**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION No.5678 of 2016**

**ORDER:**

Questioning the illegality of the order dated 31.10.2016 passed in I.A.No.263 of 2016 in O.S.No.27 of 2009, whereby the request of the petitioners, for impounding the unregistered sale deed dated 25.08.1982 by collecting the stamp duty, was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2. The facts in issue are as under:

The father of the 3rd defendant purchased the suit schedule property from Govindamma, daughter of Modi Chengaiah, through unregistered sale letter dated 25.08.1982, for a valid consideration of Rs.1,000/-. Since then, the father of the 3rd defendant is said to be in possession of the suit schedule property. The revenue authorities are said to have issued pattadar pass books and title deeds in favour of the father of the 3rd defendant. While things stood thus, respondents-plaintiffs filed O.S.No.87 of 2009 seeking permanent injunction restraining the defendants and their men from in any way interfering with the said property. During the course of trial, the petitioners herein filed the present I.A., i.e. I.A.No.263 of 2016 for impounding of the said document after collecting the stamp duty, so as to establish their case. It is stated that unless the said document is impounded, it would be inadmissible in evidence and hence prayed to send the unregistered sale deed to the District Registrar, Tirupati for impounding.

3. A Counter-affidavit came to be filed by the respondents-plaintiffs, stating that stamp paper was purchased by Jadabilla Guravaiah and the

recitals therein were scribed with a new ballpoint pen which can easily be seen from the contents of the sale deed. It is specifically urged that it is a forged document created for the purpose of this case and the said document is nothing but an unregistered sale agreement, which cannot be used as substantial evidence. It is further urged that, in I.A.No.84 of 2009, the Court has also come to the conclusion that the said document was a forged one and, as such, there is no necessity to impound the same.

4. After considering the rival arguments, the trial court rejected the request for impounding of the document, in view of the earlier order passed in I.A.No.84 of 2009, wherein the Court has already held that the unregistered sale deed dated 25.08.1982 is a created one. It is to be noted that, no reasons are mentioned in the present application explaining the findings given earlier though they have become final. Challenging the same, the present Civil Revision Petition is filed.

5. Relying upon a judgment of this Court in **Trinadh Patro v. Lingaraj Rana**[1], learned counsel for the petitioners would submit that no prejudice would be caused to the respondents herein if the said document is sent for impounding.

6. On the other hand, learned counsel for the respondent contends that in view of the earlier order passed in earlier I.A.84 of 2009, the order under challenge warrants no interference.

7. There is no dispute with regard to the fact that the trial court need not probe into the fact whether the document will pass the test of relevancy to be

---

[1] **2015 (6) ALD 617**

admissible in evidence. The only thing, which requires to be seen, is whether the said document requires to be impounded. At first glance, the argument of the learned counsel for the petitioners appeared to be impressive, but in view of the order passed by the trial court in I.A.No.84 of 2009, wherein it has been held that it is a created document, which fact is not seriously challenged even in the grounds of revision, it is to be seen whether impounding can be ordered. It is to be noted that admissibility and relevancy are two tests for judicial approval and evidence as observed by the learned single Judge in *Trinadha Patro's* case (1 supra). Admissibility of document in evidence means the admissibility under the provisions of the Indian Evidence Act, Stamp Act, Registration Act, etc. Therefore, before approving a document for evidence, the Court has to apply its judicial consideration as to whether the document produced is hit by any of the provisions of the Indian Evidence Act or other laws. It is only that document which is not hit by the said enactments, the Court shall admit the same in evidence. Dealing with Section 33 of the Indian Stamp Act, the Apex Court in **Government of Andhra Pradesh v. Smt. Laxmi Devi**[2] held as under:

> "A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorized to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word 'shall' in Section 33(1)

[2] 2008 (3) ALD 56

shows that there is no discretion in the authority mentioned in Section 33(1) to impound a document or not to do so. In our opinion, the word 'shall' in Section 33(1) does not mean 'may' but means `shall'. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions.

So at the stage of impounding the document, the trial Court, in my considered view, need not probe into the fact whether the said document will pass the test of relevancy to be admissible in evidence. That aspect can be relegated to a later stage. It must also be noted that the mortgage deed is an unregistered one. Hence, whether the said document can be admitted in evidence for collateral purpose under Section 49 of Indian Registration Act can also be looked into at the time when the document is actually tendered in evidence on behalf of defendant. At that stage the defendant has to convince to the satisfaction of the trial Court that property covered by plaint schedule and mortgage deed is in fact one and the same and it is relevant for the purpose of proving his case and further, the same is admissible in evidence for collateral purpose. Hence, what is pertinent at this stage is only to impound the document and collect the proper stamp duty and penalty under the relevant provisions of Indian Stamp Act. Therefore, impugned order is liable to be set aside."

8. Normally, at the stage of impounding of the document, the trial Court shall not probe into the fact whether such document will pass the test of relevancy to be admissible in evidence. As observed in *Trinadha Patro's* case (1 supra), this aspect can be relegated to a later stage. In the instant case, document which is sought to be impounded is an unregistered agreement of sale. The party who wants to get the document impounded has to convince to the satisfaction of the trial court that the property covered by the schedule and the unregistered agreement of sale is in fact one and the

same and that it is relevant for the purpose of proving his case. In normal course, the Court would have no hesitation in ordering impounding of the document, but, in view of the order passed by the trial court in I.A.No.84 of 2009 dated 12.04.2009, wherein it has been held that the unregistered sale deed dated 25.08.1982 is a created document, which has become final, there is no point in sending the document for impounding. Of course, the genuineness of a document and its admissibility need not be gone into for impounding of the document, but when there is a finding of the court with regard to genuineness of the document and which finding has become final, this Court is of the view that ordering so would be legalizing the document, thereby nullifying the order which has become final.

9. Having regard to the above, I see no merits in the civil revision petition and the same is accordingly dismissed.

Miscellaneous petitions pending, if any, in this C.R.P., shall stand closed. No order as to costs.

C. PRAVEEN KUMAR, J

10th February, 2017
MRR