

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.158 of 2018**

Raghvendra Das Vaishnav, S/o. Late Narendra Das Vaishnav, aged about 43 years, Builders Proprietor Home Plus Builders, R/o Anushtha Residence Colony, Junwani, Tahsil and District Durg (CG)

---- **Petitioner**

Versus

1. Premlal Sahu, S/o. Late Bodhan Sahu, aged about 70 years, R/o Village Junwani, Patwari Halka No.15, Tahsil and District Durg (CG)
2. State of Chhattisgarh through Collector-cum-Secretary, Durg, District Office, Durg (CG)
3. Deputy Registrar, Office of Registrar, Near Tahsil Office, Durg, Tahsil and District Durg (CG)
4. Deputy Director, Department of Town & Country Planning, District Panchayat Bhawan, First Floor, G.E. Road, Tahsil and District Durg (CG)
5. Tahsildar, Durg, District Durg (CG)
6. Devesh Dakaliya, S/o. Naresh Dakaliya, aged about 23 years, R/o. Sadar Bazar, Rajnandgaon, Tahsil and District Rajnandgaon (CG)
7. Naresh Dakaliya, S/o. Jeevanchand Dakaliya, aged about 48 years, R/o. Sadar Baar, Rajnandgaon, Tahsil and District Rajnandgaon (CG)

---- **Respondents**

For Petitioner	:	Mr.Manoj Paranjape, Advocate
For Respondent No.1	:	Mr.Avinash Chand Sahu, Advocate
For Res.No.2 to 5	:	Mr.Arun Sao, Dy.A.G.
For Res.No.6 & 7	:	Mr.Pallav Mishra, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/12/2018

1. By the impugned order, the plaintiff's application under Section 151 of the CPC for impounding of documents/admissibility of documents dated 24.11.1999 and 19.6.2000 has been rejected by the trial

Court.

2. I have heard learned counsel for the parties and perused the impugned order.
3. In the instant case, the plaintiff's statement has been recorded before the trial Court. During the course of evidence, defendant No.1 has taken specific objection to admissibility of the plaintiff's documents dated 24.11.1999 (Ex.P/1) and 19.6.2000 (Ex.P/2) that they are properly not stamped. The trial Court has permitted the plaintiff to mark those documents as exhibits and held that decision at its admissibility will be considered at the time of judgment.
4. In the matter of Ram Rattan (dead) by LRs. v. Bajrang Lal and others¹, the Supreme Court has indicated the procedure to be followed by the trial Court when the document is tendered in evidence by the plaintiff while in witness box and objection is taken by the defendant that the document is inadmissible in evidence as it is not duly stamped and for want of registration and held that the trial court has to apply its judicial mind and laid down as under:-

“6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however, would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially

1 AIR 1978 SC 1393

decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, S. 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The Court, and of necessity it would be trial court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, 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 and where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting S. 36 (see *Javer Chand v. Pukhraj Surana*, AIR 1961 SC 1655). The endorsement made by the learned trial Judge that "objected, allowed subject to objection", clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation S. 36 would not be attracted."

5. The above-stated judgment i.e. **Ram Rattan** (supra) has been followed by this Court in **Shashank Shekhar v. Jagdish Prasad Saraf and others**².
6. In view of above, the trial Court ought to have applied its judicial mind and decide the objection in accordance with law, as such, the trial Court is absolutely unjustified in rejecting the application by the petitioner/plaintiff under Section 151 of the CPC and not deciding the objection of the defendant raised during the course of cross-examination of the plaintiff.
7. Accordingly, the impugned order is set aside. The trial Court is

² AIR 2017 CHHATTISGARH 190

directed to consider the application under Section 151 of the CPC afresh and decide the objection regarding admissibility of the documents dated 24.11.1999 and 19.6.2000 whether they are properly stamped or not as held by the Supreme Court in **Ram Rattan** (supra) within a period of three weeks from the date of receipt of certified copy of this order and thereafter to proceed further.

8. The writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to the concerned trial Court by e-mail/fax. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-