

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Art.227) No.658 of 2019**

Satyapal Khobragade, aged about 50 years, S/o Late Shri D.R. Khobragade, R/o Village Kalyanpur, Tahsil Dongargarh, Distt. Rajnandgaon (CG)

---- **Petitioner/Plaintiff**

Versus

1. Shanker Uike, aged about 54 years, R/o Late Shopat Uike,

2. Nirabai, W/o Shanker Lal Uike,

Both R/o Village Kalyanpur, Tahsil Dongargarh, Distt. Rajnandgaon (CG),
At Present R/o Bhilai Sector 8, Quarter No.5, A Sadak No.10, Bhilai, Distt. Durg (CG)

3a. Smt. Radha Bai, aged about 60 years, W/o Late Kishan,

3b. Smt. Anju aged about 35 years, D/o Kishan,

3c. Reshama, aged about 28 years, D/o Kishan,

3d. Lata Bai, aged about 26 years, D/o Kishan

3e. Ajay, aged about 24 years, S/o Kishan

R No. 3a to e R/o Village Kalyanpur, Tahsil Dongargarh, Distt. Rajnandgaon (CG)

4. Smt.Thagiya Bai, aged about 52 years, D/o Late Guharam Mahar,

5. Birjhu aged about 32 yers, S/o Muharam Mahar,

R 4 to 5 R/o Village Kalyanpur, Tahsil Dongargarh, Distt. Rajnandgaon (CG)

6. The State of Chhattisgarh, Through Collector, Distt. Rajnandgaon (CG)

7. Mukesh Phole, aged about 38 years, S/o Kanhiya Lal By Caste Mahar,

8. Adivasi Kunwar Samaj, through Sachiv Netram, aged about 45 years,
S/o Dukharam Kanwar, R/o Village Kalyanpur, Tahsil Dongargarh,
Distt. Rajnandgaon (CG)

---- **Respondents/Defendants**

For Petitioner/Plaintiff	:	Mr.Shalvik Tiwari, Advocate
For Respondents No.1 and 2	:	Mr.Keshav Dewangan, Advocate
For Respondent No.6	:	Mr.Matin Siddiqui, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

23.09.2019

1. By the impugned order dated 25.7.2019 (in deposition sheet), the trial Court has not permitted the plaintiff to mark carbon copy of FIR as exhibit, which was registered against the defendants, against which, this writ petition has been filed.
2. Mr. Shalvik Tiwari, learned counsel for the petitioner/plaintiff, would submit that the trial Court is absolutely unjustified in declining to permit the petitioner/plaintiff to mark the carbon copy of FIR as exhibit.
3. On the other hand, Mr. Keshav Dewangan, learned counsel for respondents No.1 and 2/defendants, would submit that document is not admissible in evidence, therefore, the trial Court is absolutely justified in declining to mark the said document as exhibit and the writ petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. Since carbon copy of FIR has been issued to the petitioner/plaintiff under Section 154(2) of the CrPC, therefore, the trial Court ought to have permitted the plaintiff to mark the said document as exhibit and its effect could have been considered at the time of final hearing as held by the Supreme Court in the matter of **Ram Rattan (dead) by LRs. v. Bajrang Lal and others**¹ and that has been followed by this Court in **Shashank Shekhar v. Jagdish Prasad Saraf and others**²,

¹ AIR 1978 SC 1393

² AIR 2017 Chhattisgarh 190

in which this Court held as under:-

“11. In the matter of **Ram Rattan (dead) by LRs. v. Bajrang Lal and others**³, 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 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.”

³ AIR 1978 SC 1393

12. Their Lordships further held in **Ram Rattan** (supra) that where an instrument who is not duly stamped or insufficiently stamped is tendered in evidence before the Court, then duty and penalty has to be recovered by the court having authority to receive document and held as under:-

“7. Mr. Desai then contended that where an instrument not duly stamped or insufficiently stamped is tendered in evidence, the Court has to impound it as obligated by S. 33 and then proceed as required by S. 35, viz., to recover the deficit stamp duty along with penalty. Undoubtedly, if a person having by law authority to receive evidence and the civil court is one such person before whom any instrument chargeable with duty is produced and it is found that such instrument is not duly stamped, the same has to be impounded. The duty and penalty has to be recovered according to law. Section 35, however, prohibits its admission in evidence till such duty and penalty is paid. The plaintiff has neither paid the duty nor penalty till today. Therefore, *stricto sensu* the instrument is not admissible in evidence. Mr. Desai, however, wanted us to refer the instrument to the authority competent to adjudicate the requisite stamp duty payable on the instrument and then recover the duty and penalty which the party who tendered the instrument in evidence is in any event bound to pay and, therefore, on this account it was said that the document should not be excluded from evidence. The duty and the penalty has to be paid when the document is tendered in evidence and an objection is raised. The difficulty in this case arises from the fact that the learned trial Judge declined to decide the objection on merits and then sought refuge under S. 36. The plaintiff was, therefore, unable to pay the deficit duty and penalty which when paid subject to all just exceptions, the document has to be admitted in evidence. In this background while holding that the document Ext. I would be inadmissible in evidence as it is not duly stamped, we would not decline to take it into consideration because the trial court is bound to impound the document and deal with it according to law.”

13. It is well settled law that mere marking or exhibiting the document does not dispense with the proof of the document. Mere marking of the document does not take away the right of the opposite party to say that such document cannot be relied upon as it is not registered. Similarly, when the law declares for collateral purposes an unregistered document could be looked

into, it makes clear that such a document could be marked. Under these circumstances, it would be proper to the trial Court to mark such document subject to objections and permit the parties to adduce evidence, instead of putting questions to the lawyers at the time of argument to state for what purpose they are relying on the said document, thereafter consider the respective contentions at the time of final hearing and then decide whether the said document could be looked into for collateral purposes and whether non-registration of the said document has made it inadmissible in evidence.”

6. In view of above, the trial Court is directed to mark the said document as exhibit and its admissibility or any other objection raised by other side shall be considered at the time of final hearing.
7. With the aforesaid observation, the writ petition stands finally disposed of. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-