

***THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+CIVIL REVISION PETITION No.4998 of 2014

% 06.03.2015

G.Sudhaker Reddy

...Petitioner

vs.

\$ M.Pulliah

... Respondent

!Counsel for the Petitioner : Sri B.Venkat Rama Rao

^Counsel for the Respondent : Sri N.Ashok Kumar

<Gist :

>Head Note :

? Cases referred

1. AIR 2012 SC 264
2. (2011) 11 SCC 786
3. 2006 (3) ALT 66
4. (2003) 8 SCC 752 : AIR 2003 SC 4548
5. AIR 1957 AP 60
6. 2004 (2) ALD 507
7. 1921 PAT 61
8. AIR 2001 SC 1158
9. 2006 (3) ALD 838
10. AIR 1957 AP 1022
11. 2003 (3) LS 480
12. (2010) 8 SCC 423
13. (1972) 4 SCC 562
14. ILR 1999 Karnataka 4634
15. 2003 (1) ALD 790
16. 2011 (5) CTC 206
17. 2014 (4) ALD 1 (DB)
18. AIR 1955 SC 425 : (1955) 2 SCR 1

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ORDER:

This Civil Revision Petition is directed against the order dated 02.12.2014 in O.S.No.94 of 2010 passed by the learned Junior Civil Judge, Ramannapet.

The petitioner is the defendant in the suit. The suit was filed for possession over the suit plot of an extent of 2281.5 square feet out of Survey No.122 of Chityal Village and Mandal in Nalgonda District. The issues in the suit were framed on 27.01.2014. The plaintiff filed an affidavit in lieu of chief examination on 19.03.2014. The plaintiff filed the documents on 30.04.2013. Out of the said documents, during the course of evidence of P.W.1, Exs.A6 to A10 were already marked. When the plaintiff sought to mark the memorandum of understanding dated 21.10.1980, which was shown at serial No.6 of the list of documents filed on 30.04.2013, the defendant raised an objection for marking the document stating that the same was not mentioned by the plaintiff in his plaint and he should not be permitted to mark the document without pleading the same in his plaint. The trial Court overruled the objection stating as follows:

“At the time of marking a document, the court will not go into the merits of the document, it is only concerned, as to whether requisite stamp duty is paid, if the document is to be compulsorily registered, it will verify, whether the document is registered or not, and whether the document is

relevant to the facts of the case and will be helpful to the court to adjudicate the matter between the parties effectively.

Here, it is pertinent to note that, “mere marking of document is not proof of its contents” the burden of proving the contents of the documents lies on the party seeking to mark the document.

At this juncture, the court is not inclined to look into the nature of document, relevancy of the document, whether the same is disclosed in the pleadings or not, the probative value of the document. As the same, shall be decided at full fledged trial of the suit.”

Learned Counsel for the petitioner contended that, even at the time of marking of the document, the relevancy of the document has to be looked into by the Court and it cannot be postponed. He relied on Section 5 of the Indian Evidence Act, 1872 (for short, the Evidence Act), and Order VII Rule 1 read with Order XIII Rules 1 to 3 and 7 of CPC in support of his contention. He relied on **National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad^[1]**, **Kalyan Singh Chouhan v. C.P.Joshi^[2]**, **G.Sanjeeva Reddy v. Indukuru Lakshamma^[3]**, **R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswarni^[4]**, **Nori Srirama Sastri v. Nori Lakshmiddevamma^[5]**, **Balaji Adithi v. Baddam Chandra Reddy^[6]** and **Musammat Sumitra Kuer v. Ram Kair Chowbey^[7]**.

Learned Counsel for the respondent, on the other hand, submitted that the admissibility and non-admissibility of document or its relevancy need not be decided at the stage of marking the document, and it can be decided during the trial of the suit.

The issue relating to the method and manner of production of documents, the stage of objection to be raised against such documents, and the proof of documents has been troubling the Courts on a number of occasions. Though the learned Counsel for the petitioner relied on Order VII Rule 14 read with Order XIII Rules 1 to 3 and 7 of CPC, there are other provisions in CPC, which deal with the issue relating to documents. Apart from the provisions in CPC, Chapter X of the Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980 (for short, Civil Rules of Practice), deal with documents.

Rule 14 of Order VII CPC enjoins upon the plaintiff to produce a list of documents along with the plaint if he wants to rely on any documents. If he is not in possession of any document, he shall state in whose possession or power it is. Sub-rule (3) of Rule 14 specifically states that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, ***without the leave of the Court***, be received in evidence on his behalf at the hearing of the suit. For better clarity, sub-rule (3) of Rule 14 of Order VII CPC is extracted hereunder:

“(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

The above sub-rule was substituted by Act 22 of 2002 with effect from 01.07.2002 for the earlier sub-rule (3). This substitution has become necessary in view of repeal of Rule 2 of Order XIII by Act 46 of 1999 with effect from 01.07.2002, which deals with the effect of non-production of documents. In order to gather the intention of legislature, it is necessary to extract the repealed Rule 2 of Order XIII CPC, and it reads as follows:

“2. Effect of non-production of documents- (1) *No documentary evidence in the possession or power of any party which should have been, but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.*

(2) *Nothing in sub-rule (1) shall apply to documents, -*

- (a) *produced for the cross-examination of the witnesses of the other party,*
- (b) *handed over to a witness merely to refresh his memory.”*

A similar provision exists in respect of the duty of the defendant in Order VIII Rule 1A of CPC inserted by Act 46 of 1999. Order XI dealing with discovery and inspection also contain provisions relating to documents in Rules 12 to 18 thereof. Further in Order XII relating to admissions, a provision is made in Rule 2 relating to notice to admit documents. Rule 2A of the said order is relevant at this stage and it reads as follows:

“2A. Document to be deemed to be admitted if not denied after service of notice to admit documents.—(1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.”

Rule 8 of Order XII deals with notice to produce documents. Then comes Order XIII dealing with production, impounding and return of documents. Rule 1 of the said order deals with production of original documents at or before the settlement of issues, the copies of which were filed along with the plaint or written statement. Rule 3 thereof deals with rejection of irrelevant or inadmissible documents, and since it is relevant for the purpose of the present case, it is extracted hereunder:

“3. Rejection of irrelevant or inadmissible documents.—The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”

Rule 4 thereof deals with the endorsements on documents admitted in evidence. Rule 6 deals with the endorsements on documents rejected as inadmissible in evidence. The other Rules relating to the documents under this Order are not relevant for the purpose of the present case.

Rules were framed by the High Court in exercise of powers conferred by Article 227 of the Constitution of India and Section 126 of Code of Civil Procedure, 1908, for the guidance of Subordinate Civil Courts. Chapter X of the Civil Rules of Practice deals with documents. Rule 117 deals with the inspection of documents by party of the documents filed along with the plaint or written statement. Rule 119 deals with inspection of documents by strangers.

In respect of the list of documents filed along with the pleadings, Form No.7 is prescribed under Rule 16 of the Civil Rules of Practice. Rule 102 thereof deals with production of documents. Sub-rule (2) of Rule 102 says that the Court shall not ordinarily receive any documentary evidence in possession or power of any party which should have been but has not been produced on the due date, except in exceptional circumstances and good cause is shown for the default. Rule 113 deals with evidence and sub-rule (7) thereof deals with marking and certifying of exhibits. Sub-rule (7)(c) indicates the procedure to be followed in respect of documents admitted in evidence, and it reads as follows:

“(7)(c) The Court shall consider the admissibility of the documents referred in the Affidavit of Examination-in-Chief and endorse on the documents. If admitted in evidence, the following particulars, viz.,

- (i) the number and title of the suit.
- (ii) the name of the person who filed the document and the exhibit number given by the Court.
- (iii) the date on which was produced.
- (iv) the statement of its having been admitted.

And the endorsement shall be signed or initialed by the Judge.”

Rule 115 deals with marking of exhibits and it reads as follows:

115. (79) Marking of Exhibits:-

(1) Exhibits admitted in evidence shall be marked as follows:

- (i) if filed by the plaintiff or one of several plaintiffs, with the capital letter ‘A’ followed by a numeral A1, A2, A3 etc.
- (ii) If filed by the defendant or one of several defendants with the capital letter ‘B’ followed by a numeral, B1, B2, B3 etc.
- (iii) If court exhibits with the capital letter ‘C’ followed by a numeral C1, C2, C3 etc.,
- (iv) If third party exhibits, with the capital letter ‘X’ followed by a numeral X1, X2, X3 etc.,

(2) The exhibits filed by the several plaintiffs or defendants shall be marked consecutively.

(3) If in a proceeding subsequent to the trial of a suit or matter, further exhibits are admitted in evidence, they shall be marked in accordance with the above scheme with numbers consecutive to the number on the last Exhibit previously filed.”

From a perusal of the above provisions, it is clear that it is incumbent on the parties to the suit to file the documents in their possession in the form of a list at the time of filing the plaint or the written statement, as the case

may be. If they want to file any document(s) subsequently, they have to seek the leave of the Court. In this connection, the effect of non-production of documents, which was repealed by Act 46 of 1999 with effect from 01.07.2002, should also be taken note. By virtue of the said repeal, for the effect of non-production of documents, one has to look into sub-rule (3) of Rule 14 of Order VII CPC, which is already extracted above. The plaintiff or defendant is not precluded from filing the documents at a later stage. But he has to seek leave of the Court in order to receive those documents in evidence.

In the instant case, the party filed the list of documents on 30.04.2013 and filed the affidavit in lieu of chief examination on 19.03.2014. Exs.A1 to A12 were marked on 21.03.2014. Out of the said Exs.A1 to A12, Exs.A6 to A10 formed part of the list of documents filed on 30.04.2013. Though no leave of the Court was taken for marking the said documents forming part of the said list and were marked without objection, now an objection is taken by the learned Counsel for the petitioner that one of the documents mentioned at serial No.6 of the said list ought not to have been received in evidence without the leave of the Court and without deciding its relevancy.

Here we have to examine whether receiving of documents amounts to admitting the documents in evidence or what is the meaning of 'documents received in evidence'. It is also to be examined with regard to the nature of objections that can be entertained by the Court at the time of receiving the documents in evidence. The following decided cases are of some assistance.

In **Bipin Shantilal Panchal v. State of Gujarat**^[8], arising out of criminal proceedings, the practice of deciding objection raised as to admissibility of evidence and then proceeding further with the trial was found to be unacceptable and it was commented upon by the Court as follows:

"12. 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 fall out 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 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 re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

13. 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 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.)

14. The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

This Court in **T.Basavaraju (Died) per LRs v. T.Nagaratnam**^[9] explained the words 'admitted in evidence' occurring in Section 36 of the Stamp Act, 1899, and held that it means 'admitted after judicial consideration of circumstances relating to admissibility'. In the said case, the suit was filed for partition of the plaint schedule property. When D.W.6 (3rd defendant) was being examined on commission, a carbon copy of the family settlement deed dated 09.07.1987 was marked through him. Thereafter, defendant Nos.4 and 5 filed an application objecting to the marking of the said document on the ground that, unless the said document is duly stamped and registered, the same cannot be admitted in evidence. D.W.6 resisted the said contention stating that

once the document is marked, defendant Nos.4 and 5 cannot question the admissibility of the same. The trial Court ordered the petition and directed the 3rd defendant to pay the stamp duty and penalty on Ex.B38, and challenging the said order, a revision was filed in this Court. This Court, after considering the decisions in **Basavaiah Naidu v. Venkateswarulu**^[10], **Vemi Reddy Kota Reddy v. Vemi Reddy Prabhakar Reddy**^[11] and **R.V.E.Venkatachala Gounder** (supra), the provisions of CPC, and the Civil Rules of Practice, held as follows:

“19. On 31-12-2003, the Court below recorded "Heard. The said documents are marked as Exs.B35 to B38. For report - 5-1-2004". In fact, there was no judicial determination as to the nature of the document and its admissibility in evidence by the Court below on that day i.e., 31-12-2003. Admittedly, Ex.B38 was marked through D.W.6 and there was no endorsement by the Court that the other side had no objection for the same being marked. It is curious to note that the very same Presiding Officer, who directed marking of Ex.B38 has passed the impugned order and it has been noted in the impugned order '*on that day, the question of admissibility of the documents did not come up for consideration and that question was not decided*'. Under these circumstances, the Court below went into the judicial determination as to the admissibility of Ex.B38 and found that it is not admissible in evidence, unless and until it is properly stamped and registered.

20. In a matter like this, unless and until there is a judicial determination, it cannot be said that it has been admitted in evidence, though it is marked. Mere marking of the document itself is not sufficient and there should be judicial determination as to the nature of the document and its admissibility. Further, the words 'admitted in evidence' appearing in Section 36 of the Stamp Act means 'admitted after judicial consideration of the circumstances relating to the admissibility'. There shall be a judicial determination of the question whether the document can be admitted in evidence or not for want of stamp duty etc. In this case, on the date when the document was marked, the learned Judge has not applied his mind as to the admissibility of the document and consequently, there was no judicial determination in regard to the objection raised by defendants 4 and 5. Merely because the document was marked, it would not mean that the objection raised by the other side has been rejected. In the instant case, there is absolutely no record that on that day i.e., 31-12-2003 or any day before that, the trial Court determined judicially the question regarding the admissibility of Ex.B38. No opportunity was given to the other side and the document was mechanically marked without there being judicial scrutiny. In fact, even otherwise, the Court may, at any stage of the suit, reject any document, which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection (Order XIII Rule 3 CPC). In this case, the same thing happened when a proper application was filed by the respondent-defendants 4 and 5. The application was considered and the impugned order was passed.”

In **Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills**^[12] it was held that admissibility of a document has to be decided at the stage of admission itself, instead of leaving it to be decided subsequently. When the trial Court provisionally admitted the photocopy of a document “subject to objection of proof of admissibility”, it was held that the photocopy should have been rejected at the beginning itself.

Learned Counsel for the petitioner relied on **Nori Srirama Sastri** (supra), wherein it was held that the question of admissibility of the documents ought to be decided at the time of marking itself. But, it appears that in the said case the objection relates to the improper stamping and registration of the case, which is not the case in the present case. He also relied on **National Textile Corporation Ltd.** (supra) and submitted that the issue of relevancy should be considered at the threshold itself and in the absence of any pleadings and particulars of the document by the plaintiff in his pleadings, the said document cannot be admitted in evidence.

In **Musammat Sumitra Kuer** (supra), the High Court of Patna considered the case where a document, which was not admissible in evidence, was tendered as evidence without objection, it was held to be inadmissible at the time of pronouncement of judgment. No finding on point of law was recorded, except stating that mere omission to object a document which is not in itself admissible as evidence does not constitute a documentary evidence so as to be available to either party at the trial. In other words, it says that a document which is inadmissible and marked without objection can be considered as to its admissibility at a later point of time by the Court.

In **Sait Tarajee Khimchand v. Yelamarti Satyam Alias Sattैया**^[13] it was held that mere marking of exhibits does not dispense with proof in evidence.

In **K.Amarnath v. Smt.Putamma**^[14] the law relating to the documents under Order XIII Rule 2 CPC read with Section 145 of the Evidence Act was considered in proceedings arising out of the Karnataka Rent Control Act, 1961. In view of the useful discussion made therein, the relevant portions of the judgment are extracted hereunder:

“...Whenever the document is sought to be marked in evidence, the Court is bound to consider the following three aspects; (a) what is the nature of the document; (b) whether it bears the requisite Stamp duty under the relevant Stamp Law; and (c) whether the registration of the document is compulsory. The decision on the first question, that is identifying or deciding the nature of the document is necessary to decide the other two questions relating to Stamp duty and registration...

A document which has been marked only for the purpose of identification, is not admitted in evidence and cannot be looked into for any purpose. It cannot even be used for deciding the manner of entry into possession or for determining the nature of possession. Assigning an exhibit number only for identification purposes without admitting it in evidence and without deciding on the question of admissibility and leaving the question open for decision at a later stage, is a procedure neither contemplated under the Evidence Act, nor under the Code of Civil Procedure. The Courts should desist from adopting such a procedure. Such a procedure is as irregular as marking a document subject to objection, reserving the question of admissibility to be heard at the stage of arguments. Order 13 of CPC makes it clear that all documents on which the parties intend to rely on as substantive evidence, should be produced either with the pleadings or before settlement of issues, (In summary proceedings, where issues are not framed, the documents should be produced before commencement of evidence), or thereafter with an application assigning reasons for non-production. Parties may however produce a document for the limited purpose of confronting it to a witness during his cross-examination to contradict him or to refresh the memory of a witness. It is clear from Order 13, Rule 2 of the CPC read with Section 145 of Evidence Act, 1872 that what can be produced during cross-examination, to confront a witness to contradict him, is only his previous statement in writing or reduced into writing. A witness cannot therefore be confronted in cross-examination (without previous production as per law) a document executed by someone else. In this case, therefore, the document allegedly executed by petitioner's father, ought not to have been permitted to be confronted to petitioner in his cross-examination, without prior production as required by law.

When a document is admitted in evidence, it is marked in the manner prescribed in Order 13, Rule 4 of the CPC. When a document is rejected as inadmissible in evidence, an endorsement has to be made as prescribed under Order 13, Rule 6 of the CPC. When a document is not admitted, but is assigned a number only for identification purposes, then an endorsement to that effect should be made on the document. Such identification number should not be in the regular series of exhibit numbers, that is Ex. 'P' series of plaintiff or petitioner, or Ex. 'D' (or 'R') series of defendant or respondent, but should be in a completely different series. The Court shall also note in the evidence and in the order sheet that such document is not admitted in evidence, but is assigned a number for purposes of identification only. In this case, the Trial Court has not noted on the document that it is marked for identification purposes only. In the order sheet for the day (21-10-1997), the Trial Court has recorded "P.W.1 fully cross- examined, Exs, R-4 to R-7 are marked during cross-examination". The procedure adopted, to say the least, is irregular.

When a document is produced and sought to be exhibited, the Court should decide whether it is admissible or not immediately, so that the parties will know whether such document could be relied on or not. If a document is not admitted, by refusing to mark it, the party may take steps to let in other relevant and permissible evidence to prove the document. On the other hand, if the document is marked in evidence, the parties may not choose to let in further evidence on that aspect. When the question of marking of the document is left open, the parties will have to proceed with the evidence with considerable uncertainty. Therefore, Courts should consider and decide the question of admissibility of a document sought to be exhibited, before proceeding further with the evidence. If the Court has any doubt, it may hear arguments on the question.

A duty is cast upon every Judge to examine every document that is sought to be marked in evidence. The nomenclature of the document is not decisive. The question of admissibility (with reference to Section 34 of Karnataka Stamp Act, or Section 35 of Indian Stamp Act and Section 49 of Registration Act) will have to be decided by reading the document and deciding its nature and classification. The tendency to mark documents without inspection and verification should be eschewed. Even while recording ex parte evidence or while recording evidence in the absence of the Counsel for the other side, the Court should be vigilant and examine and ascertain the nature of the document proposed to be marked and ensure that it is a document which is admissible. The Court should not depend on objections of the other Counsel before considering whether the document is admissible in evidence or not. Section 33 of the Stamp Act casts a duty on the Court to examine the document to find out whether it is duly stamped or not, irrespective of the fact whether an objection to its marking is raised or not. It should be borne in mind that once a document is admitted in evidence, it cannot be called in question thereafter on the ground that it was not duly stamped. Once the Court admits a document even wrongly, such admission becomes final and cannot be reopened. Hence, the need for diligence not only on the part of the opposite Counsel, but also on the part of the Court having regard to the statutory obligation under Section 33 of Karnataka Stamp Act.

A combined reading of Sections 33, 34, 35, 37 and 41 of the Karnataka Stamp Act requires the following procedure to be adopted by a Court while considering the question of admissibility of a document with reference to the Stamp Act: (a) when a document comes up before the Court, it has to examine and determine whether it is properly stamped. When the other side objects to it, the Court should consider such objection and hear both sides; (b) after hearing, if the Court comes to the conclusion that the document has been duly stamped, it shall proceed to admit the document into evidence; (c) on the other hand, if the Court comes to the conclusion that the document is not stamped or insufficiently stamped, it shall pass an order holding that the document is not duly stamped and determine the Stamp duty/deficit stamp duty and penalty to be paid and fix a date to enable the party who produces the document to pay the Stamp duty/deficit Stamp duty plus penalty; (d) if the party pays the duty and penalty the Court shall certify that proper amount of duty and penalty has been levied and record the name and address of the person paying the said duty and penalty and then admit the document in evidence as provided under Section 41(2); and the Court shall send an authenticated copy of the instrument to the District Registrar together with a Certificate and the amount collected as duty and penalty, as provided under Section 37(1); (e) if the party does not pay the duty and penalty, the Court will have to pass an order impounding the document and send the instrument in original, to the District Registrar for being dealt with in accordance with law as per Section 37(2) of the Karnataka Stamp

Act.”

In **R.V.E.Venkatachala Gounder** (supra), the Supreme Court held as follows:

“One document A/30 is the photocopy of a certified copy of the decision given by Charity Commissioner. This document was tendered in evidence and marked as an exhibit without any objection by the defendants when this was done. The plaintiff has in his statement deposed and made it clear that the certified copy, though available, was placed on the record of another legal proceedings and, therefore, in the present proceedings he was tendering the photocopy. There is no challenge to this part of the statement of the plaintiff. If only the tendering of the photocopy would have been objected to by the defendant, the plaintiff would have then and there sought for the leave of the Court either for tendering in evidence a certified copy freshly obtained or else would have summoned the record of the other legal proceedings with the certified copy available on record for the perusal of the Court. It is not disputed that the order of Charity Commissioner is a public document admissible in evidence without formal proof and certified copy of the document is admissible in evidence for the purpose of proving the existence and contents of the original. An order of Charity Commissioner is not per se the evidence of title inasmuch as the Charity Commissioner is not under the law competent to adjudicate upon questions of title relating to immovable property which determination lies within the domain of a Civil Court. However, still the order has relevance as evidence to show that the property forming subject matter of the order of the Charity Commissioner was claimed by the temple to be its property but the temple failed in proving its claim. If only the claimant temple would have succeeded, the item of the property would have been directed by the Charity Commissioner to be entered into records as property of the charity, i.e. the temple, which finding and the entry so made, unless dislodged, would have achieved a finality. On the contrary, the appellant herein, who claimed the property to be his and not belonging to the charity, succeeded in the claim asserted by him.

The other document is the rent note executed by defendant No. 2 in favour of plaintiff. Here also photocopy of the rent note was produced. The defendant No. 2 when in witness box was confronted with this document and he admitted to have executed this document in favour of the plaintiff and also admitted the existence of his signature on the document. It is nobody’s case that the original rent note was not admissible in evidence. However, secondary evidence was allowed to be adduced without any objection and even in the absence of a foundation for admitting secondary evidence having been laid by the plaintiff.

The abovesaid facts have been stated by us in somewhat such details as would have been otherwise unnecessary, only for the purpose of demonstrating that the objection raised by the defendant-appellant before the High Court related not to the admissibility of the documentary evidence but to the mode and method of proof thereof.

Order 13 Rule 4 of the CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced...”

It was further held as follows:

“...Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as ‘an exhibit’, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons : firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

In **Bada Bodaiah v. Bada Lingaswamy** ^[15], after considering Order VII Rule 14(3) and Order XIII Rules 1 and 2 of CPC, it was held that mere non-mention of documents in plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect power of the Court to grant leave to produce documents at

subsequent stage. Non-mentioning of the documents sought to be produced at the subsequent stage is a curable defect. But, the power to grant leave must be exercised in rare cases and not in a routine manner.

The decision relied on by the learned Counsel for the petitioner in **Balaji Adithi** (supra) is not directly on the point and it relates to impounding of documents. Similarly, the decision in **G.Sanjeeva Reddy** (supra) relates to grant of leave by the Court with regard to the documents produced before the Court subsequent to the filing of the plaint. The decision in **Kalyan Singh Chouhan** (supra) also relates to the pleadings of the parties. The said decision relates to the election proceedings.

In **Manickam v. Chinnasamy**^[16] the High Court of Madras elaborately considered the law on this point and held as follows:

"It is to be borne in mind that the objections/questions as to the admissibility of a certain document ought to be determined by a Court of Law, when they come up for consideration or determination instead of admitting the evidence in the first instance tentatively and observing the questions till the completion of the trial of the case. Ruling as to the admissibility of a document to be received in evidence must be short one. If the ruling is rendered by a Court of Law, then, there should not be any further hindrance of the conduct of a trial. If need be, a fuller reason may be given in the Judgment as per decision **Ponnammal Ammal V. Modern Stores, Tirunelveli through Partner Mahadev Iyer and others**, AIR 1950 Madras 62.

An objection that the mode of proof is irregular or initial should be taken before the document is admitted. When a document is exhibited before the trial Court, a party against whom it is being brought on record is entitled to question it on the ground of its inadmissibility if after the admission of a particular document it is later on found to be an irrelevant or inadmissible one, in the eye of law, it may be rejected at any stage of the suit as per Order 13 Rule 3 of Civil Procedure Code.

It is the duty of a Court of Law to exclude all irrelevant or inadmissible evidence even if no objection has been taken by the opposite side.

At this stage, this Court worth recalls the decision of Hon'ble Supreme Court in **Javer Chand and others V. Pukhraj Surana**, AIR 1961 SC 1655, wherein it is held as follows:

"Where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Once a document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S.36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or Revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction. AIR 1957 Raj 47, Reversed."

In **Prabhu Dayal V. Suwa Lal and another**, AIR 1994 Rajasthan 149, it is held that 'The provision Order 13 Rule 1 and 3 of Civil Procedure Code does not debar a Court from reopening the question of admissibility of the document already exhibited and further that the mode of proof could not be questioned.'

The general plea in law is that an objection must be raised before the document is admitted during the course of the trial. However, if a document which cannot be admitted into evidence because of the impediment in law but the same is admitted into evidence without objection, always it is open to a Court of Law to arrive at a finding that the said document is legally inadmissible one.

This Court aptly points out the decision in **Dhruba Sahu (dead) and after him Nalumoni Sahu and another V. Paramananda Sahu**, AIR 1983 Orissa 24 at page 25, wherein it is held that 'objection is mode of proof of document shall be taken when it is exhibited by trial Court and not in appeal for the first time.'

Further, in **Kissen V. Ram** 12 WR at page 13, it is held that 'if after admission of a document which is subsequently found to be irrelevant or otherwise inadmissibility, it may be rejected at any time under the rule.'

Even an erroneous omission to object to an inadmissible evidence does not make it admissible, if the evidence per se is inadmissible under the Indian Evidence Act as per decision in **Miller V. Madho** 23 IA 106.

As a matter of fact, only when a document is formally proved and admitted in evidence be marked as an exhibit Section 36 of the Indian Stamp Act comes into operative play which enjoins that such an admission shall not be called into question at any stage as per decision **Kuppammal V. Pethanna** AIR 1956 Madras 250. Order 13 Rule 4 speaks of endorsements on documents admitted in evidence which ought to be strictly complied with, as opined by this Court. However, it is to be noted that the ingredients of Order 13 Rule 4 has nothing to do with the question whether a particular document has been admitted in evidence to admit a document in evidence, the endorsement as per Order 13 Rule 4 is quite sufficient and no express order as per Section 61(1) of the Indian Stamp Act is not necessary as per decision **Jageshar V. Collr**, AIR 1966 A 392 FB. In law, the marking of a document as an exhibit on the side of one party does not dispense with its proof as per decision **Sait Tarajee V. Yelamarti**, AIR 1971 SC 1865. Even the unproved documents cannot be regarded as proved merely because an endorsement has been made by stamp as per decision **Firoz V. Nawabkhan**, AIR 1928 L 342. Moreover, a mere omission to make the formal endorsement does not render a

document duly proved and exhibited the inadmissible as per decision **Gopal V. Sri Thakurji**, AIR 1943 PC 83.”

Ultimately, it held that the marking of the documents, subject to objection, is a curable one.

A Division Bench of this Court in **IVRCL Assets & Holdings Ltd., Hyderabad v. A.P.State Consumer Disputes Redressal Commission, Hyderabad**^[17] held that unregistered and insufficiently stamped document, if marked as a document, does not amount to admitting in documentary evidence. The difference between marking of document and admitting a document in evidence was made out in the said decision.

On the survey of the above decisions, the following points are deduced:

- i) A list of documents should be filed along with the plaint or written statement and if the parties want to file document subsequently, they have to take leave of the Court.
- ii) The documents, which are marked, does not dispense with their proof.
- iii) There is a difference between marking of a document and admitting the same in evidence.
- iv) As held by the Supreme Court in **R.V.E.Venkatachala Gounder** (supra), the objection that the document which is sought to be proved is itself inadmissible in evidence can be raised even at a later stage or even in appeal or revision. When the objection relates to mode of proof alleging the same to be irregular or insufficient, the objection should be taken before the evidence is tendered and cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This later objection is an objection relating to the irregularity or insufficiency.
- v) In order to avoid delay in the trial of the suit, the Court can tentatively mark a document and examine its admissibility and the objection raised to it along with the pronouncement of judgment.

At this stage, it is relevant to extract the passage from the judgment of Vivian Bose, J. in **Sangram Singh v. Election Tribunal**^[18]: (AIR p.429, para 16)

“16. Now a code of procedure must be regarded as such. It is ‘*procedure*’, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to ‘*both*’ sides) lest the very means designed for the furtherance of justice be used to frustrate it.”
(emphasis supplied)

Since, in the instant case, the order of the trial Court speaks of receiving of the document only without passing a judicial order on its admissibility, the defendant can as well raise his objection as to its admissibility at a later stage, and the trial Court shall consider the same and pass appropriate orders thereon. The objection relating to relevancy of the document need not be decided at the time of marking the document. It relates to admissibility and can be raised by the defendant at a later stage and should be decided by the Court at the time of pronouncement of judgment. Though the plaintiff has not sought leave of the Court while filing the list of documents on 30.04.2013, subsequent to the filing of the plaint, this Court considers the said defect as an irregularity and not an illegality. Since Exs.A6 to A10 were already marked from out of the list of documents, it is assumed that the trial Court has permitted such filing of the documents. However, the trial Court, hereafter, should scrupulously follow the provisions of CPC while receiving and marking the documents.

The Civil Revision Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

06.03.2015

Note: LR copy to be marked. Yes

B/o.
vs

[1] AIR 2012 SC 264
[2] (2011) 11 SCC 786
[3] 2006 (3) ALT 66
[4] (2003) 8 SCC 752 : AIR 2003 SC 4548
[5] AIR 1957 AP 60
[6] 2004 (2) ALD 507
[7] 1921 PAT 61
[8] AIR 2001 SC 1158
[9] 2006 (3) ALD 838
[10] AIR 1957 AP 1022
[11] 2003 (3) LS 480
[12] (2010) 8 SCC 423
[13] (1972) 4 SCC 562
[14] ILR 1999 Karnataka 4634
[15] 2003 (1) ALD 790
[16] 2011 (5) CTC 206
[17] 2014 (4) ALD 1 (DB)
[18] AIR 1955 SC 425 : (1955) 2 SCR 1