**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**

**FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

***

**<u>CIVIL REVISION PETITION No.1850 of 2015</u>**

Between:

Buddha Jagadeeswara Rao

………Petitioner

and

Sri Ravi Enterprises rep. by its Proprietor

Kedarisetty Gurumurthy

…….Respondent

Date of Judgment pronounced on : 23-08-2016

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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**< GIST:**

**> HEAD NOTE:**

! Counsel for the petitioner : Sri M. Radhakrishna

^ Counsel for the respondent : Sri Srinivas Ambati

**? Cases referred**

1. 2007 (1) ALD 67=(1) ALT 460
2. 2001(7) SCC 573
3. AIR 1946 PC 51
4. AIR 1962 AP 132
5. AIR 1972 AP 373
6. AIR 1981 AP 175
7. (1970) 2 AnWR 181
8. 1980(2) ALT-436=1981(1)AnWR-139
9. 2003(2)-ALD-638=2002(2)AnWR-725
10. 2005(5)ALD-206
11. (2009) 2 SCC 532
12. AIR-1970-Orissa-22(B)
13. (2003) 4 SCC 161
14. 1992 Supp (2) SCC 77
15. 2003(2)ALD-640
16. 2003–(1)LS-382
17. 2007(6)ALD-781=2007(5)ALT-758
18. 2005 (1) ALD-607
19. 2005 (4) ALT-411
20. AIR-1970-Bombay-109(E)
21. AIR-1914-Bombay-55
22. AIR-1928-Bombay-553
23. (2011) 14 SCC 66
24. (2013) 4 SCC 354
25. AIR-1969-Madras-1
26. AIR-1963-SC-1307
27. 1967(2)AnWR-515(FB)
28. AIR-1953 Madras-764(FB)
29. 1959(2)AnWR-102(FB)
30. AIR-1992-AP-183
31. AIR-1968-AP-213(FB)
32. AIR-2001-SC-358=2001(1) ALD-SC-57
33. AIR-1962-Punjab-167
34. 1961(1)AnWR-425

35. AIR-1958-659
36. 1955(1)MLJ-457
37. 1997(3)ALD–336=(2)AnWR-42
38. 2004(4)ALT-177
39. 2005(1)ALT-507
40. 2000(3)ALD-649(DB)
41. AIR-1975-AP–96
42. AIR-1977-AP-397
43. AIR- 1970-MP-74(FB)
44. AIR 1981-AP 274
45. AIR-1975-AP-96
46. 1967(2)AnWR-268
47. AIR-1951-Madras-209
48. AIR-1972-Mysore-263
49. AIR-1955-AP-257
50. AIR-1956-SC-35
51. AIR-1986-SC-403
52. AIR-1977-SC-500
53. AIR-1976-AP-417
54. AIR-1952-Madras-515
55. AIR-1970-Madras-2
56. AIR-1970-Madras-5
57. AIR-1956-AP-252; AIR-1962-AP-145; AIR-1970-Madras-10 & 1967(2)AnWR-515 (FB)
58. (2007) 1 LS (SC) 111
59. 2004(3) ICC-832=
60. 2002(2) CLJ-449
61. 2005(1) CLJ-249
62. AIR 2001 SC 1158
63. AIR-1971-SC-1070
64. AIR-1962-SC-110
65. AIR-1973-AP-398
66. 2002(5)ALT-624=(4)ALD-808=(2)LS-467
67. AIR-1946-Madras-298; 1961(1)AnWR-183.
68. AIR-2001-SC-1321
69. 1975(2)APLJ-298
70. AIR-1976-AP-74
71. AIR-2003(NOC)41
72. 2016(3) ALT 12
73. AIR 1953 Patna 365
74. AIR 1946 PC 51
75. AIR 1919 Privy Council 44
76. AIR-1957-Madras-472
77. 2001(1) MLJ-1 or 115
78. AIR-1952-SC-153
79. 1999(1)ALT-136=(1)ALD-191
80. AIR-1999-SC-2054
81. AIR-1953-Bombay-50
82. AIR-1977-AP-371
83. AIR-1975-MP-230
84. AIR-1973-Madras-262
85. AIR-1986-MP-215
86. 2002(3)ALD-186
87. 2005(1)ALD-607
88. 2005(4)ALT-411
89. (2008) 8 SCC 564
90. (2010)5 SCC 401

## HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

## CIVIL REVISION PETITION No.1850 of 2015

**ORDER:**

The revision involves the questions as to whether a copy of an unstamped document can be called as instrument under Section 2(14) of the Stamp Act and if not is it not an inadmissible document for not to exhibit, unless original is produced to cause impound and that too when the original document is undisputedly available in another proceeding that was marked with no objection for stamp duty therein for collateral purpose, (apart from what is meant by collateral purpose under Section 49 of the Registration Act from its wording), from not a registered lease deed, still is it not a bar to exhibit in the present proceedings in view of the specific wording of Section 35 of the Stamp Act confining to same proceedings of waiver of objection by not extending to any other proceeding even between same parties and any earlier expression by not considering properly said provision is still a binding precedent and if not it still requires any reference to a Division Bench in this regard.

2. The revision is filed impugning the docket order passed by the lower Court in the suit pending trial during course of PW1's evidence on dated 19.12.2014, refusing permission to exhibit as secondary evidence the certified copy obtained from a Court proceeding in another suit, where the so called lease deed unregistered and not duly stamped was already exhibited without objection on stamp duty between parties interse for collateral purpose, when copy sought to exhibit the same in the present suit.

3. The facts in nutshell for purpose of answering the revision lis are: Plaintiff-B. Jagadeeshwar Rao in O.S.No.453 of 2007 on the file of Principal Junior Civil Judge, Anakapalle, maintained against the defendant-lessee, Sri Ravi Enterprises-Proprietor, K. Guru Murthy, the suit for recovery of money towards rentals due.

4. The learned counsel for the plaintiff-revision petitioner assailed the order saying once the original lease unregistered and even not-duly stamped document is exhibited for collateral purpose between parties interse in another proceeding without objection on stamp duty, the certified copy obtained from that court is admissible when original undisputedly lying in that another suit and refusal to exhibit the same is unsustainable and said docket order is liable to be set aside by allowing the revision and in support of the submission the learned counsel for the revision petitioner mainly placed reliance on a single judge expression of this court in **Lakkaraju Radha Krishna Vs. Pyarle Sri Rama Sarma and Others**[1].

5. Whereas it is the submission of the Counsel for the revision respondent-defendant that the order of the lower court holds good and for this court while sitting in revision, within its limited scope, there is nothing to interfere and the expression in **Lakkaraju Radha Krishna** supra is hit by the principle of ***per-incuriam*** and not binding for same was rendered in ignorance of the wording of Section 35 of the Stamp Act.

6. Heard both sides at length including from the expression in **Lakkaraju Radha Krishna** supra among several expressions

[1] 2007 (1) ALD 67=(1) ALT 460

placed reliance in support of the rival contentions and perused the material on record.

7. Before coming to any further facts if at all for answering the revision lis, it is necessary to consider the scope of law from the relevant provisions and propositions.

8. **The Indian Stamp Act is a *fiscal* legislation** with an object to *protect revenue & to collect revenue* (tax) in the shape of stamps on transactions covered by the instruments. It is in fact to exclude proof of any transaction by an instrument not duly stamped till Stamp duty is levied & paid in order to protect the revenue-as held in **Hameed Vs. Abdul**[2]. The Privy Council in **Ram Rattan Vs. Parma Nand**[3], held way back in 1946 that the words 'for any purpose' used in Section 35 of the Stamp Act, should be given their natural meaning and effect and would include a collateral purpose and thus an unstamped document of partition cannot be used to corroborate the oral evidence for the collateral purpose of determining even the factum of partition referred in the instrument as distinct from looking into the terms of the instrument. Said decision in **Ram Rattan** supra has been followed in a large number of decisions by the Apex Court and several High Courts, including by this Court in **Bhaskarabhotla Padmanabhaiah vs. B. Lakshminarayana**[4], **Sanjeeva Reddi Vs. Johanputra Reddi**[5], **T.Bhaskar Rao Vs. T.Gabriel**[6] **and B. Rangaiah v. B. Rangaswamy**[7] among others. The decision of this Court in **Tayi Rama Krishna Rao Vs. Pebbu Penchalamma and**

[2] 2001(7) SCC 573
[3] AIR 1946 PC 51
[4] AIR 1962 AP 132
[5] AIR 1972 AP 373
[6] AIR 1981 AP 175
[7] (1970) 2 AnWR 181

**others**[8] is outcome of not referring the earlier expressions supra. In **Rachakonda Rama Koteswara Rao and others vs. Manohar fuel centre, Neruducherla**[9] also it was held that for an unstamped document there is a total bar for its admission and ***no part of the document, be it-a single sentence or a word or a signature can be admitted,*** hence it cannot be admitted even for any collateral or other purposes unless stamp duty is levied-(impounded) and paid. No doubt in **B. Rangaiah** supra, two instruments contained in one document not stamped and not registered, one is a settlement and the other is a will, sought for admission, it was held that part of the instrument which constitutes a will did not require any stamp and registration and will be admissible in evidence for proving the bequeaths contained therein, but for that part which is a settlement not to admit for want of stamp and registration. In **V.Anjaneyulu vs. V.Vadapalli**[10] also it was held that, a document executed within the meaning of instrument-unregistered and insufficiently stamped, if it runs in two parts which are separable-on stamp duty required to be paid on impounded respectively, the portion which is required to be registered cannot be looked into but for collateral purpose and the other portion which is not required to be registered can be looked into for main purpose. Referring most of the above, the Apex Court in **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra**[11], while interpreting the words 'for any purpose' used in Section 35 of the Stamp Act, held that 'for any purpose' to mean for all purposes, and thus if all purposes for which the document is sought to be

[8] 1980(2) ALT-436=1981(1)AnWR-139
[9] 2003(2)-ALD-638=2002(2)AnWR-725
[10] 2005(5)ALD-206
[11] (2009) 2 SCC 532

brought in evidence are excluded, it shall not be admitted for any purpose whatsoever. As per section 35 of the Act, if all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for any collateral purposes. It was therefrom held that the Court before admitting such unstamped or insufficiently stamped document is empowered to direct payment of unpaid duty with penalty. There, it was an unregistered sale deed, since requires payment of stamp duty applicable to deed of conveyance, held the Court being an authority to receive a document in evidence is bound to give effect thereto, for section 33 of the Stamp Act casts a statutory obligation on all the authorities to impound such document in question.

9. Whereas, **the Indian Registration Act** is one way a legislation having ***public policy*** to protect public and prevent fraud by conservation of evidence, assurance of title and publicity of document. It is thus meant to prevent people from being duped into entering transactions relating to property with persons having no right or title and publicity from documents registered about right and title over the property in order to prevent fraud & mischief. Virtually registration of an instrument is a notice by way of definite recorded information to the world at large to enable public to verify records and enquire there from right, title and obligations if any on any immovable property. That is why under section 31 (2) of the Specific Relief Act,1963, even on cancellation of registered instrument/document, the same requires intimation by the Court to the Registrar concerned for so entering. Even the Circular instruction of the High Court in Roc.No.1911/SO/2016,

dated 21.07.2016 directs all Courts to forward copy of orders of even attachment of property under litigation, copy of the orders and also orders where attachment raise to the concerned Registrar to record the same in their registers. Regarding scope and object of the Indian Registration Act, in **Jogidas vs. Fakir panda**[12] it was held that it is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising and affecting a particular property, and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud. Registration lends inviolability and importance to certain classes of documents. In **Avinash Kumar Chauhan** supra the Apex Court referring to **Ram Rattan, Bhaskarabhotla Padmanabhaiah, Sanjeeva Reddi, T.Bhaskar Rao and B. Rangaiah** supra and other expressions including of the Apex Court in ***Bondar Singh vs Nihal Singh***[13], held that Section 17 of the Indian Registration Act deals with documents, the registration of which is compulsory and Section 49 of the Act is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 of the Act or by any provision of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. **<u>But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter</u>**. Referring

[12] AIR-1970-Orissa-22(B)
[13] (2003) 4 SCC 161

to ***Bondar Singh*** supra, it was observed that there only by interpreting Sections 17 r/w. 49 of the Registration Act, 1908, what was held is: "The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed execution is not in dispute. The legal position is clear that the unregistered document, even though not admissible in evidence, can be looked into for collateral purpose of nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized..." It was ultimately observed that as it by now the law is well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if it is not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or stamp duty and penalty are paid under Sections 33 & 35 of the Stamp Act. It also refers to **Pandey Oraon Vs. Ram Chander Sahu**[14]. In this regard even the subsequent expressions of this Court reiterated the same principle and of which in **Rachakonda** supra it was held that for an unstamped document even there is a total bar for its admission and no part of the document, be it-a single sentence or a word or a signature can be admitted, hence it cannot be admitted even for any collateral or other purposes unless stamp duty is levied-(impounded) and paid; whereas an unregistered document once duly stamped or stamp duty and

[14] 1992 Supp (2) SCC 77

penalty is paid, even though under section 17 of the Indian Registration Act, it is compulsorily registerable one, for collateral purpose or such other purposes specified in Sections 49 r/w 17 of the Registration Act, it can be admitted and looked into. Same is the law laid down in **Jannuchenderbabu vs. Manchikatla[15], Smt.Bolleddula Laxmi Devi vs. B. Papanna[16], Nukala Krishnaiah(died) and others vs. Nukala Dakshina Murthy[17]** and particularly in case of lease in **Ambati vs. Pericherla[18]** and **Giri-Yadav vs. L.R.Goud[19]** that an instrument of Lease for above one year-unregistered and insufficiently stamped-only on stamp duty impounded and paid can be looked into for collateral purpose.

10. The Stamp Act and Registration Act are no doubt not in ***pari-materia.*** The principles that govern the interpretation of the Stamp Act even cannot be applied to the interpretation of the provisions of the Registration Act, but for to read together and the definition in one Act may be applied to the other Act among the two only when there is no such definition in the other Act, as held by the Bombay High Court in **Leela DD vs. EC.Shinde[20]** (page-114-para-12), **Chandrashanker Pranshanker Vs. Bai Magan[21]** & **INRE Maneklal Manilal[22].**

11. From the above, coming to the **main difference between the provisions of the Stamp Act and the Registration Act** from the effect of not duly stamped and not duly registered even

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[15] 2003(2)ALD-640
[16] 2003–(1)LS-382
[17] 2007(6)ALD-781=2007(5)ALT-758
[18] 2005 (1) ALD-607
[19] 2005 (4) ALT-411
[20] AIR-1970-Bombay-109(E)
[21] AIR-1914-Bombay-55
[22] AIR-1928-Bombay-553

compulsory to register are, while considering the effect of not duly stamping an instrument, the effect of non-registration mentioned in Section 49 Registration Act is not relevant. It is because there is no total bar for admitting unregistered document if duly stamped, since it can be used for collateral purpose or other purposes specified in Section 49, though u/s.49 an unregistered document (when compulsory to register) is inadmissible for main purpose to affect any rights in immovable property and the terms and conditions in the instrument. **Where as an unstamped document is not at all admissible (even for collateral purpose) unless it is duly stamped since there is a total bar to admit any part of the instrument in evidence. Same principle is laid down even in the subsequent expressions of the Apex Court** in **SMS Tea Estates Pvt. Ltd. Vs. Chandamari Tea Company**[23] in **Naina Thakkar Vs Annapurna Builders**[24]

12. Coming to execution of a document as an instrument, it means completion by the last act out of series of acts which complete the document i.e., writing or scribing, singing, sealing if any, attestation if any, and delivery of document as per the full bench judgement of the Madras High Court held between **The CCRA-BOR, Madras vs. The CI&BS.Ltd**[25] (at para-9-page-4) by relying upon **New Central Jute Mills Co. Limited Vs. State of West Bengal and Others**[26].

13. The stamp duty payable and if at all to impound is on market value of property as on date of document and the penalty how many times of document value to be levied is as per law as on

[23] (2011) 14 SCC 66
[24] (2013) 4 SCC 354
[25] AIR-1969-Madras-1
[26] AIR-1963-SC-1307

date of impounding. In this regard in **H.gangaram vs. Kamalabai**[27] by holding that the view of the **Madras High Court in the case of Crompton Engineering Company**[28] is not good Law and by approving the view of the AP. High court in the case of **Midde Vara Prasada Rao**[29], it was held that to ascertain stamp duty on the value of the property on which duty payable is market value as on the date of document. Since the word document is not defined in these Acts, one has to go to the definition in the general clauses Act. Section-3(16) of the General clauses Act (10 of 1897) states that ***document*** shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter.

14. Once the instrument is duly impounded, it is as good as originally duly stamped. The question of impounding arises when it is within the meaning of instrument defined by the Stamp Act. As per Stroud's judicial Dictionary Volume-3, the word ***"IMPOUND"*** implies its being put in an enclosed place. A document is impounded when it is ordered by a court to be kept in the custody of its officer. ***Instrument***-as per Section-2(14) of the Stamp Act includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. For that it is required to understand what is meant by instrument under the Stamp Act as part of the **duty of the Court to consider** under Section 33 of the Stamp Act

[27] 1967(2)AnWR-515(FB)
[28] AIR-1953 Madras-764(FB)
[29] 1959(2)AnWR-102(FB)

is whether it is properly stamped or not and whether it is liable for stamp duty or not and if so what is the market value at the time of execution as held in **Media Anasuyamma and Another Vs. Choppela Lakshmamma**[30] & **Hazarami Gangaram Vs. Kamlabai and Others**[31]. If a document executed in a foreign country relied in India the document is liable for stamp duty as per Indian law as per section-18 of the Stamp Act which says within 3 months after the documents reached India, to be stamped other than for pro-note & bill of exchange as held in **Malaysian Airlines**[32] case and also in **Gujrals Company Vs. M/s. M.A. Morri**[33].

15. No doubt, question of impounding by court arises when tendered in evidence to exhibit and not from mere filing with plaint. In this regard in **K.Santa kumari vs. V.Susheela Devi**[34] it was by explaining the **Balaramdas's case**[35] and by relying up on **Daivasikhamani's case**[36] held that it is not proper for the trial Court to consider the question of stamp duty and penalty and ask for payment of those amounts before tendering for evidence when there was a great probability amounting to practical certainty that at the time of considering the admission of the documents, it would be rejected as inadmissible even due to want of registration. Section 35 proviso (a) of the Stamp Act provides that the instrument which is unstamped or insufficiently stamped shall be admitted in evidence on payment of duty and penalty. This suggests that the collection of stamp duty should not be done

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[30] AIR-1992-AP-183
[31] AIR-1968-AP-213(FB)
[32] AIR-2001-SC-358=2001(1) ALD-SC-57
[33] AIR-1962-Punjab-167
[34] 1961(1)AnWR-425
[35] AIR-1958-659
[36] 1955(1)MLJ-457

before the stage of admissibility of the document in evidence. Once it is found at the stage of admission of document in evidence that it is liable for stamp duty, then to consider as to what is the stamp duty that is payable to impound and collect for a document not duly stamped i.e. unstamped or insufficiently stamped. The penalty payable in such case is ten times to the value of stamp duty payable in addition to the actual value as per Section-35 proviso (a) of the Stamp Act. Further if the stamp duty and penalty are collected in advance and later the document is not admitted in evidence, the party concerned would have to pay penalty equal to ten times the duty or deficit duty or take the chance of getting benefit of referring for impounding u/s 39 of the Act and in such case will loose the chance of having to pay a smaller penalty at the discretion of the Collector (now District Registrar) u/s 40(I)(b) of the Act. This would cause undue hardship to the party. Such undue hardship will be avoided if the provision under Proviso (a) to Section 35 of the Act were followed. Held the trial Court therefore erred in ordering payment of stamp duty and penalty before the stage of admission of documents in evidence was reached. Following the above decisions, in **Link well Electronics Ltd vs. APEDC Ltd**[37] it was held that plaint cannot be rejected on the mere ground of non-payment of deficit stamp duty payable on a document filed along with plaint since such question shall be considered only when the document is sought to be tendered in evidence, since Order 7 Rule 1 CPC., does not contemplate that the deficit stamp duty, if any, on any document should be paid at the inception. It is also unnecessary to decide

[37] 1997(3)ALD–336=(2)AnWR-42

the nature of the document at that stage. In **Y.Vijaya vs. B.Bhagaiah**[38] also it was held that the impounding of the document arises only during evidence in enquiry or trial and not before. In **Kasim Sahib vs. s.Hanumanthu**[39] it was held following **Link well Electronics** supra that, plaint cannot be rejected by raising objection for numbering under Order 7 Rule 11 CPC., on the mere ground of non-payment of deficit stamp duty payable on a document filed along with plaint, since such question shall be considered only when the document is sought to be tendered in evidence during enquiry or trial. In **Ch. Annapurnamma vs. AP.Shastri**[40] it was by considering some of the above decisions and also the decisions reported in **BVR Reddy Vs. The Adoni Co-operative Central Stores Limited**[41], **Gulam Hussain Vs. Additional Rent Controller, Hyderabad**[42] and **Balakrishna Biharilal Vs. Board of Revenue, MP**[43] held that, when a document is unstamped or insufficiently stamped and party knows that it cannot be admitted in evidence thereby, he should have taken steps as option lies with him to pay the duty and the penalty when Court impounded the document or to ask to forward the same to Collector u/s.38(2) of the Act. *When he kept quite with no explanation for it, the enquiry which had begun ought not to be stalled till the document is sent to collector and received back from collector, which would take months or years that lead to delay in trials and enquires.* Further, in **Y.Peda Venkaiah vs. RDO**[44] it was held referring to the two earlier expressions **B.V. Reddy Vs. The**

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[38] 2004(4)ALT-177
[39] 2005(1)ALT-507
[40] 2000(3)ALD-649(DB)
[41] AIR-1975-AP–96
[42] AIR-1977-AP-397
[43] AIR- 1970-MP-74(FB)
[44] AIR 1981-AP 274

**Adoni Co-operative Central Stores Limited**[45], **Balaji Chit Fund, Jangoan Vs. Balaji Satyanarayana**[46] that, when original document was sent to the Collector at request of party u/s.38(2) of the Stamp Act by the Court, the trial of the case need not be stayed till the document is received back by the Court.

16. So far as the determination of Stamp duty payable on the instrument concerned, it is from the real nature of the transaction covered by the instrument from its contents and not from its mere nomenclature that is decisive to charge or to impound the instrument with stamp duty and penalty in directing to be payable. The nature of document to be determined to decide stamp duty is not only from the language employed therein from its' contents but also the purpose that is intended to serve. Thus, the substance of the transaction from whole contents of the document will be determined even to gather the intention of the parties, vide **Sahayanidhi Virudhnagar Limited through its Md. A.Saminatha Modailar Vs. A.S.R. Subramanya Nadar & Others**[47], **The State Government by Sub Registrar Vs. M.L. Manjunatha Shett**[48] and **Tungabhadra Industries Limited, Kurnool Vs. CTO Kurnool**[49]. For charging stamp duty it has to be considered as to whether the instrument covered is a single transaction or part or more than one transaction, vide decisions-**The Member, Board of Revenue Vs. Arthur Paul Benthall**[50]; **Somaiya Organics (India) Limited Vs. Board of Revenue, UP**[51]; **Madras Refineries Limited Vs.**

[45] AIR-1975-AP-96
[46] 1967(2)AnWR-268
[47] AIR-1951-Madras-209
[48] AIR-1972-Mysore-263
[49] AIR-1955-AP-257
[50] AIR-1956-SC-35
[51] AIR-1986-SC-403

**Controlling Revenue Authority Madras**[52]; **N.Guruva Reddy Vs. The District Registrar, Hyderabad**[53]; **S.T.Naryana Chettiar Vs. The Kaleewarar Mills Limited**[54]; **Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. M.Abdulla**[55]; **Chief Controlling Revenue Authority Vs. Chidambaram, Sugar Mills**[56] **and Inre Chief Controlling Stamp Authority Hyderabad Referring Officer**[57].

17. Regarding the stage when objection to be taken and when it amounts to waiver for not taking on stamp duty and how to mark the document concerned, in **Syam kumar Roy Sushil Kumar Agarwal**[58], it was held that, the document to be marked is in presence of parties and they have an opportunity to object for marking and though it is also the duty of the Court to determine judicially on sufficiency of stamp duty before admission, same arises generally when an objection in this regard was taken by the party in opposing for marking as insufficiently stamped. If it is marked not in the presence of opposite party or even from presence an objection for marking was taken the question of waiver or taking away the objection does not arise as held by the AP High Court in **Vemi Reddy Kota Reddy vs. Vemi Reddy Prabhakara Reddy**[59] and by the Calcutta High Court in **Biswajit Chakraborthy vs. Mira Sen Roy**[60]**,** however once objection is taken, it is the duty of the Court to determine judicially on

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52 AIR-1977-SC-500
53 AIR-1976-AP-417
54 AIR-1952-Madras-515
55 AIR-1970-Madras-2
56 AIR-1970-Madras-5
57 AIR-1956-AP-252; AIR-1962-AP-145; AIR-1970-Madras-10 & 1967(2)AnWR-515 (FB)
58 (2007) 1 LS (SC) 111
59 2004(3) ICC-832=
60 2002(2) CLJ-449

sufficiency of stamp duty of the document tendered in evidence, before it is admitted and exhibited, after such determination by the Court the document was admitted and exhibited and parties participated by examination and cross examination with reference to the same, such objection later not left open for Section 36 of the Stamp Act comes into play there from as held in the later expression of the Calcutta High Court in **Mujibar Rehman Mondal vs. Md. Abdulla Molla & others**[61] In this regard even the Expression in **Bipin Santhilal Panchal Vs. State of Gujarat**[62] **at para-12** in directing all courts to follow is that objections relating to stamp duty and registration are to be decided instantaneously though all other objection to be recorded subject to objection while marking to decide finally in the lis. ***Therefore and for more clarity it is to say, collateral purpose even known to the Registration Act is unknown to the Indian Stamp Act and the State Amendments made to it.***

18. Once the above position is clear on objection to be raised before admission of an instrument tendered in evidence and there from instant determination of nature of document for the instrument to be impounded with stamp duty and penalty, it is needful to say what is meant by instrument and whether a copy is an instrument. In **Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao**[63]; **State of Bihar Vs. Karam Chand Thapur & Brothers Limited**[64]; **E.Venkat Reddy & Others Vs. E.Yadgir Reddy and Others**[65]; **Akkam Lakshmi vs. Thota Bhoomaiah**[66] and also

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[61] 2005(1) CLJ-249
[62] AIR 2001 SC 1158
[63] AIR-1971-SC-1070
[64] AIR-1962-SC-110
[65] AIR-1973-AP-398

**V.Chidambaram Chettiar and Anotehr Vs. M.A. Mayappan Ambalam**[67] it were held that a copy of a document cannot be called as an instrument under the Stamp Act. Thus, it is only the original if produced it can be impounded and if not produced a copy cannot be received to impound, even party prepared to pay any stamp duty and penalty required by law. It was further held that when the original document not duly stamped and not produced in proof, a copy of the same since cannot be an instrument and for no question of stamp duty payable thereon and further it is not at all admissible as secondary evidence even, in view of bar under Section-35 of the Stamp Act. When once the original is available and even a certified copy of the exhibited original is produced, the question of impounding of certified copy does not arise but for the original and thus original lease to be produced where it is required to impound duly. Leave about registration required or not even to admit for collateral purpose for want of registration from combined reading of Section 17 read with Section 49 of the Registration Act, so far as stamp Act and requirements of stamp concerned, that not duly stamped document question of marking for collateral purpose is unknown to law. Equally question of impounding certified copy or copy to the original for not being an instrument as per the Section 2(14) of the Stamp Act is also unknown to law.

19. For a copy cannot at all be called as instrument and thus, it is only the original document that can be called as instrument and what is the bar to raise objection to the other side under Sections 35 and 36 of the Stamp Act is once marked without

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[66] 2002(5)ALT-624=(4)ALD-808=(2)LS-467
[67] AIR-1946-Madras-298; 1961(1)AnWR-183.

objection as to stamp duty, it cannot be left open to raise only in the same proceeding and there is no such bar to apply even between the same parties in a different proceeding. For more clarity it is needful to extract herein Sections 33,35 and 36 of the Stamp Act, which read that:

"**33. Examination and impounding of instruments:** (1) *Every person having* by law or consent of parties *authority to receive evidence*, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, *if it appears to him that such instrument is not duly stamped, impound the same*.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a *stamp of the value and description required by the law in force in [3][India] when such instrument was executed or first executed*:

**PROVIDED** that-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898:

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, (a) [27][the [6][State Government]] may determine what offices shall be deemed to be public offices; and (b) [27][the [6][State Government]] may determine who shall be deemed to be persons in charge of public offices.

**35. Instruments not duly stamped inadmissible in evidence, etc.:-** *No instrument chargeable with duty shall be admitted in evidence* ***for any purpose*** *by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped*:

**PROVIDED** that-

(a) *any such instrument* not being an instrument chargeable [33][with a duty not exceeding ten naye paise] only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the *amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion*;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) *nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act*

**36. Admission of instrument where not to be questioned:-** *Where an instrument has been admitted in evidence,* ***such admission shall not,*** *except as provided in section 61*[68], ***be called in question at any stage of*** **the same suit or proceeding** *on the ground that the instrument has not been duly stamped.*

20. Thus, the expression placed reliance on by the learned counsel for the revision petitioner of **Lakkaraju Radha Krishna** supra is without actual referring to the wording of the Sections 33 to 36 of the Indian Stamp Act supra, which categorically say from Section 36 that waiver of objection is only confined to same proceedings between the parties and thereby what is laid down of the parties inter se even in separate proceeding that waiver of objection applies is not correct and the expression thereby is not

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[68] **61. Revision of certain decisions of courts regarding the sufficiency of stamps:**

(1) When any court in the exercise of its civil or revenue jurisdiction of any criminal court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the court to which appeals lie from, or references are made by, such first-mentioned court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

**PROVIDED** that-

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such court, was payable in respect or the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

laying down the correct principle of law to rely or allow to place reliance thereon and needless to say it is if not *per-incurium*, at least hit by subsilentio for the reasons supra. In fact correctness of the expressions **in Lakkaraju Radha Krishna** supra and **Tayi Rama Krishna Rao** supra came for consideration before another single judge of this Court in CRP Nos.1156,1158,1159 & 1161 of 2014 in **Smt.Aruna Sagar and others Vs M/s.Shruthi Infrastructure Corp. and others**, dt.06-11-2015 and it was held that both the expressions did not correctly decide the law.

21. Thus, it is the duty of the party to produce original document to impound if at all to rely as also laid down by this Court in **AS.MP.NO.421 OF 2013** in **AS.NO.475 OF 1997, vide order dt.04-12-2013,** where for the non-possessory and unregistered sale agreement of 2011, copy sought to be admitted, held is not an instrument in directing the vendee a third person to appeal suit lis to produce the original and then to impound on payment of stamp duty and penalty by the petitioner-appellant for who wants to rely and it is after impounding and certifying to that effect on original, by marking and substitution with certified Xerox copy, to return the original to said third party to the appeal suit.

22. In this case on hand, as original is in another suit proceedings, it is left open to the party to take return of the original by substitution of certified Xerox copy and directly to approach the District Registrar concerned for impounding and duly cause certifying of stamp duty is impounded and paid, and if not on production before court or in seeking to send for from that court record the original and on such receiving by court either impound by court with stamp duty and penalty of ten times value

on the original or to make a request to the court to refer to the District registrar concerned for impounding and duly cause certifying of stamp duty is impounded and paid. The above procedure to be followed u/s.31 to 42 has been clearly laid down by the Apex Court in **Chilukuti Gangulappa vs. RDO. Madanapalli**[69] holding that, when a document is found insufficiently stamped, when the instrument is presented before Civil Court, the court cannot exhibit without collection of stamp duty with penalty if party prepared to pay or else the party can ask the Court to forward the same to Collector, then the Court has to forward for impounding and certifying then to receive in evidence. Under Section-33 r/w. Section-38(1), the Court has the power to admit such document in evidence only if the party producing the same pays the stamp duty together with 10 times of that stamp duty amount as penalty, on compliance with such condition u/s. 38(1), the Court in such case has to forward only a copy of the document to the Collector (Registrar), together with the amount collected from the party for taking adjudicatory steps. But, if the party refuses to pay the amount impounded by the Court on the document and asks the Court to forward the same to Collector(Registrar), the Court has no option except to forward. On receipt of the document through either of the said avenues-the Collector(Registrar) has to adjudicate. He can not refuge to adjudicate or to say that-if Civil Court already impounded, since impounded he won't interfere. Section-40(1)-says that-when Collector(Registrar), impounds document u/s.33 or receives any instrument sent to him u/s.38(2), the Collector(Registrar),

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[69] AIR-2001-SC-1321

u/s.40(1) r/w.33 and 38(2) shall adopt the procedure laid down u/s.40(1) on the question of deficiency of stamp duty.

23. It is on such impounding and duly certifying as per the procedure supra established by law, it comes the question for consideration as to the same then admissible under the stamp Act, for want of registration can be admitted for collateral purposes. In this regard, coming to what the provisions of the Registration Act say particularly from Sections 17,18&49 of the Act as per the central and State amendments are:

**Section17-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 No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

(a) Instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(AP amendment by Act,4 of 1999, w.e.f.01-04-1999-leases of immovable property, substituted for above)

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

(AP amendment by Act,4 of 1999, w.e.f.01-04-1999-added cls.f & g:

f) Any decree or order or award or a copy thereof passed by a civil Court, on consent of the defendants or in circumstantial evidence but not on the basis of any instrument which is inadmissible in evidence under Section 35 of the Indian Stamp Act, 1899, such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of Rs.100/- and upwards to or in immovable property; and

g) Agreement of sale of immovable property of the value of Rs.100/- and upwards.

PROVIDED that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

[Central amendment by Act,48 of 2001, w.e.f.24-09-2001 added 1(A)]:

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 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 purpose of the said Section 53-A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(AP amendment & Central amendment supra):

(v) any document other than the documents specified in sub-section 1(A), except an agreement of sale as mentioned in clause (g) of sub-section (1), not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court, not being a decree or order or award falling under Clause (f) of Sub-section (1) (A.P. Amendment) except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.

[Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

Above explanation was omitted by A.P. Act 4 of 1999 supra

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

**Section 18-Documents of which registration is optional:**

Any of the following documents may be registered under this Act, namely:-

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

(Clause (c) is omitted by the A.P. Amended Act 4 of 1999).

[(cc) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by section 17 to be registered.

**Section 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 (4 of 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, (xxxx)*[70] or ***as evidence of any collateral***

[70] The words 'or as evidence of part-performance of a contract for the purposes of Sec.53-A of the Transfer of Property Act, 1882 was omitted by Act 48 of 2001 supra.

***transaction not required to be effected by registered instrument***."

Thus the contingency permits in terms of the proviso appended to Section 49 thereof is an ***unregistered document can be received as evidence of any collateral transaction.***

24. In this regard as per the amendments under the Central & State Act supra: As per Amendment in 2001 by Parliament Act, 48 of 2001, which came in to force w.e.f., dated-24-9-2001 to Section-17 after Section-17(1)(a)-inserted as Section-17(1A)-"which says that *the documents containing contracts to transfer for consideration, any immoveable property for the purpose of Section-53A-TP. Act shall be registered after commencement of this Act, if not they shall have no effect for purposes of Section-53A-TP. Act*. Similar amendment is made in Section-53A of the TP. Act by omitting there from the words "the contract though required to be registered has not been registered or".

25. **As per Section-17(1)(d)&(g)-Registration is compulsory** either in case of lease or in case of agreement for sale of immoveable property, irrespective of the value as per the A.P. Amendment by Act, 4 of 1999, w.e.f. 1.4.1999. **Section-49 of the Act is not simultaneously amended by the AP Act supra, but for proviso to Section 49 to the extent of possessory sale agreement under doctrine of part performance.** Thus from the above, an unregistered document affecting immoveable property and required to be registered u/s. 17 or as per the TP. Act, **may be received in evidence of a contract in a suit for specific performance under chapter 2 of the Specific Relief Act or as evidence of any collateral transaction not required to be**

**effected by the registered instrument.** In **B.Narayamma & Others Vs. Ramaiah**[71] and **Dimilli Narayana and Others Vs. Dimilli Satyanarayana**[72] besides in **Mary's Education Society Vs. Qutubuddin Ahmed and Others**[73] it was held by this Court that as per Section-49 an unregistered document may be received for the purposes mentioned therein. *Thus Section-49 proviso is only an exception to the general rule that unregistered document is inadmissible in evidence. This Court specifically in relation to even unregd. Gift/settlement deed held at para 4(a) in* ***G.Narayana Reddy Vs. P.Narayan Reddy***[74] relying upon the expressions of the Patna High Court in ***Sm.Kheni Mahatani Vs. Charan Napit***[75] referring also to several earlier expressions of the High Courts of Calcutta and Allahabad holding an unregistered sale deed which is inadmissible in proving title, nevertheless it could be referred to as explaining the nature and character of the possession thereof held by the party and from the transfer effected in violation of the law, **however, the transferee from proof of possession therefrom** would be deemed to be in adverse possession ever since the date of the transfer as also held by the Privy Council in **Ram Rattan Vs. Parma Nand**[76] saying unregistered documents are admissible to show nature of possession as a collateral purpose and so far as the unregistered sale deed, even not admissible to prove title but explaining character of possession can be admitted for the collateral purpose and the privy Council for that conclusion mainly placed reliance on the earlier expression of the Privy

71 1975(2)APLJ-298
72 AIR-1976-AP-74
73 AIR-2003(NOC)41
74 2016(3) ALT 12
75 AIR 1953 Patna 365
76 AIR 1946 PC 51

Council in ***N.Varada Pillai Vs. Jeevarathnammal***[77] wherein it was held that ***gift though invalid as not being made by a registered document could be looked into as explaining the nature and character of possession thenceforth***. In fact, said Privy Council expression arising out of Madras High Court's judgment is a short and crisp of a Four-Judges Bench in ***Varada Pillai*** in holding **the unregistered gift where under donee enters in possession and when the donor did not effect a registered gift deed but allowed donee to enter into possession of the gifted property**, even the gift must be a registered one under Section 123 of the Transfer of Property Act and **under Section 91 of the Evidence Act the recitals therein cannot even be used as evidence of a gift having been made,** the defendant's case of the possession of the property thereunder which is not connected with the main transaction and not a decision to arrive from recitals as to nature and character of main transaction can be looked into.

26. The concepts ***"main purpose"*** and ***"collateral purpose"*** play a pivotal role for admitting or not admitting in evidence an un-registered document compulsorily registerable. The main purpose means the purpose mentioned in Section-17 i.e. for the purpose of creating, declaring, assigning, limiting or extinguishing a right to immoveable property, etc. Such a document when compulsory registerable not admissible in evidence for the said main purposes. The effect of non-registration of such an instrument compulsory registerable is that the instrument doesn't affect any immoveable property comprised

[77] AIR 1919 Privy Council 44

therein nor can it be received as evidence of any transaction affecting such property. It does not follow, however, that the document is wholly irrelevant. Though the instrument is not admissible for the purpose of proving a concluded transaction transferring an interest, yet it can be received in evidence for collateral purposes. Collateral purpose is any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immoveable property. The proviso to Section-49 permits the use of an un-registered document even compulsorily be registered, as evidence of a collateral transaction within the meaning of Section-49 proviso. Collateral transaction means a transaction other than the transaction affecting the immoveable property but which is in some ways connected with it. See-1999(3)MLJ-423 & AIR-1942-Bombay-268. The expression "collateral transaction" is not used in the sense of an ancillary transaction to a principal transaction or subsidiary transaction to a main transaction. The root meaning of the word "collateral" is running together or running on parallel lines. The transaction as recorded would be a particular or specific transaction. But it would be possible to read in that transaction what may be called the purpose of the transaction and what may be called a collateral purpose. The fulfilment of that collateral purpose would bring into existence a collateral transaction, which may be said to be a part and parcel of the transaction but nonetheless, a transaction which runs together with or on parallel lines with the same. Thus, a collateral purpose is a purpose which must be unrelated to the terms and conditions of the main purpose of the transaction covered by the document. It must be independent of, or divisible from the transaction which requires registration, and it must be a transaction not by itself required to be effected by a registered document. The term collateral purpose is a very vague one and therefore it is the courts that must decide in each case depending upon facts and circumstances and from contents, as to whether the parties who seek a compulsory but unregistered document when not admissible to main purpose, for a purpose which is really a collateral purpose to mean other than for any of the main purposes mentioned as held in **K.Panchapagesu Aiyyar Vs. K.Kalyanasundaram Aiyyar**[78]. It is because a party cannot use such un-registered document by the simple device of calling it as collateral purpose. In legal proceedings what one cannot directly bring about, cannot indirectly bring about is held in **A.C.Lakshmipathy and Others Vs. A.M. Chakrapahi Reddiar**[79]. In-AIR-1932-PC-55 and **Kashinath Bhaskar Datar Vs. Bhasker Viveshwar**[80] it was clearly held that to decide whether registration required or not the words creating, declaring, assigning, limiting or extinguishing a right to immoveable property are ***ejusdem-generis*** and imply a definite change of legal rights in the property that is main purpose. Where the document doesn't reflect any definite change of legal rights in the property and merely recites what the existing rights therein are i.e. mere acknowledgment of a fact took place, likewise merely recites with whom the possession of the property lies, it cannot be construed from the contents as of creating, declaring, assigning, limiting or extinguishing any rights in immovable property. See also **Uma Devi and Others Vs. Shaik**

[78] AIR-1957-Madras-472
[79] 2001(1) MLJ-1 or 115
[80] AIR-1952-SC-153

**Hussaini and Others**[81], **Harendra H. Mehta and Others Vs. Mukesh H.Mehta**[82] & **Ramlaxmi Ranchlodal Vs. Bank of Baroda, Hyderabad**[83]. In-1969(1)SCWR it was held that evidence as to character of possession is being considered as collateral purpose. See also **Hari Waman Rao and Others Vs. Pappula Narsimlu**[84]. In-AIR-1959-SC-199-it was held that character of possession prior to date of document can not be regarded as collateral purpose. *The test would be whether the party relying on the registered document seeks to rely on its terms for "affecting such property or conferring such power"*. If the genuineness of a document is questioned, the execution of the document itself will have to be proved and that cannot be a collateral purpose. For instance, an unregistered lease deed cannot be relied upon to enforce the terms of the agreement such as the period of tenancy, quantum of rent, mutual obligations under the agreement, where the lessee has the right to sub-lease or to carry out the repairs to the building etc., In other words, **what is prohibited is the attempt to enforce the terms of the unregistered document, but not to establish the purpose for which the property was given possession i.e., nature of possession which is a collateral purpose**. See **Sardar Amar Singh and Others Vs. Smt Surinder Kaur**[85]; AIR-1977-AP-371; 1975(2) APLJ-298; **Gangayya and Others Vs. S. Madan Chand Samdaria**[86]; **Raghunath Singh and Others Vs. Kishanla (deceased LR)**[87]; 1975(2) AnWR-226

[81] 1999(1)ALT-136=(1)ALD-191
[82] AIR-1999-SC-2054
[83] AIR-1953-Bombay-50
[84] AIR-1977-AP-371
[85] AIR-1975-MP-230
[86] AIR-1973-Madras-262
[87] AIR-1986-MP-215

=(1)APLJ-372; **S.K.Agarwal Vs. M.Venkateswarlu[88]-** all the above cases are relating to unregistered lease deed or lease agreements. In **Ambati Durgamma vs. Pericherla Ragapathiraju[89]** it was held that an unregistered lease deed, which is compulsorily registerable can be looked into for the purpose of proving nature of possession of lessee over leasehold land. In **Giri Yadav vs. L.Ramesh Goud[90]** it was held that a lease deed in respect of immovable property for a period exceeding one year or reserving yearly rent requires registration. However, unregistered lease is admissible in evidence for collateral purpose of proving possession of a party.

27. The character of transaction from contents of the document in question cannot be considered as collateral purpose and the law is very clearly laid down by the Apex Court in **K.B. Saha and sons (P) Limited Vs. Development Consultant Limited[91]** and the same was reiterated in ***S.Kalavathi V. V.R.Somasundaram[92]*** which reads as follows:

1. *A document required to be registered, if unregistered is not admissible into evidence under Section 17 of the Registration Act.*
2. *Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
3. *A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
4. *A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc., any right, title or interest in immovable property of the value of one hundred rupees and upwards.*
5. *If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

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[88] 2002(3)ALD-186
[89] 2005(1)ALD-607
[90] 2005(4)ALT-411
[91] (2008) 8 SCC 564
[92] (2010)5 SCC 401

28. The same is also reiterated by this court in CRP 158/2016 dated 09.08.2016 holding that character of possession from the transaction of sale or gift or lease or the like though cannot be let in from contents of document as if a collateral purpose, it can be used even the document is unregistered, for the collateral purpose to show only possession without going in to the contents of the document as to character of transaction. The Apex Court in **Bondar Singh** supra also held as referred supra of any conveyance must be even by a sale deed duly stamped and registered and even not admissible in evidence from want of registration but it can be considered as to nature of possession for collateral purpose.

29. In fact as to what objections to be decided instantaneously and what are to be postponed while marking a document subject to objection is well laid down in the expression of the Apex Court in **Bipin Shantilal Panchal** referred supra that but for stamp duty and registration to be decided instantaneously, the other objections, if any, be left open to decide ultimately. Thus, the lower Court is right in upholding the objection raised of the requirement of stamp duty on the document and thereby the certified Photostat copies obtained of the same marked in another proceeding without objection on stamp duty, can be marked in this case muchless be permitted as a secondary evidence. Thereby for this Court while sitting in revision there is nothing to interfere.

30. Accordingly and in the result, the revision petition is disposed of subject to observation that the remedy is however left open to the revision petitioner to seek for production of the original from the other proceedings by substitution of certified copy therein

or by seeking to send for and to cause impound on the original being produced and then to exhibit subject to any objection left open for want of registration, to mark only for collateral purpose as to nature of the possession and not the character of the transaction or any contents of the transaction covered by the instrument.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 23.08.2016
Note: L.R. copy to be marked
(B/o)
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