



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.7397/2021 (GM-CPC)

BETWEEN:

SYED ILYAS
AGED ABOUT 46 YEARS
SON OF LATE SYED MOHAMMAD
R/AT NO.39, FAZAL MANZIL
6TH MAIN ROAD, BTM LAYOUT
1ST STAGE, OPP. GURAPPANAPALYA
BENGALURU-560 029.

...PETITIONER

(BY SMT. YASHEEN BABU, ADV.,)

AND:

1. SMT. INDIRAMMA
AGED ABOUT 71 YEARS
DAUGHTER OF LATE K. VARADARAJU
WIFE OF SRI. NARAYANARAJU
RESIDING AT NO.27, 2ND CROSS
2ND MAIN, SRI. GURU RAGHAVENDRA NAGAR
OPP RBI LAYOUT, 7TH PHASE
JP NAGAR, BENGALURU-560 078.
2. SRI. V. RAMACHANDRA RAJU
MAJOR BY AGE
SON OF LATE K. VARADARAJU
RESIDING AT NO.157, 18TH MAIN ROAD
42ND CROSS, 4TH T BLOCK
JAYANAGAR, BENGALURU-560 041.

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



3. NARAYANA RAJU
MAJOR BY AGE
RESIDING AT NO.157
18TH MAIN ROAD, 42ND CROSS
4TH T BLOCK, JAYANAGAR
BENGALURU-560 041.
4. SRI. SYED UMAR FAROOQ
AGED ABOUT 37 YEARS
SON OF LATE SYED MOHAMMAD
RESIDING AT NO.39, FAZAL MANZIL
6TH MAIN ROAD, BTM LAYOUT
1ST STAGE, OPP. GURAPPANAPALYA
BENGALURU-560 029.

...RESPONDENTS

(BY SRI. K.K. VASANTH, ADV., FOR C/R1 TO R3
SERVICE OF NOTICE TO R4 IS H/S)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE PORTION OF IMPUGNED ORDER DTD 19.03.2021 PASSED IN O.S.NO.7759/2017, LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-60) VIDE ANNEX-A REJECTING I.E., THE ALLEGED SALE DEED DTD 04.04.1945 IS REJECTED TO BE ACCEPTED IN EVIDENCE AND NOT PERMITTED TO BE MARKED. DIRECT THE TRIAL COURT IN O.S.NO.7759/2017, LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH.60) TO ACCEPT EX.P39 NAMELY SALE DEED DTD 04.04.1945 IN EVIDENCE (COLLATERAL PURPOSE OR OTHERWISE) AND DECIDE AT THE TIME OF FINAL HEARING & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 02.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

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



CAV ORDER

This writ petition is filed challenging the order dated 19.03.2021 passed in O.S.No.7759/2017 by the LIX Additional City Civil and Sessions Judge, Bengaluru (CCH-60) (for short, 'the Trial Court').

2. Sri.Yaseen Babu, learned counsel appearing for the petitioner submits that the petitioner has filed a suit for declaration and other reliefs. In the said suit, the petitioner has produced number of documents which were marked. It is submitted that the rent agreements and the sale deed were not sufficiently stamped and hence, they were impounded and later, the plaintiffs have paid the duty and penalty and sought for marking the said documents. However, the Trial Court under the impugned order allowed the marking of the 5 rent agreements but has declined to mark the sale deed dated 04.04.1945 solely on the ground that the said instrument is unregistered. It is further submitted that even though the sale deed was unregistered, the same would have been



marked and the issue with regard to the admissibility of the said document could have been considered at the time of final adjudication of the dispute. In support of his contentions, he placed reliance on the decision of the Hon'ble Supreme Court in the case of **BIPIN SHANTILAL PANCHAL Vs. STATE OF GUJARAT AND ANOTHER**¹ and the decision of this Court in the case of **SRI.PRABHU AND OTHERS Vs. SMT.SHANTA AND OTHERS**². Hence, he seeks to allow the petition.

3. *Per contra*, Sri.K.K.Vasanth, learned counsel appearing for the respondent Nos.1 to 3 supports the order of the Trial Court and submits that the Trial Court vide order dated 07.03.2016 has noticed that the sale deed dated 04.04.1945 was inadvertently marked as Ex.P39, the said marking was recalled and the said order has attained finality. It is submitted that the lease agreements as well as the unregistered sale deed dated 04.04.1945 relied on by the plaintiffs, were insufficiently

¹ AIR 2001 SC 1158

² W.P.No.109727/2016 dt. 30.03.22



stamped which were impounded. Later, the plaintiffs made good the duty and penalty. Thereafter, the Trial Court has rightly allowed the marking of the lease agreements by declining the marking of the unregistered sale deed dated 04.04.1945 on the ground that the sale deed cannot be received in the evidence for any purpose including the collateral purpose as the plaint averment and the prayer is mainly relied on the sale deed dated 04.04.1945. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, the learned counsel for the respondents and perused the material available on record.

5. The petitioner has filed a suit in O.S.No.7759/2017 seeking the relief of declaration that the plaintiffs are the absolute owners and in lawful possession of suit schedule property and in the event the Court comes to the conclusion that the plaintiffs are not in possession of the suit schedule property, direct the



defendants to restore the possession of the property to the plaintiffs and for consequential relief of perpetual injunction etc. In the said suit, the defendants filed a written statement denying the assertions made in the plaint. The plaintiffs, during the course of evidence marked certain documents. The Trial Court, noticing that the 5 rent agreements as well as the unregistered sale deed dated 04.04.1945 are insufficiently stamped, proceeded to impound the said documents and later the plaintiffs have made good the duty and penalty on all the documents impounded. It is to be noticed that the Trial Court, on an application filed by the defendants in I.A.No.8, has recalled the marking of Ex.P39 i.e the unregistered sale deed dated 04.04.1945 on the ground that by inadvertence, the said document was marked. It is further to be noticed that the order dated 07.03.2019 of the Trial Court recalling the marking of Ex.P39 has attained finality. The Trial Court, after the duty and penalty was paid, has passed an order dated 19.03.2021



on the admissibility of the documents produced by the plaintiffs. The Trial Court, taking note of the fact that the plaintiffs have produced 5 rent agreements and have paid the duty and penalty, has answered the point No.1 in the affirmative in favour of the plaintiffs and allowed the plaintiffs to mark the said documents in the evidence. The Trial Court, while answering the point No.2 has recorded the finding that the instrument i.e the sale deed dated 04.04.1945 is now duly stamped. However, the said instrument being an unregistered instrument of sale, cannot be relied on even for any collateral purpose and the plaintiffs intend to rely entirely on the said document to trace the title.

6. It would be useful to refer to paragraph 13 of the decision of the Hon'ble Supreme Court in the case of **BIPIN SHANTILAL PANCHAL** referred *supra*:

"13. *It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further*



without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings."

7. In a recent decision, the Hon'ble Supreme Court in the case of **RAMRATAN (DEAD) THR LRS. Vs.**



RAMKALI BAI AND ORS.³ has followed the decision of **BIPIN SHANTILAL PANCHAL** referred *supra*.

8. The Co-ordinate Bench of this Court in the case of **SRI.PRABHU AND OTHERS** referred *supra*, considering the various decisions of the Hon'ble Supreme Court at paragraphs 11 to 15, has held as under:

"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

³ Civil Appeal No.3593/25 dt. 4.3.25



and get the document impounded and 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 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 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 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."



9. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court and this Court, I am of the considered view that the Trial Court has committed a grave error in answering the point No.2 in the negative by refusing the unregistered sale deed dated 04.04.1945 to be brought on record, by marking the same. The Trial Court shall mark the unregistered sale deed dated 04.04.1945 produced by the plaintiff as an exhibit subject to the objection of the defendant and consider the objection of the defendant with regard to the admissibility at the final stage of the proceedings. The marking of the unregistered sale deed dated 04.04.1945 is a tentative marking of the document as an exhibit in the case and its admissibility can be considered while considering the suit on merits.

10. For the aforementioned reasons, I proceed to pass the following:

ORDER



- (i) The writ petition is allowed.
- (ii) The impugned order dated 19.03.2021 passed on O.S.No.7759/2017 by the LIX Additional City Civil and Sessions Judge, Bengaluru, insofar as the answer to point No.2, is set aside.
- (iii) The Trial Court shall mark the unregistered sale deed dated 04.04.1945 as an exhibit tentatively and consider its admissibility at the final stage of the proceedings.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 2 Sl No.: 1