 36 of the Stamp Ordinance.

A PPEAL from an order of the District Judge of Colombo.

J. E. M. Obeyesekere (with him *S. W. Jayasuriya*), for plaintiff, appellant,
J. R. Jayawardana, for the defendant, respondent.

Cur. adv. vult.

November 7, 1938. WIJEYWARDENE J.—

The plaintiff instituted this action for the recovery of the principal and interest due on a mortgage bond executed by the first defendant in 1920. The plaintiff further stated that the first defendant paid him all the interest up to October 20, 1936. The second, third and fourth defendants were made parties as they were puisne encumbrancers.

The first defendant filed answer stating that he received a loan of Rs. 200 on the bond and pleaded that the plaintiff's claim was barred by prescription.

Before the hearing, the first defendant served certain interrogatories on the plaintiff one of which was—

“Do you hold any acknowledgment in writing from the first defendant to prove any payment or payments of interest made by him?”

The plaintiff's answer to that interrogatory was to the effect that he held a writing of October 20, 1936, from the first defendant acknowledging the debt due and the interest as from October 20, 1936.

When the plaintiff was giving evidence in Court he sought to produce the document referred to in his answer to the interrogatory, mainly for the purpose of meeting the plea of prescription. On an objection taken by the defendant's Counsel under section 36 of “The Stamp Ordinance, 1909”, the learned District Judge refused to admit the document in evidence and made the following order:—

“This is undoubtedly an acknowledgment of a debt which is stampable with a stamp of 6 cents and in the terms of the provisions of section 36 of the Stamp Ordinance, No. 22 of 1909, the document is inadmissible in evidence. I hold that the document is not a receipt falling within the exception contained in section 36 (b) of the Stamp Ordinance and therefore it cannot be admitted even on the payment of a penalty”.

After hearing the oral evidence in the case the District Judge held that the claim was prescribed and dismissed the plaintiff's action with costs.

Mr. Obeyesekere who appeared in support of the appeal produced the document in question together with a translation. This document is marked Z and initialled by the Registrar of this Court and filed of record. The point that arises for consideration is whether this document is a document stampable under Schedule B, Part 1, item 1 of the Stamp Ordinance which refers to an—

“Acknowledgment of a debt amounting to Rs. 20 or upwards in amount or value written or signed by or on behalf of debtor in order to supply evidence of such debt in any book (other than a banker's pass book) or on a separate piece of paper when such book or paper is left in the creditor's possession”.

Before rejecting a document of this nature it should be carefully examined with reference to surrounding circumstances to ascertain whether it was given to supply evidence of the debt. (*Mulji Lala v. Lingu Makoji* ¹)

¹ (1896) I. L. R. 21 Bombay 201.

In *Ambica Dat Vyas v. Nityanud Singh*¹, Banerjee and Henderson JJ. held that the mere fact of a document being an acknowledgment of a debt within the meaning of section 19 of the Indian Limitation Act would not make it liable to a stamp duty under the corresponding provisions of the Indian Stamp Act, and that other conditions were required to be fulfilled one of which was that it should be intended to supply evidence of a debt. (See also *Chandick v. Damani*².)

On a survey of the evidence led in the case I am satisfied that the document was not given with the dominant intent of supplying evidence of the debt, and I hold that the document should have been admitted in evidence subject to the proof of its execution and the payment of a penalty if any under section 36 of the Stamp Ordinance.

I set aside the judgment of the District Judge and send the case back for hearing *de novo* on the issues already framed and such other issues as may be raised by the parties and accepted by the Judge. At such trial the document referred to should be admitted in evidence (subject to the payment of any necessary penalty) on the plaintiff proving its execution.

The plaintiff is entitled to the costs of this appeal. The costs of the trial already held in the District Court and the costs of the fresh trial in the District Court will be in the discretion of the District Judge.

POYSER S.P.J.—I agree.

Appeal allowed.

