

1954

Present: Sansoni J.

P. W. MUNIWEERA, Appellant, and COMMISSIONER OF STAMPS, Respondent

S. C. 1,545—M. C. Tangalle, 9,564

Stamp Ordinance (Cap. 189)—Recovery of duty, penalty, &c.—Procedure—Right of appeal—Sections 41 (1) (b), 50, 90.

A clerk in the Department of Income Tax, Estate Duty and Stamps made an application to a Magistrate under section 50 of the Stamp Ordinance for the recovery of certain stamp duty due from the accused. At the foot of the application appeared the words "I authorise this application", and beneath those words was the signature of the Deputy Commissioner of Stamps. The Deputy Commissioner recited under his signature that he was authorised by the Commissioner of Stamps to act on his behalf in respect of section 50. That authority was filed in the record.

Held, that the clerk was not an officer authorised by the Commissioner of Stamps within the meaning of section 50 of the Stamp Ordinance.

Held further, (i) that no appeal lies from a Magistrate's order made upon an application under section 50 of the Stamp Ordinance.

(ii) that a notice issued under section 41 (1) (b) of the Stamp Ordinance without the authority of either the Commissioner of Stamps or an officer duly authorised by him in writing is invalid and of no effect.

APPEAL from an order of the Magistrate's Court, Tangalle.

E. A. G. de Silva, for the accused appellant.

Vincent T. Thamootheram, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

June 4, 1954. SANSONI J.—

On the 7th July, 1953, Mr. M. B. E. Peiris, clerk, Department of Income Tax, Estate Duty and Stamps, applied to the Magistrate, Tangalle, to recover a sum of Rs. 58 being the amount of deficiency of Stamp Duty due under Part I Schedule A of the Stamp Ordinance (Cap. 189). He stated in his application that the respondent P. W. Muniweera had omitted to pay this sum although he was requested to do so by a notice dated 14/2/52, and subsequent reminders issued by the Commissioner of Stamps.

The application was made under section 50 of the Ordinance. At its foot appear the words "I authorise this application" and under those words Mr. L. G. Gunasekera, Deputy Commissioner of Stamps, has signed. Mr. Gunasekera recites under his signature that he was

authorised by the Commissioner of Stamps to act on his behalf in respect of section 50 of the Ordinance. That authority has been filed in the record and it is dated 26th May, 1953.

The respondent was noticed by the Magistrate, he appeared in Court, and as he stated that he had cause to show against the application the matter was fixed for inquiry on 18/9/53. The respondent's proctor raised two objections. The first was that the authorisation of Mr. Peiris to make the application was by the Deputy Commissioner. The second was that the notice under section 41 (1) (b) served on the respondent was signed by one B. D. S. de Zilva who was not authorised to issue such a notice. At that stage an authority in favour of Mr. B. D. S. de Zilva to act under section 41 and other sections of the Ordinance issued by the Commissioner of Stamps and dated 26th May, 1953, was produced. The notice issued under section 41 (a) (b) was dated 14/2/52. It is obvious therefore that if the authority of the Commissioner was necessary to enable Mr. de Zilva to issue a valid notice it was wanting in this case.

The learned Magistrate, however, forthwith made order that he was satisfied that the authority issued was proper and that the application was proper. The respondent appealed from this Order but it is well settled that no appeal lies from such an Order made upon an application under section 50. Learned Counsel for the appellant, however, asked me to act by way of revision, and in view of the importance of the matter and the irregularities to which he drew my attention, I decided to accede to his request.

It is quite true that a Magistrate to whom an application is made under section 50 is only asked to recover the duty which the respondent had failed to pay. But, as Bertram C.J. pointed out in *Gunawardene v. Gunasekera*¹:

“There are some things indeed which the Magistrate must consider; one is whether the case is within his local jurisdiction; another is whether the authorisation of the Commissioner of Stamps, which is a condition precedent to the exercise of his jurisdiction, has in fact been obtained. Further, in my opinion, it may well be that if it were brought to the Magistrate's notice that a condition which the law regards as fundamental to the whole proceeding of the Commissioner of Stamps had not been fulfilled the Magistrate ought to stay his hand.”

The learned Chief Justice in the same judgment drew attention to the absence of any provision for an appeal against a notice issued under section 41 (1) (b) of the Ordinance.

To deal now with the validity of the notice dated 14/2/52, the failure to comply with which is the basis of this application. It is quite clear that this notice was not issued either by the Commissioner of Stamps or by an officer authorised by him in writing to do so. I have no doubt that an authority granted subsequent to the date of the notice is of no effect. For this reason alone this application made to the Magistrate should have been disallowed.

¹ (1923) 1 *Times of Ceylon Law Reports*, p. 90 at p. 92.

Another point taken by the respondent's counsel before me was that Mr. Peiris who made the application has not been shown to be an officer authorised by the Commissioner of Stamps. Section 50 requires that the application be made "by an officer authorised on this behalf by the written order of the Commissioner of Stamps". Section 90 defines the Commissioner of Stamps as including "any officer of his Department authorised by him in writing in respect of any particular matter or any provision of this Ordinance". No authority has been produced in favour of Mr. Peiris but he presumably relies on the authority signed at the foot of his application by Mr. Gunasekere which reads "I authorise this application". There is a difference between the authorising of an application and the authorising of an officer to make an application. It is the latter that is necessary under section 50, and not the former. Mr. Gunasekere's authorisation is no authority in favour of Mr. Peiris but only of the making of the application. It is not clear that when Mr. Gunasekere appended his signature to this application he brought his mind to bear on the necessity for authorisation in favour of Mr. Peiris; if he did, and was satisfied as to its necessity, he should have said so in a way that leaves no room for doubt.

For this reason also, in my opinion, this application should have been disallowed.

I, therefore, set aside the Order of the learned Magistrate.

Order set aside.

