

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2186 of 2018

ORDER:

This Civil Revision petition, under Article 227 of the Constitution of India, is filed by the petitioner/ plaintiff being aggrieved of the order, dated 05.03.2018, passed in I.A.no.1637 of 2017 in O.S.no.61 of 2012 on the file of Senior Civil Court, Markapur, Prakasam District.

2. I have heard the submissions of *Sri B.S.Reddy*, learned counsel appearing for the petitioner/ plaintiff; and of *Sri Venkateswarlu Varanasi*, learned counsel appearing for the respondents/ defendants. I have perused the material record.

3. The introductory facts are as under:

The plaintiff brought the suit against the defendants/ respondents herein for partition, mesne profits and costs. During the course of evidence of DW1, a certified copy of unregistered partition deed, dated 17.02.2007, which was filed along with the affidavit in lieu of examination-in-chief of the said witness, was tendered for being marked and was marked as exhibit B1. However, cross-examination of the said witness by the learned counsel for the plaintiff was deferred at request. Later, the plaintiff filed the instant application for de-exhibiting the said document marked as exhibit B1. The said petition was resisted by the 1st defendant/ DW1 by filing a counter. By a docket order, which is impugned in this revision, the trial Court dismissed the petition of the plaintiff. Hence, the plaintiff is before this Court.

4. The case of the plaintiff and the submissions made on his behalf, in brief, are as follows: "The 1st defendant filed an application to receive on file the certified copy of the unregistered partition deed, dated 17.02.2007, ('CC of unregistered partition deed'). Notice on that application is served upon the counsel for the plaintiff. He made an endorsement requesting time for filing counter. Counsel for the 1st defendant suggested that objection regarding

admissibility of the CC of unregistered partition deed can be raised at the time of its admission into evidence. Counsel for the plaintiff, then, endorsed 'No objection for allowing the application, but, not to admit the document'. Thinking that the matter will be adjourned to some other day for marking of the document, counsel for the plaintiff left the Court Hall. Unfortunately, in the absence of the counsel for the plaintiff, the matter was taken up and CC of the unregistered partition deed was marked as exhibit B1; and, the matter was adjourned for cross-examination of DW1. Thus, there was no opportunity for the plaintiff for objecting to the marking of the said document at the time when it was exhibited. The marking given does not amount to admission in evidence. The plaintiff has a right to question the admissibility of the said document at any stage of the suit, in view of the decision of this Court in *G.Sudhakara Reddy v. M.Pullaiiah* [reported in 2015(3) ALT 575]; and, a decision of the Supreme Court in *RVE Venkatachala Gounder v. Arulmigu Visweswara Swamy* [2006(3) ALT 66]. Further, Order 13 Rule 3 of the Code of Civil Procedure, 1908, ('Code' for short), which deals with rejection of irrelevant or inadmissible documents says that 'the Court may at any stage of the suit reject any document, which it considers irrelevant or otherwise inadmissible, after recording the grounds of such rejection.' In the decision in *Srinivasa Builders, Hyderabad v. A.Janga Reddy* [2016(2) ALT 321], this Court held that it is the duty of the Court of Law to exclude all irrelevant or inadmissible evidence even if no objection is taken by the opposite side. The same view was also expressed by this Court in the decision in *Syed Yousuf Ali v. Mohd. Yousuf* [2016 (3) ALD 235]; and, in the decision in *A.P.Laly v. Gurram Rama Rao* [2017 (6) ALD 300]. In the above decision, this Court reviewed the entire case law on the point and held that the Court has power to reject a document at any time. Therefore, inspite of prohibition contained in Section 36 of the Indian Stamp Act, the trial Court has power to exclude exhibit B1 from the evidence as the original of it is not properly stamped and is not

registered and is inadmissible in evidence even for collateral purpose. So, it is in the interests of justice to exclude the CC of unregistered partition deed from evidence after de-exhibiting it, as it is not properly stamped and registered.”

5. The case of the 1st defendant as stated in the Counter and as per the submissions made on his behalf, in brief, are as follows: - ‘The averments in the affidavit of the plaintiff are all false. The same are denied. Before filing into Court, notice on the application to receive the document was served upon the counsel for the plaintiff. Later, plaintiff did not file any counter. The right of plaintiff to cross-examine DW1 was forfeited, on 20.10.2017, but, not on 17.10.2017, as stated by the plaintiff. The petition is not maintainable. Hence, the petition may be dismissed.’

6. I have given earnest consideration to the facts & submissions.

7. The document in question which was marked as exhibit B1 is a certified copy of an unregistered partition deed. It is undisputed that on the application filed by the defendant for receiving the said document, the counsel for the plaintiff endorsed an objection that it may not be admitted as it is inadmissible in evidence. However, that application was allowed. Afterwards, the affidavit *in lieu* of examination-in-chief of DW1 was filed and the said CC of unregistered partition deed was tendered for marking through DW1. The Court noted in the examination-in-chief of DW1 as follows:

‘DW1 (S.Y.Vara Prasad Reddy) is present and sworn for continuation of chief examination.

I have filed my affidavit. I know the contents. I have filed the following documents.

Ex.B1 is Certified copy of registered partition deed, dated: 17-02-2017.

Cross Examination by Smt. A.U.S: At request deferred.’

Admittedly, the document exhibited is not the original document. It is a certified copy. However, in the deposition, the trial Court noted that exhibit B1 is certified copy of registered partition deed, though, infact, it is the CC of

the unregistered partition deed. The said document was marked in the absence of the counsel for the plaintiff is one of the contentions of the plaintiff. As could be seen from the counter of the 1st defendant, except stating that a counter is not filed in the application filed for receiving the documents and that the right to cross-examine DW1 was forfeited, no other averments were made in the counter and the contentions of the plaintiff, which are stated in the affidavit filed in support of the application are just baldly denied by stating that the said contentions are far from truth. Before this Court, it is not disputed that an objection on the ground of admissibility was raised for marking the document. The trial Court obviously did not examine the twin questions viz., (i) 'whether the original unregistered partition deed was engrossed on stamps of required value'; and, (ii) 'whether CC of such unregistered partition deed can be admitted in evidence.' Further, the trial Court wrongly noted in the deposition of DW1 that it is CC of registered partition deed. When the plaintiff sought for de-exhibiting the CC of unregistered partition deed on the grounds that the original deed is not properly stamped and it is unregistered, the trial Court, in the impugned order noted *verbatim* as follows:

'The plaintiff side evidence completed and now coming for cross-examination of DW2 at this stage the petitioner/plaintiff come forward with this petition. The chief affidavit of DW1 filed on 13.10.2017 and Ex.B1 was marked and posted for cross-examination of DW1 call on 20.10.2017. The petitioner not cross-examined the DW1. The document Ex.B1 is unregistered one it was marked in O.S.386/16 on the file of Junior Civil Judge Court, Giddalur. The respondent obtained certified copy, i.e., unregistered partition deed 17.02.2007 and the petitioner has not explained in his petition how the said Ex.B1 cannot be marked. In a decision in 2015(4) ALT page No.463 wherein it is held that "unregistered partition deed can be received and marked in evidence in such a case Court must make an endorsement there as to having received it only as evidence for collateral purpose under the proviso to Section 49 of Act. Admittedly, in this case also the respondent filed Ex.B1 unregistered one it is only for collateral purpose and it cannot be De-exhibited

and said decision certainly applies to this case and this point is answered against the petitioner.'

The trial Court did not at all consider as to whether the OC of unregistered partition deed can be received in evidence and can be permitted to be exhibited without a foundation being laid for admitting secondary evidence. Be that as it may. Though the plaintiff raised an objection that the original unregistered partition deed is not properly stamped, the trial Court did not consider the said aspect; viz., 'whether the original unregistered partition deed, which was engrossed on stamp papers of a total value of Rs.190/-, was properly stamped?'. The trial Court before permitting to exhibit the document in fact did not record a finding that the original deed is duly stamped and that, therefore, its certified copy can be permitted to be exhibited for collateral purpose.

8. Now it is apt to refer to the relevant provisions of the Indian Stamp Act:

Section 35 of the Indian Stamp Act reads 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 rupees 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 Chapters IX and X D 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 312 or any other provision of this Act.

As per Section 36 of the Indian Stamp Act, 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.

Section 61 of the said Act reads as under:

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 or 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-sec.(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 of 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 property 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."

A reading of the provisions of law makes it manifest that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having the authority to receive evidence or shall be acted upon. Therefore, before admitting in evidence, the CC of unregistered partition deed, the trial Court is obligated under law to examine whether its original is properly/ duly stamped. Thus, when an original document is tendered in evidence for being marked, whether an objection is raised or not, it is the duty of the Court to examine as to whether such document is chargeable with duty and find out whether it is properly stamped, if it is chargeable with duty. The CC of unregistered partition deed shows that the original of it was engrossed on stamp papers worth Rs.190/- . The trial Court before marking the document as exhibit B1 has not passed an order or has not recorded a finding with regard to the admissibility of the document after considering the aspect as to whether the original of it is duly stamped or not.

9. In this factual background, it is necessary to first refer to the ratio in the decision in *Ram Rattan (dead) by L.Rs. v. Bajrang Lal and others*¹, wherein the Supreme Court held as under:

“...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 ...”

9.1 In *Bipin Shantilal Panchal vs. State Of Gujarat And Another*² wherein the Supreme Court, on the aspect of the objections generally raised before the trial Courts, had laid down the following new procedure:

“Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised

¹ (1978) 3 SCC 236

² AIR 2001 SC 1158

regarding the admissibility of any material or any item of oral evidence.”

This decision rendered by a Bench of three Hon'ble Judges of the Supreme Court also makes it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. The trial Court failed to do so in the instant case. Further, the marking of the CC of unregistered partition deed as exhibit B1 by noting in the deposition of DW1 that it is a registered document also indicates that the trial Court did not apply its mind before the document is admitted in evidence.

9.2 In the decision in *Javer Chand v. Pukhraj Surana*³ a Bench of four Hon'ble Judges of the Supreme Court held 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. P 1 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

³ 1961 AIR 1655

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."

10. The case on hand is clearly one of those cases where the Court inadvertently and without application of mind admitted the document in question in evidence by mistaking the original of it to be a registered partition deed while in-fact it is an unregistered deed. Though the trial 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 trial Court failed to do so in the case on hand. It is to be next noted that the trial Court in the impugned order held as under: "In a decision in 2015(4) ALT page No.463 wherein it is held that "unregistered partition deed can be received and marked in evidence in such a case Court must make an endorsement there as to having received it only as evidence for collateral purpose under the proviso to Section 49 of Act. Admittedly, in this case also the respondent filed Ex.B1 unregistered one it is only for collateral purpose and it cannot be De-exhibited and said decision certainly applies to this case and this point is answered against the petitioner.' However, the law is well settled that even an original document, which is chargeable with duty; but, not properly stamped, also cannot be admitted in evidence even for collateral purpose.

11. In this backdrop, it is necessary to refer to Section 49 of the Indian Registration Act, which reads as follows:-

49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[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 (4 of 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 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]

As per the said provision, there is no prohibition to receive an unregistered document in evidence for collateral purpose. But, as rightly contended by the learned counsel appearing for the plaintiff, even when an original document is tendered for being marked for collateral purpose, it should be duly stamped or duty & penalty, if any, payable shall be paid and collected before according permission for admitting in evidence for collateral purpose. Unless the document is duly stamped or stamp duty & penalty are paid, an unregistered document cannot be admitted in evidence even for collateral purpose.

12. In the decision in the case of *Avinash Kumar Chauhan v. Vijay Krishna Mishra*⁴, the Supreme Court referred to the following ratio in the decision in the case of *T. Bhaskar Rao vs. T. Gabriel and other*⁵.

“It is now 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 not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under section 35 of the Stamp Act.”

The trial Court, in the case on hand did not examine whether the original unregistered partition deed is properly stamped, but held that CC of it can be admitted for collateral purpose. In the event the trial Court were to find that the original is not properly stamped the question of admitting the copy of the

⁴ 2009 (1) ALD 109 (SC)

⁵ AIR 1981 AP 175

same would not arise as the question whether or not stamp duty can be collected on a copy of a document is no longer *res integra*. In *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao*⁶, the Supreme Court emphatically held that stamp duty cannot be collected on a copy of document, if the original was not subjected to stamp duty at all. The ratio in this cited decision is as follows:

"The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. 'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

If Section 35 only deals with original instruments and not copies, Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words 'an instrument' in Section 36 must have the same meaning as that in Section 35. The Legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding."

⁶ AIR 1971 SC 1070

In the above decision, the Supreme Court held thus:

“Section 36 only lifted that bar in the case of an original unstamped or insufficiently stamped document to which no exception as to admissibility was taken at the first stage. It did not create any exemption in the case of secondary evidence which a copy would undoubtedly be. In the case before the Judicial Committee the copy was one other than the final draft of the original document which had been lost through no fault on the part of the person intending to prove it and yet it was held that the Stamp Act ruled out its admissibility in evidence.”

The Supreme Court also held as follows:

For the same reason we must hold that the dictum in *Satyavati v. Pallayya* [AIR 1937 Mad 431 at p. 432] that ‘Section 36 will also apply when secondary evidence of an instrument not duly stamped had been wrongly admitted’ is not good law.’

Be it noted that in the above said decision, the Supreme Court quoted and approved the judgment of the Privy Council in *Raja of Bobbili v. Inuganti China Staramaswami Garu*⁷. The same principle was followed by this Court in *Akkam Laxmi v. Thosha Bhoomaiah*⁸. Thus, the law is well settled that stamp duty and penalty, if any, payable are collectable only on the original document, i.e., primary evidence but not on a copy of the document, i.e., secondary evidence. Therefore, the observation of the Court below in the impugned order that the document can be admitted for collateral purpose is unsustainable as the trial Court did not advert to and examine the aspect as to whether the original unregistered partition deed in question is duly stamped or not.

⁷ (1900) ILR 23 Madras 49

⁸ 2002 (4) ALD 808

13. In *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and Anr.*⁹, the Supreme Court having referred to an earlier decision cited held as follows:

“The learned counsel for the defendant-respondent has relied on ‘The Roman Catholic Mission v. The State of Madras and Another [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though-brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise. 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

⁹ AIR 2003 SC 4548

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.”

14. In the case on hand, the objection is not only with regard to the mere sufficiency or otherwise of the stamp duty payable on the original partition deed but, also with regard to non-registration of the original partition deed. The law is well settled that there is no bar under law to consider at any stage of the matter, an objection which is raised with regard to the admissibility of an unregistered document, which is compulsorily registerable, even though such document is marked as an exhibit, more particularly, when such marking is given inadvertently and without application of mind. Indeed, in a recent decision in *Uma Pandey and Another v. Munna Pandey and others*¹⁰ the Supreme Court held that question relating to admissibility of an unregistered partition deed relied upon by the defendants is a substantial question of law and can be permitted to be raised even in a second appeal. Further, as already noted the law is well settled that Section 35 only deals with original instruments and not copies and that Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words 'an instrument' in Section 36 must have the same meaning as that in Section 35. The Legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. Therefore, the document in question

¹⁰ (2018) 5 Supreme Court Cases 376

now being a certified copy and not an original the benefit cannot be extended to it in any view of the matter.

15. In the facts & circumstances and in view of the precedential guidance, this Court is of the well considered view that the Court below was in error in marking the document, viz., CC of unregistered partition deed as exhibit B1 without application of mind and without first deciding the objection raised as ordained in the decision of the Supreme Court in Bipin Shantilal Panchal's case (supra) and in further refusing to accede to the request of the plaintiff to de-exhibit the document or exclude/ eschew it from evidence for deciding its admissibility or otherwise after adverting to the aspects viz., whether it's original was duly stamped/ charged with duty and whether it can be admitted in evidence for collateral purpose in the light of the ratios in the precedents adverted to supra. For the foregoing reasons, this Court finds that the order is unsustainable and is liable to be set aside.

16. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, the interlocutory application in I.A.no.1637 of 2017 is allowed and the certified copy of unregistered partition deed marked as exhibit B1 shall stand eschewed from evidence and the marking given to it shall stand cancelled. However, the trial Court shall after affording an opportunity of hearing to both sides, decide its admissibility after considering the relevant aspects as to its admissibility as per the settled law and procedure and then proceed further in the matter in accordance with law. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22.06.2018

Note:- L.R copy to be marked
(B/ o)
RAR

