

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ Civil Revision Petition No. 1873 of 2017

% 19.09.2017

A.P. Laly

..Petitioner

Vs.

\$ Gurram Rama Rao

... Respondent

! Counsel for the Petitioner : Sri Venkateswarlu Chakkilam

^ Counsel for the Respondent : Sri M.R.S. Srinivas

< Gist :

> Head Note :

? Cases referred

- 1.1996(1) ALT 917 (FB)
- 2.AIR 1956 SC 12
3. AIR 1960 AP 155
4. AIR 1961 SC 1655
5. AIR 1972 SC 608
6. 1997(5) ALT 628
7. 2002(5) ALD 660
8. 2004(2) AndhWR 189
9. (2006) 11 SCC 331
10. 2016(3) ALD 235
11. 2016(2) ALT 321
12. AIR 1916 PC 27
13. (1955) 1 Mad LJ 457
14. AIR 1956 Mad 250
15. AIR 1962 AP 398
16. AIR 1966 Allahabad 392 (FB)
17. (2003) 8 SCC 752
18. 2017(5) ALD 228



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

* * * *

Civil Revision Petition No. 1873 of 2017

Between

A.P. Laly.

...Petitioner

And

Gurram Rama Rao

.. Respondent

JUDGMENT PRONOUNCED ON : 19.09.2017



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 1873 of 2017

Order:

Heard learned counsel for the petitioner and learned counsel for the respondent.

The plaintiff is the petitioner herein. She filed O.S.No.6 of 2014 on the file of VI Additional District Judge, Markapur for recovery of an amount of Rs.18,92,000/- from the defendant. The suit was filed on the basis of a hand letter executed on 14.02.2011. The evidence of the parties was completed. During the course of evidence of PW.1, the said hand letter was marked as Ex.A1 and was treated as an agreement under Article 6(A) of Schedule I(A) of the Indian Stamp Act (for short 'the Act'). PW.1 was cross-examined. When the case was posted for arguments on defendant's side, the defendant filed I.A.No.490 of 2016 stating that the said document is not an agreement but it is a bond within the meaning of Section 2(5)(b) of the Act as laid down by the Full Bench of this Court in B. Bhavannarayana v. Kommuru Vullakki Cloth Merchant Firm¹, and it is liable to be stamped under Article 13 of Schedule I(A) of the Act and not under Article 6(A) (iv) of Schedule I(A) of the Act. It was stated that it happened by inadvertence. Though the said document was marked as exhibit, it does not amount to admission and he has got a right to challenge the admissibility of the said document. Accordingly, he sought to de-exhibit the said document.

A counter was filed stating that the said application was filed only to drag on the matter. It is further stated that the plaintiff paid an amount of Rs.1100/- towards stamp duty and penalty on the above said

¹ 1996(1) ALT 917 (FB)

hand letter at the time of filing of the suit on 25.03.2014 and the same was endorsed on the back side of the hand letter.

On the above averments, the trial Court framed the following points for determination:

- “1. What is the nature of the document marked under Ex.A1?
2. Whether the document marked as Ex.A1 can be de-exhibited, if so to what result?”

The trial Court, by its order dated 17.02.2017, held that the plaintiff has to pay the stamp duty and penalty and, accordingly, allowed the application in part directing the plaintiff to pay the remaining stamp duty and penalty under Article 13 of Schedule IA of the Act after deducting the stamp duty already paid under Article 6A(iv) of Schedule I(A) of the Act with the following observations:

“11. In the instant case on hand, for better appreciation, this Court reiterating the recitals of Ex.A1 as it is:

“MAHARAJASRI A.P LALY, W/O BUSHAN
GAARIKI MARKAPUR GRAMAMU GURRAM RAMA RAO,
S/O SUBBAIAH GAARU WRAASI/WRAINCHI ICHINA
CHEUTTARAM LOGA TEECHAVALASINA BAAKI
VUNDAGA, E DINAMU NAA AVASARA/VYAPARA
NIMITTAMU NEETAHAVUNA NEENU APPUGA
TEESUKUNNA ROKKAM RS.11,00,000/- LU AKSHARALA
ELEVEN LAKHS ONLY ECCHINARU GAANA MUTTINADI.
INDUKU VADDI NELA 1 KI 100KI RS.2-00 PRAKARAM
SAALUSARI COMPOUND VADDITO MEEKU
EVVAGALAVAADANU. INDUKU AYYE PENALTY
KARCHULU NEENE BARINCHAGALAVADANU
RS.11,00,000/- G. RAMA RAO”

12. In the instant case on hand, the document in question would show that it consists of two parts and is not attested. The first part reads as follows “E DINAMU NAA AVASARA/VYAPARA NIMITTAMU NEETAHAVUNA NEENU APPUGA TEESUKUNNA ROKKAM RS.11,00,000/- LU AKSHARALA ELEVEN LAKHS ONLY ECCHINARU GAANA MUTTINADI”. The second part reads as follows “INDUKU VADDI NELA 1 KI 100KI RS.2-00 PRAKARAM SAALUSARI COMPOUND VADDITO MEEKU EVVAGALAVAADANU. INDUKU AYYE PENALTY KARCHULU NEENE BARINCHAGALAVADANU”.

13. The maker of document has obliged himself to pay money with interest to the person named at the top of document. As per the decision referred supra, it is therefore, to be seen the document marked as Ex.A1 can be said to be a ‘bond’. Now it has to be decided what is the stamp duty and penalty collected for a

'bond'. During the course of evidence of PW.1 the said document i.e., Ex.A1 was treated as an agreement under Art.6(A) of Schedule I(A) of the Indian Stamp Act and marked as Ex.A1. In fact the said document marked as Ex.A1 is a bond within the meaning of Sec.2(5) of the Indian Stamp Act as laid down by the full bench decision of Hon'ble A.P. High Court in 1996(1) ALT 917(F.B) and not an agreement and it is liable to be stamped under Article 13 of Schedule I(A) of Indian Stamp Act and not under Art.6(A)(iv) of Schedule I(A) of the Stamp Act. Therefore, this Court is of considered view that respondent/plaintiff has to pay the stamp duty and penalty under Article 13 of Schedule I(A) of Indian Stamp Act for Ex.A1."

Learned counsel for the petitioner did not contest the finding recorded by the trial Court that Ex.A1 is not an agreement and it is a bond, but strenuously argued the maintainability of the application for de-exhibiting the document which was already admitted in evidence. He relied on the decisions reported in V.E.A. Annamalai Chettiar v. S.V.V.S. Veerappa Chettir², Sree Rama Varaprasada Rice Mill v. Takurdas Topandas³, Javer Chand v. Pukhraj Surana⁴, P.C. Purushothama Reddiar v. S. Perumal⁵, Dokka Joganna v. Upadrasta Chayadevi⁶, Isra Fatima v. Bismillah Begum⁷, Sunkari Srujana v. Chikkala Bhavani Shankar⁸ and Shyamal Kumar Roy v. Sushil Kumar Agarwal⁹, in support of his submissions.

Learned counsel for the respondent submitted that the document is inadmissible in evidence and an appropriate application can be filed under Order 13 Rule 3 of CPC and relied on the decisions reported in Syed Yousuf Ali v. Mohd. Yousuf¹⁰ and Srinivasa Builders v. A. Janga Reddy (Died) per LRs¹¹, the latter of which was decided by me.

² AIR 1956 SC 12

³ AIR 1960 AP 155

⁴ AIR 1961 SC 1655

⁵ AIR 1972 SC 608

⁶ 1997(5) ALT 628

⁷ 2002(5) ALD 660

⁸ 2004(2) AndhWR 189

⁹ (2006) 11 SCC 331

¹⁰ 2016(3) ALD 235

¹¹ 2016(2) ALT 321

The decision in Syed Yousuf Ali's case (supra) was decided on 05.02.2016, whereas Srinivasa Builders's case (supra) was decided by me on 08.02.2016. These two decisions agree on the point of maintainability of an application under Order 13 Rule 3 CPC, even after a document was admitted in evidence. But, after hearing the learned counsel for the petitioner, I was attracted by his arguments and relooked the matter once again from the perspective of the arguments advanced by the learned counsel for the petitioner. Though, they are attractive on their face, on a deeper study, it is noticed that the decisions cited by him and the argument advanced by him based on Section 36 of the Act are not absolute principles applicable to all cases. Those decisions were rendered without considering the effect of the principle laid down under Order 13 Rule 3 CPC.

The point involved in the present case is whether it is open to a party who raised the objection or not with regard to admissibility of document to file a petition for de-exhibition of the said document at a later stage either in the same proceedings or at appellate stage.

Order 13 deals with production, impounding and return of documents. Rules 1 and 2 provide for production of documents and effect of non-production. Rules 4 and 5 deal with endorsements on documents and Rules 3 and 6 to 9 contain provisions relating to return of documents, impounding of documents and rejection of documents. In the present case we are concerned with admission of a document and rejection thereof. As stated above, Rule 4 deals with endorsements on documents admitted in evidence and Rule 3 deals with rejection of irrelevant or inadmissible documents and they read as follows:

4. Endorsements on documents admitted in evidence.-(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-

(a) the number and title of the suit,
 (b) the name of the person producing the documents,
 (c) the date on which it was produced, and
 (d) a statement of its having been so admitted,
 and the endorsement shall be signed or initialed by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the Judge.

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

Rule 6 provides for an endorsement on documents rejected as inadmissible in evidence. Rule 7 provides that every document which was admitted in evidence shall form part of record of the suit. Rule 8 empowers the Court to impound any document. Now comes Rule 3 which deals with rejection of inadmissible or irrelevant documents.

At this stage it is also necessary to extract Sections 35 and 36 of the Act. They read as under.

“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 shall 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 fifteen rupees or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen 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 three 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;

[Now Chapter IX and XD of Cr.P.C., 1973;]

(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, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

In *Sadik Hussain Khan v. Hashim Ali Khan*¹², the Privy Council deprecated the practice of not making endorsement on the document exhibited in evidence and refused to read or permit to be used any document which was not endorsed in the manner required under the Code of Civil Procedure. The relevant observations are as follows:

"Finally, their Lordships feel bound to criticize adversely a practice followed in these two cases, which is as illegal as it is slovenly and embarrassing. By the 141st section of C.P.C., 1877, repeated in C.P.C. 1882 and practically re-enacted in Order XIII, Rule 4, of the Rules and Orders passed under the Code of Civil Procedure of 1908, it is provided that a presiding Judge shall endorse with his own hand a statement that it (i.e. a document proved or admitted in evidence) was proved against or admitted by the person against whom it was used. That course was in many instances not followed at the hearing of these two cases, with the result that embarrassing and perplexing controversies arose on the hearing of these appeals as to whether or not certain documents, prints of which were bound up in the record, had been given in evidence. There is no possible excuse for the neglect, in this manner, of the duty imposed by the Statutes, since, so long ago as the 3rd March, 1884, a circular was addressed by the then Registrar of the Privy Council to the Registrar of the High Court of Calcutta calling attention to the requirements of the then existing law and the necessity of observing them. A copy of this circular was sent not only to the High Courts of Madras, Bombay and Allahabad, but, in addition, to the Judicial Commissioner of Oudh and other Judicial Commissioners. Their Lordships, with a view of insisting on the observance of the wholesome provisions of these Statutes, will, in order to prevent injustice, be obliged in future on the hearing of

¹² AIR 1916 PC 27

Indian appeals to refuse to read or permit to be used any document not endorsed in the manner required.”

His Lordship P.V. Rajamannar, the then Chief Justice of Madras High Court in *A. Devasikamani Goundar v. M.A. Andamuthu Goundar*¹³ observed that if an objection is taken to the admissibility of a document for want of stamp and registration, the Court should decide both the questions at once. If the Court finds that the document is unregistered, when it requires registration, it has to reject the document itself. It cannot ask the document to be stamped first and thereafter decide whether it would require registration.

This gives guidance to the Courts dealing with the documents which require payment of proper stamp duty as well as registration fee.

In *Kuppammal v. Mu.Ve.Pethanna Chetty*¹⁴ the Madras High Court considered the objection relating to the admissibility of a document subsequent to endorsement and the effect of stamping endorsement on document. The said decision has a bearing in the present case and hence it is necessary to notice the facts in the said case. The suit was filed for recovery of money on the basis of pronote executed by the defendant. The stamp portion of the pronote was torn. The plaintiff stated that she entrusted the pronote to her brother for safe custody and when the same was handed over to her prior to filing the suit she found that a portion of the pronote bearing the signature of the defendant on the stamps was torn out. The defence of the defendant was that the suit pronote was executed nominally and at a settlement effected between the parties the pronote was discharged and the stamp was torn in the presence of the mediators, but was left with the defendant (sic. plaintiff) in connection with the settlement of the dispute with a third party. An issue was framed

¹³ (1955) 1 Mad LJ 457

¹⁴ AIR 1956 Mad 250

with regard to maintainability of the suit when the pronote did not bear the revenue stamps. The trial Court held that the pronote was insufficiently stamped and it cannot be used in evidence for any purpose and accordingly dismissed the suit. The appeal was dismissed. The Second Appeal was preferred to the High Court. It was contended before the High Court that the pronote was admitted under order 13 Rule 4 CPC and was marked as Ex.A1 and when it was so admitted and marked as exhibit its admissibility could not be reopened or questioned on the ground that the document not having been duly stamped having regard to the provisions of Section 36 of the Act. The case in *Alimane Sahiba v. Subbarayudu* (AIR 1932 Mad 693) was relied on. In those circumstances, the High Court considered the meaning of "Admitted in evidence" occurring in Section 36 of the Act. It considered the observations of the Division Bench of the same High Court in *Venkanna v. Parasuram* (AIR 1929 Mad 522), wherein it was held as follows:

"If a trial Judge had not considered the admissibility of a document proved before him the mere endorsement thereon under Order 13, Rule 4 C.P.C., does not preclude him from considering its admissibility at a later stage of the case."

The Division Bench followed the views taken by the Bombay, Punjab and Nagpur Courts in *Chunilal v. Mula Bai* (6 Ind Cas 903 (Bom)), *Sundardas v. Peoples Bank of India Ltd.*, (16 Ind Cas 834 (Lah)) and *Sitaram v. Thakurdas* (AIR 1919 Nag 141). The learned single Judge considered various decisions of Madras High Court on the point and ultimately held that the mere fact that the endorsement on the document as required under Order 13 Rule 4 CPC has been made should not in every case be considered sufficient to hold that the document has been admitted. In cases where no objection has been raised as to the admissibility on the ground of insufficiency of stamps and an endorsement

of admission under Order 13, Rule 4 is made and objection to such admissibility is not taken even at any stage of the trial of the suit, it will not be open to any party to raise the objection in appeal, before any other forum to which the matter might be taken up. He also held that by mere mechanical act of stamping the endorsement under Order 13 Rule 4 the Court has applied its mind as to the admissibility of the document. So long as the objection has not been considered by the Court, the endorsement under Order 13 Rule 4 could be considered only to be a mechanical act and not the result of the exercise of the judicial mind as to its admissibility. He further held as follows:

“Much significance cannot therefore be given to the procedural provision under Order 13, Rule 4, which prescribes the method to be followed if a document is admitted in evidence by having the same endorsed with the particulars required under the rule. The observance of the procedure under Order 13, Rule 4 presupposes an admission of the document in evidence, which again should be based on such admission being directed to be made by Court. But if the Court had not applied its mind but allowed it to be endorsed under Order 13, Rule 4 that would not however deprive the Court of the right of rejecting it if, on the consideration of any objection raised as to its admissibility, the Court comes to the conclusion that the document is inadmissible.”

The same phrase “Admitted in evidence” occurring in Section 36 of the Act was considered by a learned single Judge of this Court in *Mantrala Simhadri v. Palli Varalakshmi*¹⁵. The learned single Judge held that the question as to whether a document has been admitted or not depends upon the facts of each case. He did not decide the true meaning of the words “Admitted in evidence”, but on the facts of that case held that no objection should be taken with regard to admissibility of a document at a subsequent stage of the proceeding when no objection was taken earlier.

¹⁵ AIR 1962 AP 398

A Full Bench of Allahabad High Court in *Jageshar Naik v. Collector of Jaunpur*¹⁶ by majority held that mere endorsement on Instrument is sufficient and no order is necessary within the meaning of Section 61 of the Act. The majority of the Full Bench differed from the contra view taken in *Emperor v. Gian Chand* (AIR 1946 Lah 265) and *Ramchand v. Moti Thad* (AIR 1962 All 353) and ultimately held as follows:

“Then even if an express order is required, an express order admitting an instrument in evidence is enough even though it does not recite the fact that the instrument is duly stamped (or does not require to be stamped or is admissible on payment of a certain sum of money by way of deficit and penalty). "Order" used in the Code of Civil Procedure is what is known as formal order and the definition of "order" contained in Section 2(14) of the Code of Civil Procedure does not apply to the word "order" used in the Stamp Act. Section 2 of the Code makes it clear that the definitions contained in it are merely for the purposes of the Code. There is a provision in the Code, the Evidence Act and the Stamp Act for an order, as defined in Section 2(14) of the Code, admitting an instrument in evidence and in practice such an order is not passed. An endorsement on an instrument is an order within the meaning of Section 61 as pointed out by Iqbal Ahmad and Bajpai, JJ. in *Lodhi*, AIR 1939 All 588. The view taken by N.U. Beg and S.D. Singh, JJ. in this regard is in conflict with the view taken in the case of *Lodhi*, AIR 1939 All 588. As regards the rule of strict interpretation, I have already given reasons for not applying the rule of strict interpretation of a taxing statute to the interpretation of the words, "makes any order admitting an instrument in evidence as duly stamped". A trial Court's order can be taken into consideration by a superior Court even though it does not contain reasons; see *Milkhiram (India) Private Ltd. v. Chamanlal Bros.*, AIR 1965 SC 1698. I think the law laid down in *Ramchand*, 1962 All LJ 435: (AIR 1962 All 353), is not correct.”

But the Bench did not disfavour the view that there should be conscious decision with regard to admission of a document.

Now, in the present case we are concerned with the document which was not properly stamped, but marked as an exhibit. There is no evidence on record to show whether the said document was properly admitted in evidence. Even if it is otherwise admitted in evidence, the point still remains whether such a document can be asked to be de-exhibited by the party objecting to it as happened in this case.

¹⁶ AIR 1966 Allahabad 392 (FB)

In *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*¹⁷, the law laid down was that the objections as to admissibility of documents in evidence falls in two cases (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. It was held, that in the first case, the objection can be raised even at a later stage or even in appeal or revision. But, in the latter case, the objection should be taken when the evidence is tendered and when once the document is 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 case of insufficiently stamped document falls under category (i) as such a document cannot be admitted in evidence under Section 35 of the Act. In spite of the said pronouncement of the Hon'ble Supreme Court, learned counsel for the petitioner in the present case drew the attention of this Court to the above decisions and submitted that when the parties went ahead with the process of evidence on the basis of an exhibited document it is not open to the defendant to file the present application seeking to de-exhibit the document at this stage and it is contrary to Section 36 of the Act.

The case of *V.E.A. Annamalai Chettiar* (supra) does not explain the position properly, but merely states that an objection with regard to improperly stamped document cannot be raised at any stage of the

¹⁷ (2003) 8 SCC 752

proceedings in view of the bar contained under Section 36 of the Act, as no such objection was taken initially.

In Sree Rama Varaprasada Rice Mill's case (supra) also, reliance was placed on Section 36 of the Act and held that the admission of the document becomes final and shall not be called in question at a later stage. The observations are as follows:

“23.....

This provision does not take away the finality provided for in Section 36 of the Stamp Act as to the admission of instruments by the Trial Court. In Venkata Reddi v. Hussain Setti (AIR 1934 Mad 383), a bench of the Madras High Court has held that when once a document has been admitted in evidence after levying penalty on the foot of its being a bond, even though it may be a debatable point, the matter must be deemed to have been concluded and the admission of the instrument by the trial court in evidence cannot be questioned.

It was urged in that case by the learned Advocate General that Section 36 would not apply to cases where a document in question forms the foundation of the suit. That argument was, if I may say so with great respect, rightly rejected. To the similar effect are the decisions in Ramaswami v. Ramaswami (ILR 5 Mad 220), Venkatrama Aiyar v. Chella Pillai (AIR 1921 Mad 413) and Venkateswara Iyer v. Ramanatha Dheekshitar (AIR 1929 Mad 622). Following the said authorities, I hold that inasmuch these Instruments have been admitted in evidence, it is no longer open to the appellants to raise the question as to the insufficiency of the stamp duty paid on the instruments.”

A four Judge Bench of the Hon'ble Supreme Court in Javer Chand's case (supra) also held to the same effect, but the same decision was based on the endorsement made on the document as “admitted in evidence” under the signature of the Court. The observations of the Supreme Court are as follows:

“That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognized by the section is the class of cases contemplated by S.61 which is not material to the present controversy. Section 36 does not admit of other exceptions. Where

a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped it has to be decided then and there when the document is tendered in evidence. Once the Court rightly or wrongly, decides to admit the document in evidence so far as the parties are concerned the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exs.P1 and P2 and bore the endorsement 'admitted in evidence' under the signature of the Court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the Court applying its mind to the question of its admissibility. 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, S.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.”

(underlining mine)

The underlined observations are crucial and important as they indicate that if a document was inadvertently admitted without the Court applying its mind about the admissibility, such admission of the document can be challenged.

The decision in P.C. Purushothama Reddiar's case (supra) is not relevant.

In Dokka Joganna's case (supra), a learned single Judge of this Court, by relying on the above judgments observed that it is necessary to decide the admissibility of the document in evidence at the stage of

raising objection itself and cannot be left open to be decided at a later stage.

In Isra Fatima's case (supra), Javer Chand's case (supra) was followed and underlined portion in Javer Chand's case (supra) was not considered nor an attempt was made to examine the scope of Section 36 of the Act in the light of Rule 3 of Order 13 CPC.

In Sunkari Srujana's case (supra), the said Isra Fatima's case (supra) was cited to be decision of the Supreme Court which in fact was not of the Supreme Court judgment.

In Shyamal Kumar Roy's case (supra) it was held that when no objection was taken for marking a document as an exhibit he cannot at a later stage raise an objection. In the said case also it was held that there should be a decision on the admissibility of the document.

Thus, in the absence of consideration of application of Rule 3 of Order 13 to the cases of improperly admitted documents, the arguments advanced on the basis of such decisions is of no avail. I am of the opinion that the decisions of this Court in Syed Yousuf Ali (supra) and Srinivasa Builders (supra) do not require any elaboration or clarification. It is also relevant to notice that a learned single Judge of this Court, who rendered the decision in Syed Yousuf Ali's case (supra), rendered another decision in S. Mohan Krishna v. V. Varalakshamma¹⁸ to the same effect. The Court has got right to de-exhibit a document when its attention was drawn as to the inadmissibility of the document, as it has got duty to decide the admissibility of a document and eschew irrelevant and inadmissible evidence. The Code of Civil Procedure deals with the procedure in dealing with the suits, whereas the provisions of the Indian Stamp Act deal with

¹⁸ 2017(5) ALD 228

the provisions for collection of proper stamp duty on the documents. When a document which was not properly stamped was admitted in evidence and when the Court's attention was drawn, the objection of the party under Section 36 of the Act pales into insignificance and the duty of the Court comes to the forefront to decide with regard to admissibility of such a document. It is for the Court to decide whether a particular document is admissible or not. If it is inadmissible it can de-exhibit such a document. It is the decision of the Court, but not that of the objector. The role of the objector is only to bring it to the notice of the Court. Even assuming that a Court decides to admit a document in evidence, there is nothing in the Code of Civil Procedure prohibiting the Court from recalling such an order.

In view of the above position, in the absence of any evidence as to the availability of a decision of the trial Court with regard to document in question as to its admission, the application as filed by the defendant is maintainable and it is open to the plaintiff to pay the stamp duty and penalty as per the Rules and make a request to admit the same in evidence and it is for the Court to admit the document and mark the same.

In view of the above legal position, the order under revision cannot be held to be erroneous and the Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs.

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

A. RAMALINGESWARA RAO, J

Date: 19th September 2017
Nsr