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PAYMENT OF INSUFFICIENT STAMP DUTY ON UNTRACEABLE/LOST DOCUMENT/INSTRUMENT

-Jaskaran Singh¹

The payment of stamp duty is a fundamental requirement for the validity and enforceability of documents in India. When an original document is lost or untraceable, the issue of paying insufficient stamp duty becomes complex.

The moot question which had come up while preparing an application under section 33 and 35 of stamp duty act was whether an insufficient stamp duty can be paid on a document which is untraceable / misplaced. The situation had arisen in view of the fact that on an earlier occasion an application was moved on behalf of the plaintiff challenging the ownership of the defendant based upon the registered gift deed.

It was pointed out to the hon'ble court that since the gift deed is insufficiently stamped, the same is not admissible in evidence and further, the gift deed may be impounded and send the same to the concerned collector for imposing penalty in accordance with the law. However, the said application was disposed off by the Hon'ble Court with the direction that whenever the original gift deed will be placed on record by the defendant, the plaintiff would be at liberty to raise the said objection at that stage.

Thereafter, when the stage of the defendant evidence had come up, again the same application was moved by the plaintiff seeking to impound the document that is the gift deed and for seeking to refer the deed to the concerned sub registrar. In reply to the said application the defendant had refused to place the document on record on the pretext that the same is not traceable.

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The said situation prompted the writers of the present article to identify the position of law as to what is the procedure of payment on insufficient stamp duty in the absence of the original document.

Stamp Duty Act, Section 33²:- It states that when an insufficiently stamped instrument is presented before a lawful authority, the instrument shall be impounded. It also states that nothing in this section, deems any Magistrate or Judge of a criminal court to impound or examine any document if he/she does not think fit to do so.

Stamp Duty Act, Section 35³: - It states that the document insufficiently stamped cannot be admitted as evidence in any court of law.

Stamp Duty Act, Section 36⁴: - Once an instrument has been admitted in evidence, such admission shall not be questioned at any stage of the same suit or proceeding, except as provided under Section 61, on the ground that the instrument was not duly stamped.

An inadequately stamped document cannot be entered as evidence under Section 35 of the Indian Stamp Act, 1899 until the necessary stamp tax and penalty are paid. This regulation guarantees adherence to the law's stamp duty requirements. It is essential to address stamping concerns up front since Section 36 prohibits challenges to the acceptance of such documents after they are acknowledged.

In *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao & Ors.*⁵ Decided on 29.01.1971, the Supreme Court of India held that under Section 35 of the Indian Stamp Act, secondary evidence of an unstamped or insufficiently stamped instrument is inadmissible. The proviso to Section 35 applies only when the original instrument is before the court and the deficiency with penalty is

² Stamp Duty Act, 1899, Page no. 18

³ Stamp Duty Act, 1899, Page no. 19

⁴ Stamp Duty Act, 1899, Page no. 20

⁵ AIR1971SC1070, 1972(2)AnWR5, 1971 INSC 37, (1972)2MLJ5, (1971)1SCC545, [1971]3SCR590, MANU/SC/0573/1971

paid. Section 36 protects the admission of an original instrument if no objection is taken at the time of its reception, but it does not extend to copies or oral accounts of such instruments. Therefore, oral or documentary secondary evidence of an insufficiently stamped agreement cannot be acted upon.

FACTS OF THE ABOVE MENTIONED CASE

The Appellant along with Respondent No. 1 and 2 were lessees of a rice mill site in Bhimavaram under a lease expiring on 17 July 1956. After expiry, negotiations led to an agreement dated 6 January 1957 for a fresh 30-year lease, written on insufficiently stamped paper and signed by the Appellant and Respondent No. 5 for themselves and on behalf of Respondents 3 and 4 on the one hand (Lessee) and Respondents 1 and 2 (Lessors) on the other. The original document remained with the lessors, who later denied its execution. The Lessors sued for possession and damages, while the Appellant filed a suit for specific performance relying on the agreement. As the original was not produced, the Appellant sought to prove its contents through oral evidence, alleging suppression by the lessors.

The trial court rejected the claim for specific performance, holding the agreement unproved. The first appellate court reversed this, decreeing specific performance, reasoning that the lessors had suppressed the agreement and thus the Appellant could rely on oral evidence.

In the second appeal, the High Court held that oral evidence to prove the terms of the insufficiently stamped agreement was inadmissible under Section 35, and Section 36 did not apply to secondary evidence. The Supreme Court upheld this view, emphasising that both primary and secondary evidence of an unstamped or insufficiently stamped instrument are barred, regardless of the reason for non-production of the original.

In *Champalal v. Pannalal*, S.B. Civil Second Appeal No. 94 of 1950 Decided On 28.03.1951⁶, the High Court of Rajasthan held that only the original document which is insufficiently stamped can be validated by payment of stamp duty and penalty under section 35 of the act. If the original

⁶ RLW1951()Raj258, MANU/RH/0143/1951

document is lost, the penalty cannot be levied. the copy of the document insufficiently stamped cannot be stamped and the penalty under section 35 cannot be levied on the copy of the original document.

FACTS OF THE ABOVE MENTIONED CASE

The respondent (plaintiff) filed a suit alleging that a plot of land marked ABCD was equally divided between the parties. It was agreed between the co-sharers that each party would leave a 3-foot-wide strip from their respective portions, creating a 6-foot-wide way between the plots. This arrangement was to facilitate construction on the land.

The plaintiff claimed to have adhered to the agreement by leaving the required 3-foot strip but alleged that the defendant was attempting to construct on the entire portion of his plot without leaving the agreed strip. The defendant denied the existence of such an agreement and asserted his right to construct on his entire portion of the land.

The plaintiff submitted a copy of the alleged agreement with his plaint but stated that the original had been lost. The trial court permitted the plaintiff to produce secondary evidence. After examining the secondary evidence, the trial court found in favor of the plaintiff, decreeing the suit. This decision was upheld on appeal.

In the second appeal, the defendant argued that the agreement, being insufficiently stamped, was inadmissible in evidence. The High Court of Rajasthan held that the penalty under section 35 cannot be levied on the copy of the original document.

The High Court set aside the decisions of the lower courts, dismissed the suit, and ruled in favor of the defendant, emphasizing the inadmissibility of secondary evidence for insufficiently stamped documents.

The same view has been taken by various hon'ble courts across the country.

The present article advocates for a balanced approach to equity in such circumstances, which can be achieved by allowing the holder of a document to pay the deficit stamp duty even on a secondary

document. Such a provision would serve the dual purpose of generating revenue for the government, one of the primary objectives of the Stamp Duty Act, while also penalising the holder for initially failing to comply with the statutory requirement of paying the appropriate duty. After due adjudication on the issue of insufficient stamping, the holder of the instrument, who seeks to exercise any right in respect of the property, should be afforded a fair opportunity to pay the deficient duty. Only upon the holder's refusal to make such payment should their right to rely on the document be barred.