

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Art.227) No.693 of 2019**

Radheshyam Sahu S/o. Shri Chheduram Sahu, aged about 58 years, R/o. Village-Pawni, Post-Pawni, Tahsil-Bilaigarh, Distt.-Balodabajar-Bhatapara (CG)

---- Petitioner

Versus

1. Puranlal S/o. Shri Mangalram, aged about 35 years, Caste-Kahar, R/o. Village-Pawni, Post-Pawni, Tahsil Bilaigarh, Distt.-Balodabajar-Bhatapara (CG)
2. State of Chhattisgarh through Collector Balodabajar, Distt-Balodabajar-Bhatapara (CG)

---- Respondents

For Petitioner	:	Mr.Sunil Sahu, Advocate
For Respondent No.1	:	Mr.S.K.Guha, Advocate
For Respondent No.2	:	Mr.Matin Siddiqui, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

23.09.2019

1. By the impugned order, agreement to sale dated 5.6.2010 has been directed to be taken on record by granting the application under Order 16 Rule 1 of the CPC and the plaintiff has been allowed to examine two witnesses, against which, this writ petition has been filed.
2. Mr.Sunil Sahu, learned counsel for the petitioner/defendant, would submit that the trial Court firstly by order dated 19.1.2016 (in deposition sheet) disallowed the plaintiff to mark the document dated 5.6.2010 as exhibit for want of registration and now by the impugned order, the trial Court allowed the plaintiff to mark the said document as exhibit, which is unsustainable and bad in law, as such, the impugned order deserves to be set aside.
3. On the other hand, Mr.S.K.Guha, learned counsel for respondent

No.1, would support the impugned order.

4. This Court in the matter of **Shashank Shekhar v. Jagdish Prasad Saraf and others**¹ while following the judgment rendered by the Supreme Court in the matter of **Ram Rattan (dead) by LRs. v. Bajrang Lal and others**² 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 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

1 AIR 2017 Chhattisgarh 190

2 AIR 1978 SC 1393

3 AIR 1978 SC 1393

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."

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.”

5. In view of above, the order passed by the trial Court permitting the plaintiff to exhibit the document will be subject to further consideration by the trial Court at the time of final hearing without being influenced by the order dated 19.1.2016 and the impugned order dated 24.6.2019. All the questions are left/kept open to the parties and to be raised before the trial Court at the time of final hearing.
6. With the aforesaid observation, the writ petition stands finally disposed of. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge