



2023:DHC:7879



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 3rd October 2023**
+ **C.R.P. 16/2021 and CM APPL. No.4213/2021**

BALRAJ

..... Petitioner

Through: Mr.D.P.Bhadana, Advocate
versus

NATHURAM SHARMA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner *vide* the instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), seeks the following reliefs:

“Keeping in view of the facts and circumstances, it is most respectfully prayed to this Hon' ble Court to set aside the order dated 24.10.2019 passed by Ld. ADJ - 02(south) Saket New Delhi and reject the plaint under Order 7 Rule 11 (d) of CPC read with Section 151 CPC and the relief as deemed fit and proper.”

2. Tersely the facts necessary for the adjudication of the instant petition are that the plaintiff/respondent filed a civil suit bearing CS DJ no. 588/ 2010 before the learned Trial Court, seeking permanent injunction with



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respect to two plots bearing no. GB-12 and GB-13, admeasuring 250 sq. yards each in Khasra no. 383 at revenue estate of Village Pul Prahalpur, Delhi-110044 (hereinafter called “suit property”). Pursuant to filing of the said suit, the respondent filed an application under Order XXXIX Rule 1 and 2 of the CPC, which was dismissed by the learned Court below.

3. The respondent filed a writ against the said order of dismissal before the Coordinate Bench of this Court and the same was declined. Thereafter, the respondent filed an application under Order VI Rule 17 seeking amendment of plaint and the said application was allowed by the learned Trial Court.

4. The defendant no. 4/petitioner had earlier filed an application under Order VII Rule 11 of the CPC, before the learned Trial Court praying that the respondent may be directed to furnish the original documents on which the respondent has placed reliance on. The said application was dismissed by the learned Trial Court.

5. The petitioner again filed an application under Order VII Rule 11 (d) read with Section 151 of the CPC, the respondent filed its reply to the same pursuant to which matter was heard by the Trial Court and the said application was dismissed by the learned Trial Court vide the impugned order dated 18th November 2019.

6. Aggrieved by the above said impugned order, the petitioner has approached this Court by way of the instant petition.

7. Learned Counsel appearing on behalf of the petitioner submitted that the plaint filed by the respondent is completely false and the documents as



relied upon by the respondent are fake, due to said reason the respondent has never been able to produce the original copy of the above said documents.

8. It is further submitted that no original documents which are required to be requisitely stamped and registered have been produced before the the learned Court below. The mandates of the Indian Stamp Act, 1899, and the Registration Act, 1908, has been violated by the respondent.

9. It is contended that the respondent has never been in the possession of the suit property and the possession of the suit property was always with the petitioner through the defendant no. 3.

10. It is submitted that the contentions raised by the respondent/plaintiff therein in its plaint was that the title deeds were deposited in favour of Sh. Surender Kumar by way of equitable mortgage deeds, who, thereafter, leased it in favour of the respondent in lieu of Rs. 6 lakhs by way of another Equitable Mortgage Deed dated 12th March 2002, wherein, Mr. Amarnath Gupta, the alleged original seller of the properties in question has mentioned to Surender Kumar that the deposit of Title deeds of documents was without the possession, and the documents filed by the plaintiff along with the plaint are forged and fabricated.

11. It is further contended that the said equitable mortgage deed is unregistered and unstamped, therefore, not admissible in law.

12. It is submitted that the deed of mortgage dated 4th June 2003, illegally and fraudulently executed by Mr. Surender Kumar in favour of respondents is also an unregistered and unstamped document, hence, inadmissible document.



13. It is contended that the impugned order passed by the Trial Court has disregarded the law pertaining to the documents which are unstamped and unregistered and has wrongly admitted such documents.

14. It is further contended that the Trial Court while passing the order has not taken into consideration the aspect that the plaintiff has never produced the original documents before the learned Trial Court.

15. It is submitted that in view of the preceding paragraphs, the instant petition may be allowed and impugned order be set aside since the learned Trial Court erred in exercising its jurisdiction while deciding the petitioner's application under Order VII Rule 11 of the CPC.

16. *Per Contra*, the learned counsel appearing on behalf of the respondent by way of its reply to the instant petition which is on record, vehemently opposed the instant petition and submitted that at the outset the same is not maintainable, hence, is liable to be dismissed.

17. It is submitted that the impugned order does not suffer any illegality or irregularity and there is no error apparent in the impugned order for being subjected to the revisional power of this Court.

18. It is contended that the issue raised by the respondents cannot be dealt with under the revisional jurisdiction of this Court, since the remedy for exercising such rights by the petitioner lies under Article 227 of the Constitution of India.

19. It is submitted that at the preliminary stage, the learned Trial Court cannot adjudicate upon the fact that documents filed by the respondent are unregistered or unstamped.



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20. It is further submitted that the same is a question of law and may be decided at the final stage of the suit upon the conclusion of the trial.

21. It is contended that allowing the instant petition, the same would have grave consequences on the respondent since it will lead to the respondent being denied a full and fair trial of the civil suit. Hence, the respondent would not be able to prove its case before the learned Trial Court.

22. It is submitted in view of the aforementioned arguments the instant petition is liable to be dismissed being not maintainable.

23. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

24. It is the case of the petitioner that the documents relied upon by the respondent in its plaint can never be admitted in evidence, since the same are unregistered and unstamped in accordance with the law. These documents must suffer the consequences as mentioned in provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908, and resultantly, no title/ownership can be claimed by the respondent. It is his contention that since the mortgage deed being relied upon by the respondent, contains recitals, and terms and conditions, the same is necessarily registrable.

25. Before delving on to the merits of the case, it is pertinent to examine whether an unregistered and unstamped document may be admitted as the basis of cause of action in a plaint.



26. The relevant section of the Registration Act, 1908, and Indian Stamp Act, 1899, have been recapitulated herein below. Section 17 of the Registration Act, 1908, has been reproduced herein below:

Section 17 -Documents of which registration is compulsory.—

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; 1

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the 2 [State Government] may, by order published in the 3 [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty



rupees.

4 [(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—
(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) 1 [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court 2 [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter



of the suit or proceeding]; or
(vii) any grant of immovable property by 3 [Government]; or
(viii) any instrument of partition made by a Revenue-Officer; or
(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or
4 [(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]
(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer. 5
[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]
(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

27. As per the aforesaid Section, there needs to be a compulsory registration of the document as per which there is a creation of any right or relinquishment of any right in any immovable property either in the present or in the future with the value of immovable property above hundred rupees.



28. Section 49 of the Registration Act, 1908, has been reproduced herein below:

“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:

*1 [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) 2 , 3 *** or as evidence of any collateral transaction not required to be effected by registered instrument.]”*

29. The above mentioned Section enunciates the repercussions of the non-registration of the documents which are mandated to be registered as per Section 17 of the Registration Act, 1908, and if not registered, it shall not affect any rights created in the immovable property or confer any power for the purpose of adoption and hence, it cannot be taken into consideration as evidence/proof of any transaction pertaining to such creation of right in the immovable property or confer any power to adopt. The exception is carved out in cases when the same has to be used as an evidence in suit for specific performance or used as an evidence for the purpose of a collateral



transaction does not mandate the registration of the document.

30. The legislative intent of the Section 17 and Section 49 of the Registration Act, 1908, has been dealt by the Madras High Court in the judgment of ***Kasthuri v. R. Hemalatha*, 2022 SCC OnLine Mad 8771**, wherein, the Court held as follows:

“17. A brief narration of the history of Sections 17 and 49 of the Act would make useful reading. The Privy Council in the year 1926 was called upon to answer the question as to whether a contract of sale, which required registration, could be registered in order to be received in evidence, in terms of Section 49 of the Act. The learned Judge had extracted Section 17 of the Act as it stood in the year 1877, which made it compulsory that certain instruments should be registered. Section 17 as it then stood was extracted by the learned Judges as follows:—

“17-(2) Instruments (other than an instrument of gift) which purport or operate to create, declare, assign limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property.

(3) Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment limitation or extinction of any such right, title or interest.”

18. Section 49 of the Act had declared that where an instrument was compulsorily registrable under Section 17, the same cannot be received in evidence in any civil proceedings by any civil Court, unless it is registered. Thereafter, the Act had undergone a change and the Indian Registration Act of 1908 was enacted, where an addition was made to Section 17 in the form of Section



17 (2) of the Act, which read as follows:—

“Nothing in Clauses (b) and (c) of this section applies to (h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign limit or extinguish any such right, title or interest.”

19. This change gave rise to questions as to which of the category of agreements fell under Section 17(b) of the Act and whether registration could be excused in respect of agreements falling under Section 17 (2) (v) of the Act. The learned Judges had observed as follows:—

“Their Lordships do not think it necessary to review these cases or to decide whether one of them will agree with what was said by Lord Buchmaster in Hemanta Kumari Debi v. Midnapur Zamindari Co. They will assume without deciding that taking the terms of Act of 1877 (alone the terms of which were repeated totidem verbis, though not with the same numbering of the paragraphs, in the Act of 1908, which is the Act which rules this case) the judgment of the Courts below were right in holding that the present agreement was an agreement to sell and not a sale, and was consequently exempted under Section 17 (2) (v), which corresponds with Section 17 (b) of 1877.”

20. The learned Judges however observed that in none of the earlier judgments, the Courts had taken note off Section 55 (b) of the Transfer of Property Act, 1882 and the learned Judges were of the opinion that Section 55(b) would apply to a case of an



agreement of sale, where a buyer has paid earnest money. The Bench observed that the agreement created in interest in immovable property, which was compulsorily registrable under Section 17 and since the agreement of sale, which was the subject matter of that case, was not registered, the Bench opined that the document could not be received in evidence.

21. Thereafter, this issue fell for the consideration of a Full Bench of this Court. In the Judgment of Muruga Mudaliar (deceased) v. Subba Reddiar, 64 LW 18 : 1951 ILR 473, the Full Bench had been called upon to answer a reference, which in the words of the learned Single Judge referring the matter read as follows:—

“In these circumstances, I direct that the papers be placed before the Chief Justice for appropriate orders being passed in regard to the reference of the question whether an agreement of lease in writing required to be registered but unregistered may be used as evidence of the agreement in a suit for damages for its breach, to a Full Bench preferably consisting of more than three Judges as already observed by me.”

22. The Hon'ble Chief Justice Rajamannar, concurring with the view of The Hon'ble Mr. Justice. Satyanarayana Rao, the author of the judgment of the majority in the Bench, had observed as follows with reference to the proviso to Section 49, which was inserted by Act XXI of 1929.

“It is true that the proviso to Section 49, of the Indian Registration Act, inserted by Act XXI of 1929 does not in terms apply to a suit for damages. But I fail to see any principle or policy which justifies the admission of an unregistered document as evidence of a contract in a suit for specific performance but at the same time requires its



rejection as evidence of a contract in a suit for breach of that contract. I venture to think that the omission to provide for the reception of such a document in a suit for damages was due to the fact that such a provision was unnecessary as a suit for damages was not concerned in any manner with a right, title or interest to or in immovable property, that is to say, was not one affecting immovable property.”

23. *Hon'ble Mr. Justice Satyanarayana Rao had pointed out the incongruity of the view taken by the Privy Council in Dayal Singh v. Indar Singh, (1926) 24 LW 396 as follows:—*

“The proviso was added by the amending Act, Act XXI [21] of 1929. Until the decision of the Judicial Committee in Dayal Singh v. Indar Singh, (1925-26) 53 IA 214 : (AIR 1926 PC 94) it was considered that an agreement for the sale of immovable property containing an acknowledgment of receipt of part of the purchase price paid by the buyer as earnest money did not require registration. The decision in Dayal Singh's case, 53 I. A. 214; (A.I.R. (13) 1926 P.C. 94), however, revolutionized the law, notwithstanding the clear provision in Section 54, T. P. Act, that a contract for the sale of immovable property does not by itself create any interest or charge on such property. This decision was pronounced in 1926. Immediately it was realised by the Legislature that this view was erroneous and caused great hardship with the result that an Amending Act, Act II [2] of 1927, was passed by which an explanation was added to Section 17 in these terms:

“A document purporting or operating to effect a contract for the Bale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any



earnest money or of the whole or any part of the purchase money.”

This provision, as the language clearly indicates, is retrospective in its operation and the law, therefore, as it stood before 1926 was restored by the timely intervention of the Legislature.”

24. The Bench had observed that an agreement of sale of immovable property as such does not create an interest in an immovable property and would therefore not come within the term “affecting such property”. The Bench therefore opined that the agreement can be used in evidence in a suit for specific performance to establish an agreement of sale by virtue of the proviso to Section 49. Ultimately, the Full Bench answered the question in the affirmative. The Hon'ble Mr. Justice Panchapagesa Sastry, who had penned a dissenting note, had also observed as follows:—

“It is well established that a suit for specific performance is in its origin and nature entirely different from a suit for recovery of damages for breach of the contract. Specific performance is asked for on the footing of the continued existence of the contract while damages are claimed on the basis of a breach of contract accepted by the party as a breach. The claim for specific performance requires continued readiness and willingness on the part of the plaintiff to perform the contract which he is keeping alive and trying to get enforced. Although a brief reference was made in the course of the argument to Section 19, Specific Relief Act, which empowers a person to ask for compensation for breach in addition to or in substitution for specific performance it was realised that a suit merely asking for damages on the footing of an accepted breach of contract cannot be described as a suit for specific performance. Section 29, Specific Relief Act, which bars a suit for compensation for breach of contract after the dismissal of a suit for specific performance is also



significant in this connection. Moreover, with respect to agreements to lease, the suit contemplated by the proviso to Section 49 would appear to be the suit provided for by Section 27A, Specific Relief Act. It is, however, unnecessary to come to a definite conclusion as regards this last question.”

25. A paradigm shift has now taken place by virtue of the amendment to Section 17 by Act 48 of 2001 and by the Act 29 of 2012. A perusal of the statement of objects and reasons to the Act 29 of 2012 would imply that the amendment has been introduced by the State of Tamil Nadu by reason of the fact that instruments of agreement relating to sale of the immovable property, instruments of power of attorney relating to immovable property and instruments evidencing agreement of deposit of title deeds, which were not registrable, were resulting in a loss to the exchequer as the public were executing these documents on white paper or on stamp paper of nominal value. The legislature had also taken note of the fact that an inadequately stamp document was invalid in law and could therefore not be admitted as evidence until they were adjudicated. Therefore, the amendment to the Registration Act was introduced. The Bill amended Section 17 of the Registration Act by substituting sub Section f and introducing sub Sections g to I. The amending Act also omitted the explanation to sub Section 2 of Section 17. By reason of this amendment under clause 17 (1) (g), all instruments of agreement relating to the sale of immovable property of a value of Rs. 100/- and upwards were compulsorily registrable. However, a corresponding amendment has not been carried out to Section 49 or its proviso.

26. Therefore, after its enactment in the year 1908, Section 17 of the Act underwent two amendments. Under the Central Amendment Act 48 of 2001, sub-Section 1-A was introduced. A reading of the above provision would imply that in an agreement



of sale, in which the purchaser has been put into possession and such purchaser seeks to exercise his right of part performance on the strength of the document, such documents shall compulsorily be registered on and after the commencement of the Amended Act, that is; with effect from 24.09.2001.

27. Thereafter, Clauses f to i had been introduced by the Act 29 of 2012 to Section 17 (1) of the Act and for the purpose of this revision, we are only concerned with Section 17 (1) (g) of the Act, which stipulates that any agreement of sale for a value of over Rs. 100/- in upwards was compulsorily registrable. Likewise, an amendment was brought about by the Central Act 48 of 2001 to Section 17 (2) (v) of the Act, where the word 'any document' was substituted by the words 'any document other than the documents specified in sub-Section 1 (A)'. Therefore, by this amendment, the legislature had consciously removed agreements, where possession had been given to the purchaser under the document out of the purview of the provisions of Section 17 (2) (v) of the Act. Likewise, the explanation to Section 17 (2) of the Act has been omitted by the Tamil Nadu Amendment Act 29 of 2012.

28. Coming to Section 49 of the Act by Act 21 of 1929, the proviso was introduced to Section 49. Under the Act as it then stood after the insertion, any document, which was compulsorily registrable under Section 17, could not be received in evidence, if it has not been registered. The proviso however ushered in an exception. The exceptions were as follows:—

- a) it could be received in evidence of a contract in a suit for specific performance;*
- b) as evidence of part performance of a contract for the purpose of Section 53 (A) of the Transfer of Property Act; and*
- c) as evidence of any collateral transaction, which is not required to be effected by a registered document.*



29. Thereafter, under the Central Amendment Act 48 of 2001, the second exception, namely receiving it as evidence of a part performance of a contract was deleted. This deletion was to bring it in conformity with the provisions of Section 17 (1) (A) and Section 17 (2) (v) of the Act. Therefore, the proviso to Section 49 as it now stands is that an unregistered document affecting immovable property, which is compulsorily registrable, can be received as evidence for the following reasons:—

- a) as evidence of a contract in a suit for specific performance and*
- b) as evidence of any collateral transaction, which transaction is not required to be effected by a registered instrument.”*

31. In view of the aforementioned judgment, the aim of the Registration Act is to register the document as per which there is creation of interest in any immovable property, to ensure that there is no fraud committed in the transactions pertaining to the immovable property.

32. The relevant Section under the Indian Stamp Act, 1899, dealing with the aspects of stamping of a document has been discussed herein below. Section 33 of the Indian Stamp Act, 1899 has been reproduced herein below:

“33. Examination and impounding of instruments. — (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the



value and description required by the law in force in 1 [India] when such instrument was executed or first executed: Provided that— (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1989); (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, — (a) 2 [the 3 [State Government]] may determine what offices shall be deemed to be public offices; and (b) 4 [the 3 [State Government]] may determine who shall be deemed to be persons in charge of public offices.”

33. Section 35 of the Indian Stamp Act, 1899, has also been reproduced herein below:

“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 6 [shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five 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 one rupee 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 proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(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 32 or any other provision of this Act.”

34. Upon the perusal of the aforesaid Sections of the Indian Stamp Act, 1899, it that unless a document is duly stamped the same cannot be used as an evidence. An instrument not duly stamped 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 requisite amount required to paid alongwith penalty.

35. It is apposite to note that the Privy Council in the matter of **Ram Rattan v. Parma Nand**, AIR 1946 Privy Council 33, while dealing with Section 35 of the Act, 1899, has observed that the words ‘for any purpose’ include collateral purpose and held that an unstamped deed of partition



cannot be used to corroborate oral evidence as to the factum of the partition.

The Privy Council observed as under:-

“The words ‘for any purpose’ in S.35, Stamp Act, should be given their natural meaning and effect and would include a collateral purpose. Where an unstamped document is admitted in proof of some collateral matter it is certainly admitted in evidence for that purpose which the Statute has prohibited. Consequently an unstamped partition-deed cannot be used to corroborate the oral evidence for the purposes of determining even the factum of partition as distinct from its terms.”

36. The Hon’ble Supreme Court in the judgment of ***Omprakash Vs. Laxminarayan and others, (2014) 1 SCC 618***, has further dealt with the aspect of the stamping of the documents and held as follows:

“12. Section 2(10) of the Act reads as follows:

*“2. Definitions.—In this Act, unless there is something repugnant in subject or context— * * * (10) Conveyance.— ‘Conveyance’ includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I;”*

13. From a plain reading of the aforesaid provision, it is evident that an instrument by which movable or immovable property is transferred, comes within the expression “conveyance”. In the present case, an immovable property is transferred on payment of part of the consideration and handing over the possession of the property. 14. It is relevant here to state that by the Stamp (Madhya Pradesh Second Amendment) Act, 1990 (22 of 1990) a few articles including Article 23 of Schedule 1-A have been substituted and Explanation has been added to Article 23. The Explanation appended to Article 23 of Schedule 1-A of the Stamp Act as substituted by Section 6 of Act 22 of 1990 reads as



follows: “Explanation.—For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly: Provided that, the provisions of Section 47-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section: Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance, subject to a minimum of Rs 10.” The aforesaid Explanation has come into effect with effect from 26-9-1990. The Explanation, therefore, creates a legal fiction. The agreement to sell shall be deemed to be a conveyance and stamp duty is leviable on an instrument whereby possession has been transferred. Thus the agreement to sell in question is a conveyance within the meaning of Section 2(10) of the Act and is to be duly stamped.

15. Section 35 of the Act makes instruments not duly stamped inadmissible in evidence, the relevant portion whereof reads as follows:

“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 five rupees, or,



when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;”

16. From a plain reading of the aforesaid provision, it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped 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 penalty. As we have observed earlier, the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not been paid and, hence, the trial court rightly held the same to be inadmissible in evidence.”

37. This Court deems it fit to discuss the scope of admissibility of the documents which are both unregistered and unstamped, in the Court of law. As per the statutes governing the registration of the documents, as discussed above, there is a compulsory registration in cases where there is a transfer of any title in the immovable property and if the said document is not registered, then there is no valid transfer of interest in the said immovable property. Moreover, as per the statute governing the stamping of the documents, it is mandatory that the party to pay the requisite stamp duty on the instruments the parties are executing and non- stamping of the said instruments make it inadmissible as evidence before the Court of law.

38. The Hon’ble Supreme Court discussed the aspect of unstamped and unregistered document not admissible as evidence before the Court of the in



the judgment titled as ***K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd., (2008) 8 SCC 564*** and observed as follows:

“27. Section 49 clearly provides that a document purporting to be a lease and required to be registered under Section 107 will not be admissible in evidence if the same is not registered. Proviso to this section, however, as noted hereinabove, provides that an unregistered lease deed may be looked into as evidence of collateral facts. Mr Mukherjee, learned counsel for the appellant argued before us that the tenancy in question was exclusively granted for the benefit of the named officer and his family and unless the landlord gave his consent, no other person could use it and such condition in the lease agreement is admissible for ascertaining the purpose of allotting the suit premises which according to the appellant is a collateral fact.

29. As we have already noted that under the proviso to Section 49 of the Registration Act, an unregistered document can also be admitted into evidence for a collateral fact/collateral purpose, let us now look at the meaning of “collateral purpose” and then ascertain whether Clause 9 of the lease agreement can be looked into for such collateral purpose.

30. In Haran Chandra Chakravarti v. Kaliprasanna Sarkar [AIR 1932 Cal 83(2)] it was held that the terms of a compulsorily registrable instrument are nothing less than a transaction affecting the property comprised in it. It was also held that to use such an instrument for the purpose of proving such a term would not be using it for a collateral purpose and that the question as to who is the tenant and on what terms he has been created a tenant are not collateral facts but they are important terms of the contract of tenancy, which cannot be proved by admission of an unregistered lease deed into evidence.

31. The High Court in the impugned judgment relied on a



decision of the Allahabad High Court in Ratan Lal v. Hari Shanker [AIR 1980 All 180] to hold that since the appellant wanted to extinguish the right of the respondent with the help of the unregistered tenancy, the same was not a collateral purpose. In Ratan Lal case [AIR 1980 All 180] while discussing the meaning of the term “collateral purpose”, the High Court had observed as follows : (AIR pp. 180-81, para 4)

“4. The second contention was that the partition deed, even if it was not registered could certainly be looked into for a collateral purpose. ... but the collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguished a right to immovable property. ... term ‘collateral purpose’ would not permit the party to establish any of these acts from the deed.”

32. In Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806] this Court observed that if a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It was also held in that decision that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose. Again this Court in Rai Chand Jain v. Chandra Kanta Khosla [(1991) 1 SCC 422 : AIR 1991 SC 744] reiterated the above and observed in para 10 as under : (SCC p. 429, para 10)

“10. ... the lease deed, Ext. P-1 dated 19-5-1978 executed both by the appellant and the respondent i.e. the landlady and the tenant, Rai Chand Jain, though unregistered can be considered for collateral purposes and as such the findings of the appellate authority to the effect that the said deed cannot be used for collateral purposes, namely, to show that the purpose was to lease out the demised premises for residential purposes of the tenant only is not at all legally correct. It is well settled that



unregistered lease executed by both the parties can be looked into for collateral purposes. In the instant case the purpose of the lease is evident from the deed itself which is as follows: 'The lessor hereby demises House No. 382, Sector 30-A, Chandigarh, to the lessee for residential purposes only'. This clearly evinces that the property in question was let out to the tenant for his residence only."

33. In Rana Vidya Bhushan Singh v. Ratiram [(1969) 1 UJ 86 (SC)] the following has been laid down:

"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th Edn., at p. 189:

'The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it.' "

34 [Ed. : Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./76/2008 dated 15-9-2008.] . From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

- 1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
- 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*



3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

39. The Hon'ble Supreme Court has further delved into the principle discussed in the foregoing paragraphs in the judgment of ***Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787***, and held as follows:

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion



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that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.

40. In view of the aforementioned judgments, it is crystal-clear regarding position of law pertaining to the admissibility of an unregistered and unstamped document, that the documents of such nature, are not admissible in a Court of law, to prove certain facts by the party which produced the said document. Such kind of document does not transfer any title to any party, hence when the party cannot use the said document as a basis or proof of transfer of title in the immovable property.

41. It is pertinent to also refer to the scope of Order VII Rule 11 of the CPC, as per which the Court has to look into the plaint and the documents relied upon in the plaint to decipher whether the plaint needs to be rejected at a preliminary stage on the grounds that the plaint does not disclose a cause of action, relief claimed in the plaint is undervalued, suit barred by any statute or the plaint is not duly stamped. The aim of the provision is to ensure that the suits which at the discretion of the Court are on the face of it vexatious and frivolous, then the same may not be dragged for a full trial.

42. There needs to be a great amount of care and caution exercised by the Courts in dismissing a plaint under Order VII Rule 11, since the same leads to dismissal of the suit at a preliminary stage before entering the trial.

43. The scope of the Order VII Rule 11 of the CPC that there should be for careful not only has been enunciated by the Hon'ble Supreme Court in the judgment of *C. S Ramaswamy v. V. K Senthil*, Civil Appeal no.



500/2022, dated 30th September 2022`held as follows:

“20.It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

44. In regard to the ambit of Section 115 of the CPC, it is an already appreciated point of law by the Courts in a catena of judgments. The said provision only confers a supervisory power to this Court with the main aim of keeping superintendence. It embarks a particular limitation prescribing that the High Court shall not interfere merely, because the Court below has wrongly decided a particular suit being not maintainable.

45. Hence, only in cases where there is an error apparent on the face of it, the High Court must interfere with the order of the Trial Court and not every order of the Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court. This view has also been reaffirmed in the judgment of the Hon’ble Supreme Court in ***D. Sasi Kumar v. Soundararajan*, (2019) 9 SCC 282**.The scope as discussed hereinabove



has also been observed by the Hon'ble Supreme Court in ***Varadarajan v. Kanakavalli***, (2020) 11 SCC 598, wherein the Hon'ble Supreme Court held as follows:

“15. In addition to the nature of proceedings to implead the legal representative to execute the decree, we find that none of the tests laid down in Section 115 of the Code were satisfied by the High Court so as to set aside the order passed by the executing court. The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing court as if it was acting as the first court of appeal. An order passed by a subordinate court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing court. Consequently, the order passed by the High Court is set aside and that of the executing court is restored. The appeal is allowed.”

46. In view of the above, it is clear that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors thereto, but shall limit itself to the question of errors of exercise of jurisdiction.

47. Now advertent to the facts of the instant case.

48. The relevant portion of the plaint has been reproduced herein below:

“4. That on 12.03.2002, the above named Amar Nath Gupta took a loan of Rs. 4,00,000/- (Rupees four lacs only) from one Shri Surender Kumar's son of Late Shri Khazan R/o Vill. Ghitorni, New Delhi-110030 as he was running under financial constraints, which was promised to repay within one year with



interest, as such, he mortgaged the above property against the aforesaid debt to Shri Surender Kumar above named vide Deed of Equitable Mortgage dated 28.03.2002. By way of the above Mortgage Deed he transferred the above properties with his all rights, ownership, easement etc. in favour of Shri Surender Kumar above named and he handed over all the original papers of the above properties to him. At the time of execution of the said mortgage, declared himself the absolute owner of the aforesaid properties and the same was free from all encumbrances and he was competent to mortgage the same. It was also declared by Amar Nath Gupta above named that in the event of default in the payment of the whole of the mortgage money inclusive of principal as well as interest due thereon within the said period, the Mortgagee i.e., Surender Kumar above named shall be entitled to enforce all or any of the remedies of an Equitable mortgage. A true copy of the Mortgage Deed is attached herewith as ANNEXURE P- 3.

5. That though the period for payment of the mortgage amount was for one year from the date of the Mortgage Deed but after execution of the mortgage, the above-named Amar Nath Gupta died on 16.06.2002.”

6. That it is respectfully submitted on behalf of the plaintiff that after the death of above-named Amar Nath Gupta, the above-named Surender Kumar waited for more than one year for repayment of his loan amount being extended to Shri Amar Nath Gupta, but none of his family member came forward to repay the same to Surender Kumar. Since the period of one year of the Deed of Mortgage expired on 11.03.2003, therefore, as per the terms of the mortgage, Surender Kumar was free to exercise his all rights over the property in question and as such he became the absolute owner of the above properties.

7. That thereafter, Shri Surender Kumar above-named was in



need of money as the mortgage money was not paid to him by either Shri Amar Nath Gupta above-named or his legal heirs, as such on 04.06.2003, the above-named Shri Surender Kumar mortgaged the said property in favour of the plaintiff for a sum of Rs. 6,00,000/- which he received from the plaintiff under the said Mortgage Deed and it was assured to be repaid by him to the plaintiff within a period of one year along with interest. A copy of Mortgage Deed dated 04.06.2003 is attached herewith as ANNEXURE P-4.

8. That it is further submitted on behalf of the plaintiff that the above named Surender Kumar did not repay aforesaid amount of mortgage along with interest to the plaintiff, so in the month of April 2004 on demand made by the plaintiff, the above-named Surender Kumar stated that he was not able to repay the said amount and was able to execute Agreement to sell in favour of the plaintiff, as such an agreement to sell dated 16.04.2004 was executed by above-named Surender Kumar son of Late Khazan in favour of the plaintiff which was duly notarized for total sum of Rs. 6,00,000/- which was already paid to him under the above Mortgage Deed dated 04.06.2003 and handed over all original previous document to the plaintiff. The above-named Surender Kumar further agreed to execute all other necessary Sale Documents in favour of the plaintiff as and when demanded by him. He further declared that the above property was free from all encumbrances, sale, mortgage, gift, lien, decree and any charges etc. under the said agreement he further stated under clause-10 that he has delivered peaceful vacant possession of the above said properties to the plaintiff at the spot. A true copy of the Agreement to sell dated 16.04.2004 is attached herewith as ANNEXURE P-5.

9. That it is further submitted that after when the plaintiff was put in possession of the properties in question at the time of execution of the above agreement to sell by above-named



Surender Kumar, the defendants started coming at the site and alleging that they are the owners of the property and they tried to pick fight with the plaintiff, but when the plaintiff asked them to justify their alleged claim of ownership etc., they did not show anything to the plaintiff. When the above activities of the defendants became the routine of the day, the plaintiff made number of complaints to the police authorities and Higher Govt. Authorities against the defendants. True copies of the complaints made by the plaintiff dated 21.10.2010 and 26.10.2010 are attached herewith as ANNEXURE P-6(Colly.).”

49. Upon perusal of the plaint, it is evident that the petitioner has placed reliance on the mortgage deed dated 28th March 2002, annexed as Annexure P-3 to buttress its claim that the suit property has been transferred by way of equitable mortgage from Mr. Amar Nath Gupta to Surender Singh on account of loan taken by Mr. Amar Nath Gupta from Surender Singh. Pursuant to the death of Mr. Amar Nath Gupta, none of his family members repaid the loan and therefore, Mr. Surender Singh became the absolute owner of the suit property.

50. The suit property was then mortgaged to the plaintiff, i.e., the respondent herein, by Mr. Surender Singh for a sum of Rs. 6,00,000/-, by way of mortgage deed dated 4th April 2003, and the said amount was assured to be paid within one year to the plaintiff. The said document is annexed as Annexure- P-4 to the plaint. Mr. Surender Singh, unable to pay back the said amount executed an Agreement to Sell in favour of the plaintiff on 16th April 2004. The said document is appended as Annexure P-5 to the plaint.

51. It is also pertinent to examine the application filed by the petitioner



under Order VII Rule 11 of the CPC, before learned the Trial Court for rejection of the plaint. The relevant portion of the same is reproduced as follows:

“5. Thereafter as per Court file two documents of Deed of Equitable Mortgage dated 12.03.2002 was executed by Shri Amar Nath Gupta, (now deceased) in favour of Shri Surendra Kumar, 5/o Late Shri Kazhan, R/o of Village Ghitorni, New Delhi.

It is important to submit here for kind perusal of this Hon'ble Court that the Deed of Equitable Mortgage dated 12.03.2002 marked initially Annexure P/B was executed by Shri Amar Nath Gupta in favour of Shri Surendra Kumar, S/o- Late Shri Kazan without possession on account of loan amount of Rs. 4 Lacs borrowed from Shri Surendra Kumar by way of mortgage of his documents of title deeds of the suit property in his favour. It is relevant to submit here that the memorandum in writing with full details of terms and conditions of Deed of Equitable Mortgage have been enumerated as affixed a stamp of Rs. 50/- only and as such this document is absolutely un stamped and unregistered being absolutely illegal which cannot be admissible in evidence at all.

It is worth submitting here if the Equitable Mortgage was simply on the basis of title deeds only with the mortgagee as deposited by the mortgagor, then there was no need to get the said document registered. But in this case as per records filed by the Plaintiff, all the terms and conditions by way of memorandum have been written in details with which both the parties i.e., mortgagor and mortgagee shall remain bown down to comply with all the conditions mentioned there in. In such event, the 'Deed of Equitable Mortgage has to be compulsorily registered u/ s 17 and 49 of Indian Registration Act, 1908'. The above-mentioned



document of Deed of Equitable Mortgage, if un-registered and un-stamped cannot be admissible in evidence as per law. Conclusively such type of documents if un-registered and un-stamped cannot be and shall not be read into evidence as per Indian Stamp Act, 1899 (Section 33 and 35 and Indian Registration Act, 1908 Section 17 and 49 of the same). The perusal of the document of Equitable Mortgage Deed proved to be the main plank on the basis of which the Plaintiff can get breathing line from the hands of Shri Amar Nath Gupta who had deposited his title of documents vide Deed of Equitable Mortgage in favour of Shri Surendra Kumar on account of loan amount of Rs. 4 Lacs received from Shri Surendra Kumar and thereafter Shri Surendra Kumar the alleged mortgagee has further transferred the suit property in favour of the Plaintiff as per sl. no. 417 dated 28.03.2002 diary of Notary Public by receiving a sum of Rs. 6 Lacs from the hands of the Plaintiff. Shri Surendra Kumar has transferred the suit property in favour of the Plaintiff posing himself as the full-fledged owner without caring complying and rather ignoring the provisions of Transfer of Property Act and the said document is again is un-registered and un-stamped which also cannot be admissible in evidence and thus barred by law. Shri Surendra Kumar being the alleged mortgagee as per sl. no. Annexure P/4 was bereft of the power to transfer the suit property in favour of the Plaintiff. In this manner the alleged mortgagee named Shri Surendra Kumar has/had not bothered to follow the provisions of Transfer of Property Act to give the notice to the LRs and did not like to get redemption from the competent authority or the court of law before being declared as self-styled owner of the suit property and further declaring the Plaintiff as the absolute owner only through agreement for sale of the suit property in favour of the Plaintiff which are absolutely in gross violation of law



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and the agreement for sale are not properly stamped and were unstamped and unregistered. Likewise, the General Power of Attorney dated 02.11.2010 Annexure P/7 along with one affidavit executed by Shri Surendra Kumar were also unregistered and unstamped and thus the same are not admissible in evidence as per law.

6. Surprisingly the alleged mortgagee named Shri Surendra Kumar, S/o Shri Khazan has dared by drafting the "possession letter" in favour of the Plaintiff by handing over the peaceful possession of the suit property to the Plaintiff which is absolutely in contravention of the terms of Deed of Equitable Mortgage dated 12.03.2002 as per Annexure P/3 executed by Shri Amarnath Gupta in favour of Shri Surender Kumar about the mortgage by way of deposit of title of documents of the suit property with the alleged mortgagee named Shri Surendra Kumar "but Equitable Mortgage without possession". All these documents detailed above are un-registered unstamped which cannot be admissible in evidence as per law. As per law agreement to sell as executed primarily by Late Shri Sohan Lal in favour of Shri Amar Nath Gupta and secondly, the agreement to sell of the same suit property in favour of the Plaintiff are required to be on stamp paper according to the market value of the property in question and thus necessary stamp duty are required to be paid followed by compulsory registration as per Indian Registration Act, 1908 failing which such documents un-registered and un-stamped coupled with the Photostat documents cannot be admissible in evidence as per law."

52. As per the aforementioned application, the equitable mortgage deed dated 12th March 2002, executed by Mr. Amar Nath Gupta in favour of Mr. Surendra Singh is unregistered and unstamped. It is pleaded by the petitioner that the said document is unstamped and unregistered despite the fact that the said document has to be mandatorily registered under the Registration



Act, 1908, and requisitely stamped as per the Indian Stamp Act, 1899. Moreover, if such mandates of the statutes are not complied with, the same would tantamount to the inadmissibility of the said documents as evidence.

53. Similarly, the General Power of Attorney dated 2nd November 2010, annexed as Annexure P-10, to the plaint is also neither stamped nor registered. Hence, the petitioner has contended that the same is also inadmissible as an evidence.

54. The above said application was dismissed by the learned Trial Court vide the impugned order and the relevant portion of the same is reproduced herein below:

“13. In so far as the documents relied upon by the plaintiff is concerned, it is clear that the documents would require as registration and stamping in accordance with law and in the absence thereof there is no escape other than to face the consequences as are stipulated in section 17 & 49 of the Registration Act and section 33 & 35 of the Indian Stamp Act. However, the assertion which needs to be considered so as to whether the inadmissibility of the document would render the very suit liable to be rejected under order 7 Rule 11 CPC.

14. The application has been filed under order 7 Rule 11 CPC (d) separately and the dismissal of the earlier application, as has been relied upon by the plaintiff side, has no bearing on the present application.

Order VII Rule 11 CPC reads as under:

"Order VII Rule 11. Rejection of plaint. -

The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on



being required by the court to so correct the valuation within a time to be fixed by the Court, fails to do so;
(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;"

15. The reference to the above provision would indicate that the suit can be summarily rejected under order 7 rule 11 (d) in the event of its being barred by any law.

16. Considering the fact that the provisions relied upon by the ld. Counsel for the applicant, would have the effect of inadmissibility of the documents, at best but the same would not strike at the maintainability of the suit.

17. Though the contention of Learned counsel for the applicant that the suit is to ultimately fail and such dismissal is visible at the horizon, cannot be said to be devoid of merit. However, even if the suit is to meet same fate, as has been contended by the ld. Counsel for the applicant, the same still cannot be rejected under order 7 rule 11 CPC on the grounds of maintainability.

18. It is not the merits of the case but the barring under the law which needs to be considered under order 7 Rule 11 (d) CPC.

19. The judgments being relied upon by the applicant side cannot be disputed. However, in so far as the present application is concerned, the same would not be applicable.

20. This court is of the opinion that even if the evidence is not admissible and the fate of the suit is at the horizon, the rejection



under order 7 Rule 11 CPC cannot be resorted. The court has to afford a fair and complete trial before coming to conclusion of merits. In addition, there is another dimension which deserves attention. As per the plaint, the plaintiff was in the possession of the property, which assertion has been vehemently opposed by the applicant side including on the ground that even the predecessor of the plaintiff did not have possession, and could not be have been expected to deliver the possession. The said question is a question of fact. The amended suit claims possession as well on the basis of title and its earlier possession. Any rejection 011 order 7 Rule 11 CPC, thus, might unduly prejudice the plaintiff. For the above reasons, the application is dismissed.”

55. The impugned order states that the contentions raised by the petitioner pertaining to the registration and stamping of the documents mandated as per the law and without the same, the documents as relied by the plaintiff in its plaint are not admissible in Court. The learned Trial Court whilst dismissing the petitioner’s application filed under Order VII Rule 11 of the CPC, observed that the suit cannot be dismissed at the stage of maintainability on the grounds raised by the petitioner and the Court must afford a full and fair trial to the respondent before dismissing the suit.

56. It is pertinent to point out that the learned Trial Court has not disputed upon the fact that the documents relied upon in the plaint are inadmissible being unstamped and unregistered and does not fall into any of the exceptions carved out for in the statutes for document being unstamped and unregistered. It has merely disputed that the same could not be a ground to dismiss the suit at the threshold and a full trial should be conducted in this



regard.

57. As per the Registration Act, 1908, and the Indian Stamp Act, 1908, the documents are inadmissible and the same is also admitted by the learned Trial Court. Hence, upon documents becoming inadmissible there is no basis of the plaint, since the plaintiff has placed reliance on the said documents to assert its contention.

58. Therefore, the Civil Suit is filed on the basis of fake and frivolous documents. Such kind of suit, needs to be nipped in the bud, by dismissing the same at the preliminary stage by way of applying the law settled with regard to the provisions enumerated in Order VII Rule 11 of the CPC *qua* the rejection of a plaint.

59. Under Order VII Rule 11 of the CPC, a plaint read along with documents has to disclose a cause of action. In the present scenario, the documents being inadmissible due to non-compliance with the statutory mandates of registration and stamping of the documents, there is no cause of action which survives in the plaint.

60. The suit is manifestly vexatious and meritless. This Court is of the considered view that there is infirmity with the impugned order and in view of the same the instant petition is a fit case for the exercise of the power of this Court under Section 115 of the CPC.

61. Accordingly, the instant revision petition is allowed.

62. In view of the above discussions of facts and law, this Court finds force in the submissions advanced on behalf of the petitioner. Henceforth, the impugned order dated 24th October 2019, passed by the learned ADJ-02,



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(South) Saket, New Delhi, in Civil Suit bearing no. 588/2010, is, hereby, set aside and accordingly, the plaint of the respondent is rejected in accordance with the provisions of Order VII Rule 11 of the CPC.

63. Accordingly, the Civil Suit bearing no. 588/2010 pending before the Court of Additional District Judge-02 (South) Saket, New Delhi, also stands dismissed.

64. The instant petition stand disposed of along with pending applications, if any.

65. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 3, 2023
SV/DB/RYP

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 02.11.2023
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C.R.P. 16/2021

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