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**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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CIVIL REVISION PETITION No.4599 of 2015

Between:
M/s Srinivasa Builders, Hyderabad,
Rep. by its Managing Director V. Nagi Reddy
....Petitioner

and

A. Janga Reddy (Died) rep. by LRs
....Respondents

ORDER PRONOUNCED ON : 08.02.2016

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : YES
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES
see the fair copy of the Judgment?

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HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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Rep. by its Managing Director V. Nagi Reddy
...Petitioner

vs.

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... Respondents

!Counsel for the Petitioner : Sri Harender Pershad

^Counsel for the Respondents : Sri K. Prabhakar Rao

<Gist :

>Head Note :

? Cases referred

- [1] 1990(3) ALT 305 (F.B.)
2 (2010) 5 SCC 401
3 (2003) 8 SCC 752
4 (2006) 11 SCC 331
5 2006(4) ALT 216
6 2011(6) ALT 671
7 (2011) 14 SCC 66
8 2014 (1) ALT 577
9 2015(3) ALT 575

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 4599 of 2015

Order:

The petitioner herein is the plaintiff in OS No.94 of 2006 on the file of II Additional Senior Civil Judge, Mahaboobnagar. The said suit was filed for specific performance of an agreement of sale in respect of 30 plots in an extent of Ac.1-20 gts., in the layout plan in Survey Nos.13, 14 and 15, situated at Kalwakurthy town.

2. The first defendant filed a written statement and the same was adopted by the defendants 2 and 3. The fifth defendant filed a separate written statement.

3. During the course of evidence, Exs.A1 and A2 were marked by PW.1 apart from other Exs.A3 to A28 on 15.10.2014. Ex.A1 was the agreement of sale dated 19.05.1999 and Ex.A2 was the agreement of sale dated 25.06.1999.

4. The defendants in the suit filed IA No.27 of 2015 in the said suit to de-exhibit the said Exs.A1 and A2 and collect proper stamp duty and penalty stating that in the written statement filed by defendant No.1 it was specifically stated that the said two agreements were not properly stamped as there was a recital in the said agreements that the possession of property was delivered to the plaintiff and thus, they are inadmissible in evidence. However, when the Court directed the office to determine the payment of stamp duty and penalty on those documents, the office wrongly calculated the stamp duty and penalty and collected less stamp duty and penalty on those documents without looking into the recitals in the documents with regard to delivery of possession. After collection of stamp duty and penalty, those documents were marked on 15.10.2014 under the mistaken impression that proper stamp duty and penalty was paid. In those circumstances, the defendants wanted to de-exhibit the said two agreements of sale.

5. A counter was filed by the plaintiff stating that two agreements of sale were executed on stamp papers worth of Rs.50/- and Rs.100/- respectively. With respect to the agreement of sale executed on Rs.50/- stamp paper, the Court imposed stamp duty and penalty, the amount was already remitted and in view of the same, the said document was marked as exhibit without any objection from the defendants. Therefore, the defendants cannot raise objection at the stage of cross-examination.

6. The lower Court observed that the recitals in Ex.A1 - agreement of sale dated 19.05.1999 disclose that the deceased first defendant agreed to sell the land of an extent of Ac.7-00 in Survey Nos.13 to 15 at Kalwakurthy, received an amount of Rs.20,000/- as advance and delivered possession to the plaintiff. Ex.A2 is another agreement of sale. It was also noticed that there was a specific recital in Exs.A1 and A2 that possession of land was delivered to the vendee. If the agreement of sale coupled with delivery of possession was executed, the document has to be executed on a stamp paper as specified under Article 47-A of Schedule

1-A of the Indian Stamp Act, 1899 (for brevity 'the Act') and since the penalty was collected under Article 6 instead of Article 47-A of the Act, both the documents were held to be insufficiently stamped documents. It was held by the trial Court that, though, the defendants did not raise objection at the time of marking of the documents, they can raise the objection with regard to admissibility at a later point of time and, accordingly, allowed the application, by an order dated 11.09.2015. Challenging the said order, the present Civil Revision Petition is filed.

7. In view of the above narration of events, facts in the case are not in dispute. The only point that has to be considered in the present petition is whether the defendants, who did not raise objection to the marking of documents by PW.1 in his evidence, can raise an objection with regard to admissibility of documents at a later stage.

8. Admittedly, Exs.A1 and A2 contain the recital with regard to delivery of possession. As observed by the trial Court, the stamp duty and penalty were collected assuming that the documents did not contain a recital with regard to possession. Now the trial Court noticed the defect and allowed the objection raised by the defendants.

9. In this background, we have to see the relevant provisions of the Indian Stamp Act. Chapter IV deals with instruments not duly stamped. Section 33 obligates the persons having authority to receive evidence to impound an instrument not duly stamped. Section 35 says that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having authority to receive evidence, unless such instrument is duly stamped subject to exceptions mentioned therein. Section 36 says that where an instrument has been admitted in evidence, such admission shall not be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped, but subject to Section 61 of the Act. Section 37 provides for making rules by the State Government where an instrument bears a stamp of sufficient amount but of improper description. The procedure for dealing with the impounded instruments is provided in Sections 38, 39 and 40. Section 42 provides making an endorsement with regard to duty and penalty paid under the instrument by the person admitting such instrument in evidence. Sub-Section (2) thereof provides that every instrument so endorsed shall be admissible in evidence and may be registered and acted upon and authenticated as if it had been duly stamped and shall be delivered. Section 61 empowers the appellate or revisional Court to review the decision of the Court of original jurisdiction with regard to admission of any instrument in evidence.

10. In the instant case the procedure contemplated under the provisions of Stamp Act were followed at one point of time but improper stamp duty and penalty were collected under the misconstruction of the documents. Now the objection is with regard to said collection of improper stamp duty and penalty at that time and improper marking of the documents.

11. Order 13 of CPC provides for production, impounding and return of documents. Rule 3 of the said Order provides that 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. Now the present case involves the interpretation of Sections 35 and 36 of the Indian Stamp Act and Rule 3 of Order 13 CPC.

12. As stated above, Section 35 of the Indian Stamp Act prohibits reception of improperly stamped document in evidence. Section 36 bars raising an objection of admitted documents except under Sec.61 of the Act. Rule 3 of Order 13 CPC empowers the Court to reject any document which it considers irrelevant or otherwise inadmissible. The procedure contained in the Code of Civil Procedure governs the suits.

13. In the light of the above provisions it has to be seen whether the trial Court which admitted the documents in evidence can reject the documents subject to payment of stamp duty and whether the party who did not raise objection at the time of marking the documents can raise an objection with regard to improper stamp duty at a later point of time.

14. If one reads Rule 3 of Order 13 CPC along with Section 61 of the Indian Stamp Act, which is an exception to Section 36, it is clear that the matter regarding admissibility of improperly stamped document does not become final on receiving the said document in evidence. The original Court on its own or at the instance of the objector or by the appellate or revisional Court can review the decision of admissibility of such document.

15. The learned Counsel for the Petitioner relied on the decisions reported in **The Land Acquisition Officer, Vijayawada Thermal Station v. Nutalapati Venkata Rao**^[1], **S. Kaladevi v. V.R. Somasundaram**^[2], **RVE Venkatachala Gounder v. Arulmigu Viswesaraswami and VP Temple**^[3], **Shyamal Kumar Roy v. Sushil Kumar Agarwal**^[4], **Isra Fatima v. Bismillah Begum**^[5], **C. Prithvi Raj Reddy v. M/s GPR Housing Pvt.Ltd., rep. by its M.D.**^[6], **SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited**^[7], and **Boggavarapu Narasimhulu v. Sriram Ramanaiah**^[8], whereas the learned counsel for the respondents relied on a decision of this court in **G. Sukender Reddy v. M. Pullaiah**^[9].

16. A Full Bench of this Court in **The Land Acquisition Officer, Vijayawada Thermal Station's** case (1 supra), considered the issue with regard to raising of objection as to the mode of proof subsequently on the ground that nobody connected with the deed was examined in a case arising under the Land Acquisition Act. The Court observed as follows:

“Point No. 1:-- we shall first refer to certain procedural provisions of the C.P.C. Order 13, R. 1, C.P.C. permits production of documentary evidence and the Court is enjoined to receive all the documents. O.13, R. 3 states that 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. Under O. 13, R. 4, C.P.C. the Court is to endorse on every document which has been 'admitted' in evidence, the following particulars, namely (a) the number and title of the case, (b) the name of the person producing the document, (c) the date of production and (d) a statement of its having been so admitted, and the endorsement shall be signed or initialled by the Judge.

Thus, there are two stages relating to documents filed in Court - one is the stage when all the documents are filed by the parties in the Court and the next stage where the documents are formally proved and tendered in evidence. It is at the latter stage that the Court has to decide whether the documents so tendered are to be admitted or rejected. The words 'admitted in evidence' mean the making of the document part of the judicial record of the case. The endorsement by the Court as provided in O. 13, R. 4, C.P.C. is intended to be a record of the fact that the document 'has been admitted' in evidence after the necessary legal formalities have been complied with. Under O. 13, R. 6, C.P.C. where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in Clauses (a), (b) and (c) of Rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge. Finally, O. 13, R. 7, C.P.C. provides that every document which has been admitted in evidence (or a copy thereof where a copy has been substituted for the original under Rule 5), shall form part of the record of the case and documents not admitted shall not form part of the record and shall be returned to the person producing the same.

It is now well settled, by a long series of decision of all Courts, to which it is unnecessary to refer, that there is a basic difference between the mode of proof of a document and its admissibility. The mode of 'proof of a document is a matter of procedure while its admissibility is a matter of substantive law, such as the [Registration Act](#) or the [Stamp Act](#) or other specific provision. If the objection is as to the admissibility of the document, then the mere making of the document as an exhibit, does not preclude any objection being raised later as to its admissibility. But so far as the mode of proof is concerned, it is well-settled that, if an objection as to the mode is not raised at the stage when the document is marked as evidence in the case under O. 13, R. 4, C.P.C such an objection cannot be raised at any subsequent stage.”

17. The decision of the Hon'ble Supreme Court reported in **S. Kaladevi's** case (2 supra), is a decision relating to non-registration of the document and we are not concerned in the present case with regard to the same.

18. The authoritative case appears to be **RVE Venkatachala Gounder's** case (3 supra), wherein the

Hon'ble Supreme Court considered the issue of admissibility of documentary evidence and 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 later 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.**” (emphasis supplied)

19. In a decision of the Hon'ble Supreme Court in **Shyamal Kumar Roy's** case (4 supra), the issue with regard to admission of insufficiently stamped document came up for consideration. Relying on Section 36 of the Stamp Act it was held that if no objection was taken with regard to admissibility of the document, at a later stage the objector cannot be permitted to turn round and contend that the document is inadmissible in evidence. The appellant having consented to the document being marked as an exhibit has lost his right to reopen the question. The observations of the Hon'ble Supreme Court are as follows.

“[Section 36](#), however, provides for a 'stand alone' clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf, viz., the provisions contained in [Section 61](#) providing for reference and revision. In a case where [Section 33](#) of the Act, as amended by [West Bengal Act](#) would be applicable, the proviso appended to Sub-Section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument.

The agreement, as notice hereinbefore, was executed in the year 1995. The applications purported to be under Section 151 of the Code of Civil Procedure, 1908 were filed by Appellant only on 16.2.2005. The Development Agreement, as noticed hereinbefore, was admitted in evidence on 17.2.2003. The learned Trial Judge as also the High Court relied upon a decision of this Court in *Javer Chand* (supra). An attempt to distinguish the said decision of this Court was made, inter alia, on the premise that therein this Court was concerned with interpretation of the provisions of Marwar Stamp Act, 1947 in respect of two mudatti hundis, which have been admitted in evidence on payment of duty and penalty, but sought to be made inadmissible in evidence in terms of the provisions contained in the 1947 Act. This Court opined that once the said document was admitted in evidence, the new Act i.e. the 1947 Act would be inapplicable, stating :

“Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross- examination of their witnesses, [Section 36](#) of the Stamp Act 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.”

The said decision, therefore, is an authority for the proposition that [Section 36](#) would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an

instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.”

20. On the same lines, a learned single Judge of this Court in **Isra Fatima’s** case (5 supra) and **C. Prithvi Raj Reddy’s** case (6 supra), held that, in view of Section 36 of the Stamp Act, the admissibility cannot be challenged subsequent to marking of document as an exhibit.

21. In the decision of **Shyamal Kumar Roy’s** case (4 supra) and the decisions of this Court in **Isra Fatima’s** case (5 supra) and **C. Prithvi Raj Reddy’s** case (6 supra), there is no reference to the case of **RVE Venkatachala Gounder’s** case (3 supra) and the consideration of effect of Rule 3 of Order 13 CPC and Section 61 of the Indian Stamp Act. Hence, those decisions cannot be taken in aid for the purpose of deciding the present issue.

22. In **SMS Tea Estates Private Limited’s** case (7 supra), the Hon’ble Supreme Court was considering a case of compulsorily registerable document which was not registered and not duly stamped. The relevant observations of the Hon’ble Supreme Court are as follows.

“Therefore, when a lease deed or any other instrument is relied upon as contending the arbitration agreement, the court should consider at the outset, whether an objection in that behalf is raised or not, whether the document is properly stamped. If it comes to the conclusion that it is not properly stamped, it should be impounded and dealt with in the manner specified in [section 38](#) of Stamp Act. The court cannot act upon such a document or the arbitration clause therein. But if the deficit duty and penalty is paid in the manner set out in [section 35](#) or [section 40](#) of the Stamp Act, the document can be acted upon or admitted in evidence.

We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registrable) and which is not duly stamped :

(i) The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registrable.

(ii) If the document is found to be not duly stamped, [Section 35](#) of Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under [section 33](#) of the Stamp Act and follow the procedure under [section 35](#) and [38](#) of the Stamp Act.

(iii) If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector (as contemplated in [section 35](#) or 40 of the [Stamp Act](#)), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.

(iv) Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registrable. If the document is found to be not compulsorily registrable, the court can act upon the arbitration agreement, without any impediment.

(v) If the document is not registered, but is compulsorily registrable, having regard to [section 16\(1\)\(a\)](#) of the Act, the court can de-link the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 8 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

(vi) Where the document is compulsorily registrable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the Arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance and (b) as evidence of any collateral transaction which does not require registration.”

23. A learned single Judge of this Court considered the case of an unregistered agreement of sale exhibited in **Boggavarapu Narasimhulu’s** case (8 supra), and following the judgment of the Full Bench of this Court held that the objector can raise an objection with regard to admissibility of a document on the ground that it has been not duly registered despite the fact that the said document has already been exhibited and admitted in

evidence.

24. I have considered elaborately the issue with regard to marking of document in **G. Sukender Reddy’s** case (9 supra), and it was held that it is the duty of a Court of Law to exclude all irrelevant or inadmissible evidence even if no objection was taken by the opposite side.

25. In view of the above legal position, the order of the trial Court is sustainable and it does not warrant interference. However, if the document does not require registration and it is only insufficiently stamped, the trial Court can take necessary action under the provisions of the Stamp Act as aforesaid.

26. Accordingly, the Civil Revision Petition is dismissed subject to the above observations. However, in the circumstances, no costs.

27. As a sequel thereto, the miscellaneous petitions, if any, pending in the Civil Revision Petition shall stand closed.

A.
Date: 08th February 2016
Nsr

RAMALINGESWARA RAO, J.

[\[1\]](#) 1990(3) ALT 305 (F.B.)
[\[2\]](#) (2010) 5 SCC 401
[\[3\]](#) (2003) 8 SCC 752
[\[4\]](#) (2006) 11 SCC 331
[\[5\]](#) 2006(4) ALT 216
[\[6\]](#) 2011(6) ALT 671
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[\[9\]](#) 2015(3) ALT 575