



CNR: KAHC010011762023

NC: 2026:KHC:45556
W.P. No.491/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.491/2023 (GM-CPC)

BETWEEN:

PUSHPALATHA
W/O C.S. SHIVAPRAKASH
AGED ABOUT 44 YEARS
R/AT SAREMAGALU KOPPALU VILLAGE
HAMLET OF MULAKATTE VILLAGE
KASABA HOBLI
NAGAMANGALA TALUK
MANDYA DISTRICT 571432.

...PETITIONER

(BY SRI. SAIF HAMEED KHAN GHORI, ADV., FOR
SRI. BHARGAVA D. BHAT, ADV.,)

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

AND:

1. S. UMADEVI
W/O N.V. BALASUBRAMANYAM
AGED ABOUT 63 YEARS
ANGANAWADI TEACHER
RESIDING AT
SAREMAGAL KOPPALU
MULUKATTE DHAKKALE
T.B.EXTENSION,
NAGAMANGALA
MANDYA DISTRICT 571432.



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2. C.S. SHIVAPRAKASH
S/O G. SRINIVASA
AGED ABOUT 50 YEARS
RESIDING AT
TANK MAIDAN ROAD
NAGAMANGALA
MANDYA DISTRICT 571432.

...RESPONDENTS

(BY SRI. RAVISHANKAR SHASTRY G, ADV., FOR R1
V/O/DTD:11.01.2023, NOTICE TO R2 IS D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 19.11.2022 IN O.S.NO. 12/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, NAGAMANGALA (AS PER ANNEXURE - A). ALLOW I.A.NO. 12 IN O.S.NO. 12/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, NAGAMANGALA WHICH IS FILED UNDER THE PROVISIONS OF ORDER XIII RULE 3 READ WITH SECTION 151 OF THE CODE (AS PER ANNEXURE - B) & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 19.11.2022 passed on I.A.No.12 in O.S.No.12/2010 by Senior Civil Judge and JMFC, Nagamangala (for short, '***the trial Court***').

2. Heard Sri.Saif Hameed Khan Ghori, learned counsel for Sri.Bhargava D.Bhat, learned counsel for the petitioner, Sri.Ravishankar Shastry G., learned counsel for the respondent No.1 and perused the material available on record.

3. The respondent No.1-plaintiff had filed a suit in O.S.No.12/2010 for relief of specific performance of the agreement dated 21.06.2007 stated to have been executed by respondent No.2 in favour of respondent No.1. The said suit came to be dismissed vide judgment dated 24.03.2017. Being aggrieved, the respondent No.1-plaintiff filed the appeal in R.A.No.33/2017 on the file of



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the II Additional District and Sessions Judge, Mandya (for short, '**the appellate Court**'). The appellate Court vide judgment dated 23.04.2018 allowed the appeal and the impugned judgment and decree in O.S.No.12/2010 dated 24.03.2017 was set aside and the matter was remitted back to the trial Court with a direction to provide an opportunity to the plaintiff and defendants to adduce additional evidence, if any, on the issue framed by the appellate Court and proceed on merits. After remand, the petitioner-defendant No.2 filed I.A.No.12 under Order XIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908, (for short, '**the CPC**') seeking prayer to de-exhibit the Ex.P1 - the agreement of sale dated 21.06.2007 on the ground that the said instrument is incorrectly marked as exhibit and admittedly the said instrument is an unregistered document and the said document indicates delivery of possession. The said application was opposed by the respondent No.1-plaintiff. The trial Court under the impugned order rejected the



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application in I.A.No.12 by recording the reason that the objection with regard to the admissibility of the instrument can be looked into at the appropriate stage.

4. The contention of the learned counsel for the petitioner is that the Hon'ble Supreme Court in the case of ***Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar and others***¹ held that once the instrument is unregistered and where the possession is delivered, it ought to have been registered as mandatory under Section 17 of the Registration Act, 1908. Hence, for any purpose the said document cannot be looked into as evidence. In support of his contention, he placed reliance on para Nos.9 and 10 of the said judgment, which are extracted herein below:

"9. In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9-7-2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1-A) of the 1908 Act came into force with effect from 24-9-2001. Whereas, the suit agreement was

¹ (2018) 7 SCC 639



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executed subsequently on 9-7-2003. Section 17(1-A) of the 1908 Act reads thus:

"17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871) or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—

* * *

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A."

10. *On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53-A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to*



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declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi v. V.R. Somasundaram [S. Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401 : (2010) 2 SCC (Civ) 424] this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act."

5. There is no dispute with regard to the aforesaid proposition of law. However, the trial Court while rejecting the application has not stated anything with regard to the admissibility of Ex.P1 and held that the same is required to be considered at the time of final hearing of the matter.

6. The Hon'ble Supreme Court in the case of ***Muruganandam v. Muniyandi (Died) through Lrs.***² at para Nos.9 and 10 held as under:

"9. Having considered the matter in detail, we are of the opinion that the prayer of the appellant in the interlocutory application falls under proviso to Section

² 2025 SCC OnLine SC 1067



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49 of the Registration Act which provides that an unregistered document affecting immovable property may be received as evidence of a contract in a suit for specific performance. The proviso also enables the said document to be received in evidence of a collateral transaction. Section 49 reads as follows:

"49. Effect of non-registration of documents required to be registered.—No document required by section 17 [or by any provision of the Transfer of Property Act, 1882, to be registered shall—

- (a) affect any immovable property comprised therein, or*
- (b) confer any power to adopt, or*
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."

10. *In Kaladevi (supra), this Court has held that an unregistered document may be received as evidence of a contract in a suit seeking specific performance. The relevant portion from the decision is as follows:*

"12. The main provision in Section 49 provides that any document which is required to be



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registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act."

(emphasis supplied)



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7. This Court, in the case of **Rajini is Pujari vs. Narayana and others**³ considering the aforesaid decision of the Hon'ble Supreme Court, at para No.5 held that the marking of document is required to be considered as a tentative marking when there is an objection with regard to its admissibility and admissibility of the document is required to be looked into by the trial Court at the time of considering the merits of the case.

8. It would be useful to refer the decision of the Hon'ble Supreme Court in the case of **Bipin Shantilal Panchal vs. State of Gujarat and Another**⁴, in which in paragraph No.14 it is held as under:

"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral

³ WP No.29248/2019 DD.02.03.2026

⁴ (2001) 3 SCC 1



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evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)"

9. The co-ordinate Bench of this Court in the case of ***Sri.Prabhu and others v. Smt.Shanta and others***⁵ in paragraph Nos.8 to 15 held as under:

"8. The short question that would arise for consideration of this Court is:

"Whether a document though compulsorily registrable not having been registered, can be objected to at the time of marking during the course of evidence?"

9. There is no dispute as regards the document being unstamped or unregistered. In fact the claim of defendant No.2 is that, she had purchased the property under an unregistered sale deed. The trial Court also finding that the said sale deed was not properly

⁵ W.P.No.109727/2016 DD 30.03.2022



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stamped, by exercising powers under Section 34 of the Karnataka Stamp Act, 1958 has impounded the same and levied penalty.

10. Sri. Anil Kale, learned counsel for respondent No.2 has submitted that respondent No.2/defendant No.2 has no objection to make payment of penalty levied.

11. The Hon'ble Apex Court in the case of Yellapu Uma Maheswari & another Vs. Buddha Jagadheeswararao & Others reported in 2015 AIR SCW 6184, at paragraph 18 has held as under:

"18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy, AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and



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the Trial Court is at liberty to mark Exhibits B-21 and B-22 for collateral purpose subject to proof and relevance."

12. The Hon'ble Apex Court in the case of *Shyam Narayan Prasad Vs. Krishna Prasad and Others* reported in AIR 2018 SC 3152 at paragraphs 22 and 23 has held as under:

"22. It is clear from the above judgment that the best evidence of the contents of the document is the document itself and as required under Section 91 of the Evidence Act the document itself has to be produced to prove its contents. But having regard to Section 49 of the Registration Act, any document which is not registered as required under law, would be inadmissible in evidence and cannot, therefore, be produced and proved under Section 91 of the Evidence Act. Since Exhibit P2 is an unregistered document, it is inadmissible in evidence and as such it can neither be proved under Section 91 of the Evidence Act nor any oral evidence can be given to prove its contents. Therefore, the High Court has rightly discarded the exchange deed at Exhibit P2"

13. This Court in ***Mahadeva Vs. The Commissioner, Mysore City Corporation and Others*** reported in **2003 (1) Kar.L.J.518** at para 9 and 10 has held as under:

"9. The proviso to Section 34 prescribes the conditions subject to which a document which is not duly stamped can be admitted in evidence. It inter alia provides for payment of the duty with which the same is chargeable or



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in the case of an instrument insufficiently stamped, the amount which is required to make up such duty together with the prescribed penalty. Suffice it to say that there is no conflict between what is permitted by the proviso to Section 49 of the Registration Act on the one hand and Section 34 of the Karnataka Stamp Act, 1957, on the other. The demand of duty and penalty in terms of the proviso to Section 34 before the document could be marked in token of its having been admitted in evidence did not therefore suffer from any error of law to warrant interference. As a matter of fact, whenever an objection regarding the admissibility of an instrument on the ground of its being unstamped or insufficiently stamped is raised, the Court is required to determine the objection before proceeding any further, unlike other cases where an objection to the admissibility of a document on any other ground may be examined at a later stage and the document tentatively marked to avoid delay in recording of the evidence. The decisions of the Supreme Court in Ram Rattan (dead) by L.Rs v. Bajrang Lal and Ors., and Bipin Shantilal Panchal v. State of Gujarat and Anr., AIR 2001 SC 1158: (2001)3 SCC 1: 2001 Cri. L.J. 1254 (SC), and that of a Single Bench of this Court in Riyaz Khan, and Ors. v. Modi Mohammed Ismail and Ors., 2002(3) Kar. L.J. 551: ILR 2002 Kar. 3369, clearly settle the legal position in this regard.

10. The only other question that was argued by Mr. Shetty was whether the amount of duty and penalty on the sale deed relied upon by him could be determined by the Court itself or a reference to the Registrar of Stamps was necessary. There is no provision in the Karnataka Stamp Act, 1957, nor has Mr. Shetty



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brought any to my notice which would envisage a reference to the Registrar of Stamps for determining the duty payable on any instrument. The scheme of Section 34 of the Karnataka Stamp Act, 1957, also does not envisage any such reference being made before the document could be marked. The amount of duty payable on the sale deed (in the absence of any material to show that the property had been undervalued) is relatable to the consideration that was paid and received by the parties to the transaction. The penalty amount leviable on the instrument also didn't require or call for any enquiry which could possibly call for a reference to the Registrar. The Court below was therefore justified in holding that the duty payable on the instrument as also the penalty had to be calculated by the Court and not by the Registrar as argued by the plaintiff."

14. A perusal of the above paragraphs in the aforesaid decisions would clearly indicate that, if an unregistered document is brought up for marking during the course of evidence, in the event of the said document not being stamped adequately, or the stamping being improper, the said Court can impound the document and levy penalty. It is only after the penalty is paid upon the impoundment, that the Apex Court as also this Court have held that, the document can be marked in evidence. However, the admissibility thereof is to be decided subsequently.

15. In view of the above, the point framed for determination in this case is no longer res integra. The



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Hon'ble Apex Court has clearly laid down the law relating to the same. Hence I answer the point raised by holding that, even if a document is not registered, the said document can be marked in evidence, admissibility being left upon for consideration at appropriate stage."

10. In view of the law laid down by the Hon'ble Supreme Court and this Court in the aforesaid decisions, reserving liberty to the petitioner-defendant No.2 to raise the admissibility of Ex.P1 at the time of final arguments, the writ petition is ***disposed of*** without interfering with the impugned order of the trial Court.

It is needless to observe that marking of the Ex.P1 is a tentative marking subject to the consideration of the objection raised by the petitioner-defendant No.2 at the time of final hearing.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE