

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 28.07.2025

Order pronounced on : 19.09.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2500 of 2025
& CMP.No.14322 of 2025

M.Damodaran

..Petitioner

Vs.

M/s.Ganesh Gold Thread Manufacturing Co.,
4E, Century Plaza,
No.560-652, Mount Road,
Teynampet, Chennai – 600 018,
Represented by its Partner
Ganesh Patwari

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned order dated 13.03.2025 in I.A.No.5 of 2025 in C.O.S.No.432 of 2022 and consequently, allow I.A.No.5 of 2025 on the file of the Principal Commercial Court, Egmore, in C.O.S.No.432 of 2022 as prayed for.

For Petitioner : Mr.V.P.Raman
for Mr.S.Vedhavel

For Respondents : Mr.Arvind Subramaniam
Senior Counsel
for Mrs.M.Rajalakshmi @ Sathya



ORDER

The defendant, aggrieved by the order of the trial Court in I.A.No.5 of 2025, directing the lease agreement dated 01.01.2005 to be impounded, is the revision petitioner.

2.I have heard Mr.V.P.Raman, learned counsel for Mr.S.Vedavel, learned counsel for the revision petitioner and Mr.Arvind Subramaniam, learned Senior Counsel for Mrs.M.Rajalakshmi @ Sathya for the respondent.

3.Mr.V.P.Raman, learned counsel for the revision petitioner would contend that the lease agreement in original was allegedly filed along with the plaint originally before this Court. Thereafter, the suit has been transferred to the file of the Commercial Court, Egmore, Chennai. It is the contention of the learned counsel for the petitioner that the original lease agreement was not marked, however, during cross-examination of DW1, the witness was confronted with a photostat copy of the said lease agreement dated 01.01.2005 and since the witness admitted the document, the trial Court has proceeded to mark the same. Subsequently, the present application in I.A.No.5 of 2025 has been taken up for unmarking the said photocopy of an unstamped and unregistered lease deed, which has been marked as Ex.A14 and also to consequently eschew the evidence insofar as Ex.A14 is concerned.



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4.Mr.V.P.Raman would further state that the suit is filed for recovery of rental arrears and damages and the primary purpose, for which the lease agreement is sought to be marked, is to establish the quantum of rent and therefore, even for collateral purposes the said document cannot be marked. Further, he would also state that since the document is not sufficiently stamped and remains unregistered, the lease being for a period of three years, the document itself is inadmissible and the payment of deficit stamp duty and penalty will not cure the defect and it cannot be relied on for any purposes whatsoever.

5.It is the further contention of the learned counsel for the petitioner that what has been marked is only a photocopy of the lease agreement and surprisingly, the original, which is claimed to have been filed along with the suit as plaint Document No.1 and which went missing, according to the plaintiff has resurfaced and in the absence of the said original being exhibited before the Court, only the photocopy being marked as Ex.A14, he would contend that the trial Court has erroneously ordered the original lease agreement to be impounded when it is not even before the court in the first place. The learned counsel for the petitioner would further refer to the deposition of PW1, where



excepting the lease deed, other documents have been marked and when the said lease deed has not been exhibited or even permitted to be exhibited on the side of the plaintiff, the said document cannot be received as evidence, merely because the defendant's witness admitted to the execution of the lease deed.

6.The learned counsel for the petitioner has relied on the following decisions:

1.Jayanthi R.Hegde Vs. G.M.Shahul Hameed, (2011 SCC Online Kar 4741).

2.G.M.Shahul Hameed Vs. Jayanthi R.Hegde, (2024 7 SCC 719).

3.Jupudi Kesava Rao Vs. Pulavarthi Venkata Subba Rao, (1971 (1) SCC 545).

4.1.Bidyut Sarkar Vs. Kanchilal Pai, (2024 SCC Online SC 2603).

5.Vijay Vs. Union of India, (2023 SCC Online SC 1585).

K.Mohammad Rafee Vs. A.G.Akbar Shereif, (2006 (2) CTC 121).

6.Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, (2009) 2 SCC 532).

7.Bakkiyam and Others Vs. Narayanan, (CRP.No.636 of 2024).

8.Pathrakali Vs. R.Senthilkumaran (2010 1 L.S 177).

9.Yellapu Uma Vs. Buddha Jagadeeshwara Rao, (2015) 16 SCC 787).

10.K.B.Saha and Sons Private Limited Vs. Development Consultant Limited, (2008) 8 SCC 564).

11.Jagadeesan vs KR.Nivethan and another, (2024 SCC Online Mad 4677).



*12.State of Gujarat vs Union of India, (2018 SCC Online
Guj 1515).*

*13.V.Velusamy Vs. L.V.Palanisamy and others
(CRP(PD)No.2991 of 2019 dated 19.06.2025).*

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7.Per contra, Mr.Arvind Subramaniam, learned Senior Counsel for respondent would state that the revision petitioner has admitted to the factum of having been inducted as a tenant under the said lease deed dated 11.01.2005 and the revision petitioner was put in possession of the tenanted premises and the plaintiff wants to rely upon the said lease deed. According to Mr.Arvind Subramaniam, learned Senior Counsel for the respondent, it is only a collateral purpose for which the lease deed is sought to be relied on and there is no bar, especially when DW1 himself has admitted to the execution of the said lease deed, pursuant to which alone, the document was marked as Ex.A14. He would further state that since the original is available and the trial Court has directed the ascertainment of the deficit stamp duty and penalty, by impounding the same and the plaintiff also willing to pay the said amount, no prejudice would be caused to the revision petitioner, if the said lease deed is received in evidence. He would also state that eschewing the evidence is not permissible as sought for by the revision petitioner, since the witness had admitted to the relationship between the parties and also the execution of the lease deed as well. He would further state that there is no provision under the Evidence Act for



eschewing evidence which has already come on record and he would therefore seek for suitable directions to be issued in this regard.

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8.The learned Senior Counsel would also place reliance on the following decisions:

1.Alimane Sahiba Vs. Kolisetti Subbarayudu, (AIR 1932 Mad 693).

2.Ponnusamy Chettiar Vs. Kailasam Chettiar, (ARI 1947 Mad 422).

3.T.S.Karthikeya Mudaliar Vs. Singaram Pillai and others, (AIR 1956 Mad 603).

4.Niyaz Ahmed Khan Vs. Mahmood Rahmat Ullah Khan, (2008) 7 SCC 539).

5.A.Venkatasubbiah Naidu Vs. S.Challpan, (2000) 7 SCC 695).

6.Sunita Rani Vs. Shri Chand (2009) 10 SCC 628).

7.K.R.Sivadesikan Pillai Vs. Ravichandran, (2014) 3 MLJ 887).

8.G.M.Shahul Hameed Vs. Jayanthi R.Hegde, Civil Appeal No.1188 of 2015).

9.Mohamed Abdul Wahid Vs. Nilofer and another, (2023) Live Law (SC) 1061).

10.Subair Banu Vs. Inspector of Police, Kottar Police Station, Nagercoil, (Crl.RC.(MD)No.348 of 2019).

11. Dr.Sundar v. State of Tamil Nadu (Crl.O.P.Nos.21519 & 21520 of 2017).

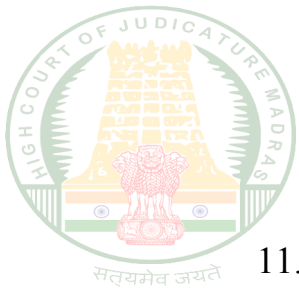
9.I have carefully considered the submissions advanced by the learned



counsel for the petitioner and the learned senior counsel appearing for the respondent /plaintiff.

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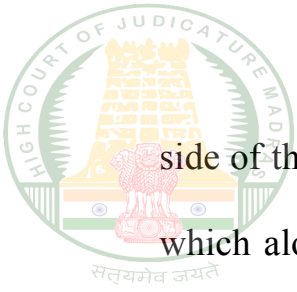
10.The suit has been filed for recovery of alleged rental arrears and also for damages. The trial has already commenced and when the plaintiff's witness was examined, the defendant has objected to marking of the lease deed and a memo has also been filed to that effect. Accepting the said memo, the trial Court has not permitted the lease deed to be marked as an exhibit on the side of the plaintiff Other documents alone were permitted to be marked. Thereafter, when the defendant's witness entered the witness box, the witness was confronted with the photocopy of the said lease deed and as the witness admitted to the execution of the said lease deed, the Court has marked the same as Ex.A14. In order to unmark the said document, which is a document that requires compulsory registration and hit by not only Section 17 of the Registration Act, but also on the ground of being deficiently stamped, the application was taken on by the revision petitioner. The trial Court has found that since the original was available before the Court and the defendant's witness has also admitted to the factum of execution of the lease deed in cross-examination, there is no impediment or prejudice that would be caused to the revision petitioner, by impounding the said document in order to enable the plaintiff to rely on the same and proceeded to allow the application.



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11.It is trite law that a document that is insufficiently stamped and also unregistered, if such document requires registration under Section 17 of the Registration Act, then such document is inadmissible in evidence. There is no second opinion with regard to the fact that a lease deed for a period of three years is compulsorily registrable and in the instant case, the lease deed is an unregistered document. It is also an admitted fact that the said document is not sufficiently stamped. Therefore, when the said document is neither sufficiently stamped nor registered, as held by the Honourable Supreme Court in *Barium Chemicals Limited Vs. Vishwa Bharati Mining Corporation and another*, reported in (2009) 16 SCC 262, such a document cannot be admitted in evidence, for any purpose, including collateral purposes.

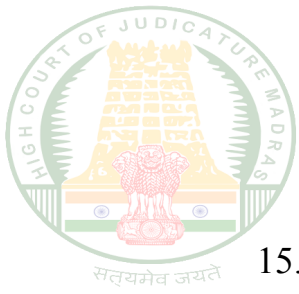
12.In this case, the original lease deed, which is claimed to have been filed along with the plaint, went missing and what was marked as Ex.A14 is only a photocopy of the said lease deed. However, at the time of arguing the present interlocutory application, it appears that the original was available in the Court records and the trial Court has directed the original lease deed to be impounded. When the original lease deed has not even been produced on the



side of the plaintiff and when DW1 was also confronted only with a photocopy, which alone came to be marked as Ex.A14, I find force in the submissions of Mr.V.P.Raman, learned counsel for the petitioner as to how the Court can direct impounding of the original lease deed. I find that at no point of time, the original lease deed was attempted to be marked in evidence for the trial Court to have taken steps to impound the same and direct payment of deficit stamp duty together with any penalty.

13. Therefore, when the lease deed, even in original, being inadmissible in evidence, the question of taking shelter under 'collateral purposes' does not even arise.

14. Coming to the decisions that have been relied on by the learned counsel on either side, in *G.M.Shahul Hameed's case*, stated supra, the Hon'ble Supreme Court, setting aside the judgment of the Karnataka High Court, held that allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the State and that the paramount duty is cast on the Court to prevent circumventions of legal obligations and to ensure due compliance and strict adherence for upholding the rule of law.



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15. In *Jupudi Kesava Rao's case*, stated supra, the Hon'ble Supreme Court, referring to Sections 35 and 36 of the Stamp Act, held that, though, once the time for raising objection to admission of documentary evidence is passed and no objections based on the same ground can be raised at a later stage, it would not extend the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of contents of a document which is unstamped or insufficiently stamped.

16. In *Bidyut Sarkar's case*, stated supra, the Hon'ble Supreme Court held that until necessary stamp duty and penalty are duly paid and endorsed by the collector, an insufficiently stamped instrument remains legally barred from being admitted in evidence.

17. In *Vijay's case*, stated supra, the Hon'ble Supreme Court held that if a document, that is required to be stamped, is not sufficiently stamped, then a copy of such document cannot be admitted as secondary evidence. However, on facts, the Hon'ble Supreme Court found that the document in question did not attract any stamp duty and permitted the prayer for leading secondary evidence.



18. This Court in *K. Mohammad Rafee's case*, stated supra, held that a party cannot attempt to mark photostat of a document, the original of which was available in order to avoid payment of stamp duty and penalty.

19. In *Avinash Kumar Chauhan's case*, stated supra, the Hon'ble Supreme Court held that an unregistered deed of sale on which adequate stamp duty was not paid cannot be admitted for any purpose whatsoever, including collateral purposes.

20. This Court in *Bakkiyam's case*, stated supra, held that even if a document is received for collateral purposes, even then the stamp duty and penalty as contemplated under Section 35 of the Stamp Act would have to be necessarily paid.

21. In *Pathrakali's case*, stated supra, referring to Section 35 of the Stamp Act, this Court held that a bar against admissibility of an instrument which is chargeable with stamp duty and is not stamped is absolute, whatever be the nature of the purpose, be it, for main or collateral purpose, unless the requirements of proviso (A) to Section 35 of the Stamp Act are complied with.



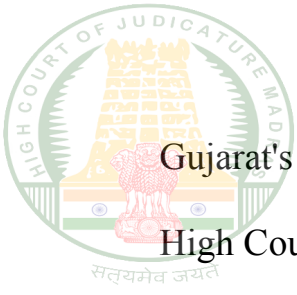
22. In *Yellapu Uma Maheswari's case*, the Hon'ble Supreme Court held that an unstamped instrument is not admissible in evidence even for collateral purposes until the same is impounded and the party concerned who seeks to rely on the document pays the stamp duty together with penalty.

23. In *K.B.Saha's case*, stated supra, the Honourable Supreme Court has explained the term collateral purpose.

24. I had an occasion in *V.Velusamy's case*, stated supra, where an insufficiently stamped and unregistered partition deed was sought to be marked as an exhibit and following the ratio in *Barium Chemical Limited's case*, stated supra, I held that such a document cannot be looked into even for collateral purpose.

25. In *State of Gujarat's case*, stated supra, the Hon'ble Supreme Court has held that supervisory jurisdiction of the High Court under Article 227 of the Constitution of India may be exercised when error is manifest and apparent on the face of the proceedings, such as when it is based on clear ignorance or utter disregard of provisions of law.

26. In *Jagadeesan's case*, stated supra this Court, referring to State of

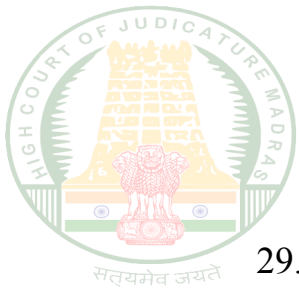


Gujarat's case, held that a revision invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is maintainable.

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27. In *Alimane Sahiba's case*, stated supra, this Court was dealing with a suit on a promissory note which had been admitted in evidence and an objection was taken that it had not been properly stamped. This Court held that once the promissory note had been admitted in evidence as an exhibit, its admissibility could not be subsequently reopened on the ground of not having been duly stamped. This Court also took note of the fact that the defendant had admitted execution of the promissory note and also pleaded discharge and in such circumstances, this Court held that it is not open to the defendant at the stage of arguments to contend that the promissory note is admissible in evidence.

28. In *Ponnuswami Chettiar's case*, stated supra, this Court finding that the defendant had admitted the execution of the document and had pleaded substitution of liability and partial discharge and following the ratio in *Alimane Sahiba's case*, held that since the document was admitted and referring to provision of Section 58 of the Indian Evidence Act, proceeded to hold that an admitted fact need not be proved and that it would be so even when the document in question is not admissible on account of any provisions of the Stamp Act.

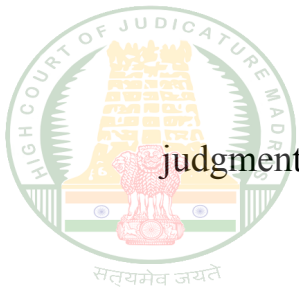


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29. In *T.S. Karthikeya Mudaliar's case*, stated supra, this Court was dealing with the concept of part performance under Section 53(A) of the Transfer of Property Act and specific performance of the said contract, held that though the document which is required to be stamped and not stamped is inadmissible in evidence under Section 35 of the Indian Stamp Act, however the document in the nature of an agreement to enter into a lease does not become inadmissible in evidence by a reason of want of registration and would certainly be inadmissible by reason of provisions of Section 35 of the Stamp Act. However, such a document, it was held, could be received in evidence as provision is made under the Act for payment of stamp duty and penalty.

30. In *K.R. Sivadesikan Pillai's case*, stated supra, this Court held that an unregistered lease deed for a period of 10 years can be admitted in evidence for collateral purposes. However, in view of later pronouncement of the Hon'ble Supreme Court, the ratio laid down in this case is no longer good law.

31. In *Subair Banu's case*, stated supra, this Court held that there is no provision under the Indian Evidence Act to eschew evidence which has already been partly recorded and that the Presiding Officer, at the time of passing



judgment, has to decide whether the same has any evidentiary value or not.

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32. In *Dr. Sunder's case*, stated supra, P.W.1 was examined on a particular date, but however, was not cross-examined on the same date, but was permitted to recall P.W.1 at a later date, at which point of time, P.W.1's whereabouts were not known. In such circumstances, this Court held that evidence of P.W.1 in chief cannot be effaced and question of eschewing evidence does not arise.

33. In *Mohammed Abdul Wahid Vs. Nilofer*, reported in (2024) 2 SCC 144, this Court was only concerned with whether party and a witness have to be treated alike or on a different footing and concluded that production of documents for both the parties to a suit as a witness at the stage of cross examination is permissible in law.

34. The Honourable Supreme Court, in *K.B.Saha's case*, held that though a document is required to be registered and if it is unregistered and not admissible in evidence, yet it can be used as evidence of collateral transaction/purpose as provided in Section 49 proviso and ultimately, the Hon'ble Supreme Court laid down the following principles:



1.A document required to be registered 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.

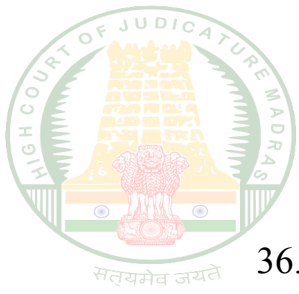
3.A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

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 immoveable 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.

Principle 5 above, that has been enunciated by the Honourable Supreme Court would squarely apply to the facts of the present case and therefore, even for collateral purposes, the lease deed cannot be admitted in evidence.

35.Keeping these decisions and ratio laid down thereunder in mind, first and foremost, it is to be noticed that the lease deed is for a period of ten years and the same being not only insufficiently stamped but also unregistered, the said document could not have been marked as an exhibit and the document was inadmissible, even for looking into it, for collateral purposes.

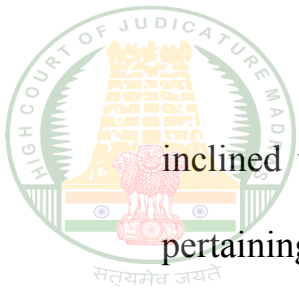


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36. In view of the above discussion, I am unable to sustain the order of the trial Court, refusing to unmark Ex.A14. The document is clearly inadmissible in law for want of sufficient stamp duty as well as registration. As held by the Honourable Supreme Court in *Barium Chemicals Limited's case* and *K.B.Saha's case*, stated supra, the document cannot be admitted for any purposes whatsoever.

37. As regards eschewing the evidence pertaining to Ex.A14, this Court in *Subair Banu's case* as well as *Dr.Sundar v. State of Tamil Nadu*, has held that there is no provision to eschew a evidence that had already come on record and that the evidentiary value of such evidence would depend upon facts and circumstances of the case and the Court cannot scrap the evidence, but only consider the same, along with the other available evidence.

38. Even under BSA, I do not find any new provision introduced for eschewing the evidence which has already come on record in a judicial proceeding. This Court has also consistently held that evidence which has already been recorded cannot be eschewed. In the light of the above, I am not



inclined to accept the second part of the prayer seeking eschewing evidence pertaining to the unregistered lease deed, Ex.A14. In fact, D.W.1 has already been examined and he has spoken about the lease and other attending circumstances. Therefore, merely because Ex.A14 is being directed to be unmarked, the oral evidence which has come on record need not be necessarily eschewed. However, at the same time, it is needless to state that the trial Court is not obliged to look into such of the evidence which pertains to Ex.A14 which is being directed to be unmarked and the trial Court shall decide the probative value of the evidence on record, at the time of delivering judgment.

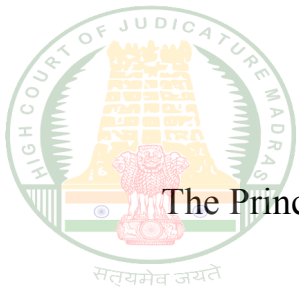
39.In the light of the above, the Civil Revision Petition is partly allowed. The document in Ex.A14 / photocopy of the unstamped and unregistered lease deed dated 01.01.2025 is directed to be unmarked. However, the prayer seeking to eschew evidence, insofar as Ex.A14, is disallowed, with a direction to the trial Court to decide the probative value of the evidence adduced by D.W.1, at the time of delivering judgment. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

19.09.2025

Speaking/Non-speaking order
Index : Yes/No
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The Principal Commercial Court, Egmore.

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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.2500 of 2025
& CMP.No.14322 of 2025



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19.09.2025