

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Rajah Venkata Sveta Chalapati Ranga Rao Bahadur Garu, Raja of Bobbili, Appellant, v. Sri Inuganti Bhavayyamma Garu (a Ward under the Court of Wards, represented by their Agent, the Collector of Vizagapatam), the original Respondent, who is now represented by the Respondent, Inuganti China Sitarasami Garu, from the High Court of Judicature at Madras; delivered 13th July 1899.

Present at the hearing :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Lord Watson.*]

In the year 1848, the then Raja of Bobbili, Sri Raja Sveta Chalapati Ranga Rao Bahadur Garu, who was owner of the estate of Chidikada Jagannadhapuram, situated within the Zamindari of Magdole, made a grant of it to his cousin, Sri Inuganti Rajagopala Rayanin Garu, the husband of his sister Sri Gopayyamma Garu. The estate was registered in the name of the donee, who died upon the 4th April 1856, survived by his widow Gopayyamma, and by their daughter, Lakshmi Chellayamma Garu, who was at that time a minor, eight years of age.

Upon the death of Sri Inuganti Rajagopala Rayanin Garu, the estate was, with the consent of his widow, Gopayyamma, retransferred into the name of the original donor, upon the footing that

the interest conferred upon Inuganti by the grant of 1848 was for his lifetime. The original donor, Sri Raja Sveta Chalapati Ranga Rao Bahadur Garu, on the 19th February 1862, made a second grant of the estate, in terms absolute and unqualified, to Sri Inuganti Sitaramasvami Garu, the son of one of his sisters, who was registered as owner and continued to possess the estate, until his death, without leaving issue, in September 1873. His widow, the original Respondent, Sri Inuganti Bhavayyamma Garu, thereupon entered into, and continued to enjoy possession of the estate, under the management of the Court of Wards. She died during the dependence of this Appeal, and her representative, Inuganti China Sitarasmasami Garu has been substituted as Respondent.

The donor died, after making his second grant of the estate of Chidikada, in the year 1862, and was succeeded in the Raj of Bobbili, by his son, Sri Raja Sitaramakrishna Rayandappa Ranga Rao Bahadur Garu, who was married to Lakshmi Chellayyamma Garu, the daughter of Rajagopala, the first donee. Her husband, the Raja, died without issue on the 18th May 1868, but authorised his widow Lakshmi to adopt a son. In virtue of that authority, his widow adopted the Appellant in February 1871. In 1881, the Appellant attained majority, and he has since been in full possession of the estate and Raj of Bobbili.

The present suit was brought by the Appellant, in order to recover possession from the original Respondent of the estate of Chidika Jagannadhapuram, in December 1890, his main ground of action being, that by the terms of the first grant of 1848, Sri Inuganti Rajagopala Rayanin Garu became absolute owner of the estate, and that his interest was not restricted to his lifetime. The Appellant main-

tained that, by Hindu law, on the death of Rajagopala, his widow Gopayyamma became entitled to a life estate, that on her decease, their daughter Lakshmi became entitled to enjoy the estate in question during her life, and that her right of succession had now devolved upon the Appellant, under an arrangement with Lakshmi.

In the course of the proof taken in the present suit, the Appellant proposed to establish by means of secondary evidence, the terms of the grant of 1848, which he alleged to have been executed in the shape of a formal deed of gift. The Respondent denied that such a deed ever was executed, and averred that the gift consisted in transferring the estate to the donee's name in the register, upon the footing that the estate was to revert to the donor, in the event of the donee leaving no heir male of his body.

What took place at the trial appears from an order passed by the District Judge of Vizagapatam, which is thus quoted in the final judgment delivered by him :—“ The Plaintiff
 “ offered in evidence what purported to be an
 “ unauthenticated copy, said to be the original
 “ draft, of a deed of gift of the plaint land, dated
 “ 5th April 1848, and executed by the Plaintiff's
 “ paternal grandfather in favour of the Plaintiff's
 “ maternal grandfather. The Defendants object
 “ to the admission of this document on the ground
 “ that it is the copy of a document which was
 “ insufficiently stamped. The copy bears on its
 “ face an entry to the effect that the document
 “ of which it is a copy bore a stamp of Rs. 8.
 “ The Defendants' Exhibits I. and II. (admitted
 “ by the Plaintiff) show that in 1835 the plaint
 “ land was sold for Rs. 40,000. The document
 “ produced, and which the Defendants say is a
 “ copy of a document insufficiently stamped,
 “ does not contain any mention of the value of

“ the property. It contains an entry to the effect
 “ that the Peshcush, or revenue payable to
 “ Government, was Rs. 4,800. If this could be
 “ shown to be the value of the property, the
 “ stamp of Rs. 8 would, under Regulation XIII.
 “ of 1816, be sufficient. But there is no con-
 “ nection, of which I am aware, between the
 “ revenue payable to Government and the value
 “ of the property, except that the former may,
 “ to some extent, be an indication of the latter.
 “ The lower is the revenue, the higher is the
 “ market value of a given piece of property.”

The learned Judge, accordingly, refused to receive the document tendered as secondary evidence or to allow it to be proved. He referred to two decisions of the High Court of Madras, (4 M. H. C. R. p. 312) and (I. L. R. VII. Mad. p. 440), as establishing the rule that secondary evidence could not be admitted (even on payment of a penalty) of the contents of the original deed of gift of the 5th of April 1848. The Appellant having thus failed to support his claim by competent evidence, the District Judge, on the 18th November 1892, dismissed his suit with costs.

The present Appellant appealed from that decision to the High Court of Madras, on the ground that the District Judge had erred in refusing to receive the draft tendered as secondary evidence of the contents of the original deed of 1848. On the 4th April 1894, Mr. Justice Sir T. Mattusami Aiyar and Mr. Justice Best affirmed the decree of the Court below and dismissed the appeal with costs. The learned Judges of the High Court agreed in holding
 “ that the copy should not be admitted on pay-
 “ ment of a penalty, for the provision of the
 “ Stamp Act regarding penalty (Section 39 of
 “ Act I. of 1879) prescribes that such payment
 “ shall be endorsed on the document, and pre-
 “ supposes that the document is forthcoming.”

Upon the hearing of this Appeal, Counsel for the Appellant admitted, that he was not in a position to dispute that the original deed of gift, dated in 1848, had not been sufficiently stamped, in terms of the Madras Regulation No. XIII. of 1816; and that he would be unable to maintain his claim for the estate of Chidikada, unless he were permitted to prove the copy of the deed which he had tendered, and to use it as secondary evidence either on due payment of a penalty into Court, or upon its endorsement by the Collector. His right to have that remedy allowed him was rested upon the provisions of the Stamp Act, No. 1 of 1879.

Accordingly, the only question arising for decision in this Appeal is,—Whether the Courts below were right in holding that the provisions made by the Act of 1879, for the case of deeds either unstamped, or insufficiently stamped, have no application, when the original deed, which ought to have been stamped or was insufficiently stamped, has not been produced? That is a question which must depend upon the terms of the Statute itself.

Their Lordships are satisfied, by an examination of its clauses, that the construction of the Act of 1879, adopted by the Court below, is correct. These clauses throughout deal with, and exclusively refer to, the admission as evidence of original documents which, at the time of their execution, were not stamped at all, or were insufficiently stamped. It is only upon production of the original writ, that the Collector has the power given him, or the duty imposed upon him, of assessing and charging the penalty, a duty which he must, in that case, perform by writing an indorsement upon the writ submitted to him, which then, and not till then, becomes probative in law. By Section 33, it is made the duty of “every person having, by law, or consent “of parties, authority to recover evidence,” to

impound any document coming before him in the course of his functions, which appears to him to be chargeable with duty, and not to have been duly stamped. Section 34 provides, that no instrument which has not been duly stamped, shall be received in evidence, or acted upon by the persons described in the preceding section, except (1) on payment of the duty chargeable, or of the amount required to make up such duty, together with a penalty, and (2) in any proceeding in a criminal court, other than a proceeding under chapter 40 or chapter 41 of the Code of Criminal Procedure, or chapter 18 of the Presidency Magistrates Act. When the original has been admitted in evidence by a person having authority under the preceding section, upon payment of duty and penalty, it is made the duty of such person to send to the Collector an authenticated copy of the instrument, together with a certificate in writing stating the amount of the duty and penalty levied in respect thereof, and also to send such amount to the Collector. In every other case, the person impounding the instrument is required "to send it in original to the Collector."

In the opinion of their Lordships, the effect of granting the remedy which the Appellant maintains he is entitled to, would be to add to the Act of 1879, a provision which it does not contain, and which the Legislature of India, if the matter had been brought under their notice, might possibly have declined to enact.

Their Lordships will humbly advise Her Majesty to affirm the judgment appealed from. The Appellant must pay to the Respondent his costs of this Appeal.
