2025:PHHC:073813

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 10th of March, 2025
Pronounced on 28th of May, 2025**

CR No.6862 of 2023 (O&M)

Sikander Singh ....Petitioner

Versus

Bhawan Singh alias Badan Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Kumar Saini, Advocate
for the petitioner.

Mr. Abhay Gupta, Advocate
for respondent No.1.

PANKAJ JAIN, J.

Challenge is to the order dated 12th of May, 2023 passed by Civil Judge (Junior Division), Samrala, whereby application filed by the petitioner/plaintiff seeking permission to prove agreement to sell, dated 4th of September, 2013 and its endorsement dated 27th of April, 2014 by way of secondary evidence, stands dismissed.

2. Plaintiff filed suit for possession by way of specific performance of agreement to sell dated 28th of February, 2014 claimed to have been executed by defendant No.1 himself as well as on behalf of Parshotam Singh son of Lal Singh @ Madhu Sudan Singh as his attorney on the basis of registered power of attorney, dated 5th of September, 2013. The

plaintiff claims that there was a prior agreement to sell dated 4th of September, 2013 and an amount of ₹8,00,000/- was paid as earnest money. In order to prove the earlier agreement dated 4th of September, 2013, plaintiff filed present application. The permission has been sought to prove prior agreement to sell by leading secondary evidence. It has been claimed that defendant No.1 in his written statement, admitted execution of agreement dated 4th of September, 2013 and receipt of ₹8,00,000/-. Though, it has been claimed that the defendant signed the same without knowing the contents thereof and that the amount of ₹8,00,000/- stands returned. Plaintiff/ petitioner claims that the photocopy of the agreement to sell, dated 4th of September, 2013 along with endorsement thereof dated 27th of February, 2014, is already on record. Plaintiff thus prayed for permission to lead secondary evidence to prove the same.

3. The application stands dismissed by the Trial Court holding that the document being not properly stamped and the original document having not been produced, the petitioner cannot be allowed to tender secondary evidence of an instrument in evidence in view of law laid down by Supreme Court in the case of **'Hariom Agrawal vs. Prakash Chand Malviya', (2007) 8 SCC 51**.

4. Having heard counsel for the parties, the issues that arise for adjudication for this Court are:

> *"(a) Whether the bar as contemplated under Section 35 of the Indian Stamp Act, 1899 (hereainafter*

referred to as 'the Stamp Act') applies to agreement to sell not duly stamped? and

(b) Whether copy of an agreement to sell chargeable with stamp duty but not duly stamped, be adduced as secondary evidence?"

5. Section 2(11) of the Stamp Act defines 'Duly Stamped'. The same reads as under:

> *"(11) "Duly stamped". — "duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India;"*

6. 'Instrument' is defined under Section 2(14), which reads as under:

> *"(14) "Instrument".— "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:"*

7. Section 3 of the Stamp Act deals with 'instruments chargeable with duty'. It will be apt to peruse the same, which reads as under:

> **"3. Instruments chargeable with duty.** —Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the

amount indicated in that Schedule as the proper duty therefore respectively, that is to say—

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand] 8 *** or promissory note drawn or made out of 6 [India] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that, notwithstanding anything contained in clause (a), (b) or (c) of this section or in Schedule I, and subject to the exemptions contained in Schedule 1-A, the following instruments shall be chargeable with duty of the amount indicated in Schedule 1-A, as the proper duty therefor, respectively, that is to say-

(aa) every instrument mentioned in Schedule 1-A as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in Punjab on or after the date of commencement of this Act.

(bb) every instrument mentioned in Schedule 1-A as chargeable with duty under that Schedule, wich, not having been previously executed by any person is executed out of Punjab on or after the date of the commencement of this Act and relates to any property situated, or to any matter or thing done or to be done in Punjab, and is received in

Punjab"

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts."

8. Schedule I-A has been incorporated for State of Punjab. Item 5 prescribed under Schedule I-A reads as under:

"**Description of Instrument**	**Proper Stamp Duty**
5. Agreement or Memorandum of an Agreement -,	
(a) if relating to the sale of a bill of exchange	Twenty five rupees
(b) if relating to the sale of a Government Security or share in an incorporated company or other body corporate;	Five rupees for every ten thousane or part thereof of the value of the security or share.
(c) if relating to the sale of immovable property;	
[(cc) in the case of agreement to sell followed by or evidencing delivery of possession of the immoveable property agreed to be sold.	The same duty as is leviable under column 2 of entry No. 3 of this Schedule, subject to the adjustment of duty chargeable at the time of execution of conveyance made in pursuance of such agreement, and]1
(d) If not otherwise provided for;	Fifteen rupees
Exemption	
Agreement or memorandum of agreement -	
(a) for or relating to the sale of goods or merchandise	

> exclusively, not being a Note of Memorandum chargeable under No. 43; and
>
> (b) made in the form of tenders to the Central Government for or relating to any loan]"

9. In view of aforesaid provisions, it is explicitly clear that agreement to sell being an instrument was chargeable with duty under Schedule I-A appended to 1899 Act (as applicable to Punjab).

11. Counsels are *ad idem* that on the date of agreement to sell, i.e. 4th of September, 2013, the stamp duty prescribed under Schedule I-A was Rs.2,000/-.

12. Perusal of the photocopy of the agreement to sell, dated 4th of September, 2013, reveals that the same has been executed on stamp-paper of Rs.1,000/-. Meaning thereby, that the agreement to sell dated 4th of September, 2013 is not duly stamped.

13. Chapter IV of the Stamp Act deals with the instruments not duly stamped. Section 35 part thereof provides for instruments not duly stamped to be not admitted in evidence. The provision provides as under:

> **"35. Instruments not duly stamped inadmissible in evidence, etc.** — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :
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> 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."

14. Admittedly, the original document has not been produced. Permission has been sought to lead evidence by way of secondary evidence. The issue of dealing with copy of instrument not duly stamped, was dealt by Supreme Court in the case of **'Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao', (1971) 1 SCC 545** observing as under:

"**10.** We find ourselves unable to accept the submissions made on behalf of the appellant. The Indian Evidence Act which was enacted in 1872 consolidates, defines and amends the law of evidence. By various chapters it deals with matters as to how facts are to be proved and which facts need not be proved. Section 52 of the Act lays down that all facts except the contents of documents may be proved by oral evidence. Documentary evidence is dealt with in Chapter V and Section 61 provides that the contents of the document may be proved either by primary evidence or secondary evidence. Under Section 62 primary evidence means the document itself produced for inspection of the Court. Section 63 shows the different kinds of secondary evidence admissible with regard to documents. It includes several kinds of copies as specified in sub-clauses (1) to (3) of the section, counterparts of documents as against the parties who did not execute them in terms of clause (4) and oral accounts of the contents of a document given by some person who has himself seen it in terms of clause (5). Under Section 64 documents must be proved by primary evidence except in cases mentioned thereafter. Section 65 allows secondary evidence to be given of the existence, condition or contents of a document in circumstances specified in clauses (*a*) to (*g*) thereof. Under Section 91 when the relevant portion of a contract or of a grant or of any other disposition of property has been reduced to the form of a document, no evidence shall be given in proof of the terms except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

11. As the first Court of appeal recorded the finding that it was the defendants who were responsible for suppression of the original agreement to lease, a finding which was accepted by the High Court, it must be held that no objection to the reception of secondary evidence by way of oral evidence can be raised under the provisions of the Indian Evidence Act.

12. The Indian Evidence Act, however, does not purport to deal with the admissibility of documents in evidence which require to be stamped under the provisions of the Indian Stamp Act. The

Stamp Act which is now in force is an Act of 1899, but it had a fore-runner in a statute of 1879. Chapter IV of the Stamp Act deals with instruments not duly stamped. Section 33(1) of this Act provides that:

> "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."

The relevant portion of Section 35 is as below:

> "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 not being an instrument chargeable with a duty not exceeding ten paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, 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:
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> .. .."

Section 36 lays down that:

> "Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or

proceeding on the ground that the instrument has not been duly stamped."

13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (*a*) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 25 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. "Instrument" is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words "an instrument" in Section 36 must have the same meaning as that in Section 35. The legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later stage. But this in no way extends the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped.

15. The above is our view on the question of admissibility of secondary evidence of a document which is unstamped or insufficiently stamped, as if the matter were res integra. It may be noted, however, that the course of decisions in India in the Indian High Courts, barring one or two exceptions, have consistently taken the same view.

16. One of the earliest decisions is the judgment of the Judicial Committee of the Privy Council in *Raja of Bobbili* v. *Inuganti China Sitaramaswamy Garu* [23 Mad 49] . In this case a suit was brought by the Raja of Bobbili to obtain the proprietary possession of an estate once belonging to the family. The original defendant was the widow of a son of the sister of the plaintiff's paternal grandfather, a former Raja of Bobbili, by whom the estate, the subject of dispute was granted by a deed of April 5, 1848 to a cousin who had then married the then Raja's sister. The donee died in 1872, and his widow thereupon restored the estate to the Raja on the footing that the grant had been only for her husband's life. The Raja then granted the estate to another cousin who died in the same year. This was the husband of the original defendant. It was necessary for the Raja to show that the grant of 1848 was absolute and unconditional. The deed of grant was, however, not forthcoming having been lost. In question was whether the draft, or a copy, of the instrument tendered as secondary evidence of its contents when the original instrument was shown to have been insufficiently stamped, could be subjected to the penalty prescribed by Section 34 of the Indian Stamp Act, 1879, as a preliminary to its being admissible in evidence. The respondent denied that such a deed was ever executed and averred that the gift consisted in transferring the estate to the donee's name in the register, upon the footing that the estate was to revert to the donor, in the event of the donee leaving no heir male of his body. At the trial the plaintiff offered in evidence what purported to be an unauthenticated copy and the defendant objected to the admission of the same on the ground that it was the copy of a document which was insufficiently stamped. The District Judge refused to receive the document or allow it to be proved and dismissed the suit. The appeal to the High Court of Madras was also unsuccessful, the learned Judges of the High Court holding that:

> "The copy should not be admitted on payment of a penalty, for the provision of the Stamp Act regarding penalty (Section 39 of Act 1 of 1879) prescribes that such payment shall be endorsed on the document and pre-supposes that the document is forthcoming."

Before the Judicial Committee, counsel for the appellant admitted that he was not in a position to dispute that the original deed of gift, dated 1-8-48, had not been sufficiently stamped in terms of the Madras Regulation 13 of 1816 and that he would be unable to maintain his claim for the estate unless he was permitted to prove the copy of the deed and use it as secondary evidence either on due payment of a penalty in Court, or upon its endorsement by the Collector. He based his right to that remedy on the provisions of the Stamp Act of 1879. The Judicial Committee held on the construction of the said Act that the judgment appealed from was correct observing:

> "These clauses throughout deal with, and exclusively refer to, the admission as evidence of original documents which, at the time of their execution, were not stamped at all, or were insufficiently stamped. It is only upon production of the original writ, that the Collector has the power given him, or the duty imposed upon him, of assessing and charging the penalty, a duty which he must, in that case, perform by writing an endorsement upon the writ submitted to him, which then, and not till then, becomes probative in law."

Reference was made to Section 33 of the Act of 1879, which is in pari materia with Section 33 of the Act of 1899. Section 34 of the Act of 1879, was on the same lines as the present Section 35. The

Board further held that the effect of granting the remedy which the appellant maintained he was entitled to would be to add to the Act of 1879, a provision which it did not contain, and which the Legislature of India, if the matter had been brought under their notice, might possibly have declined to enact.

17. More than sixty years after the above decision this Court observed that the law laid down there was well settled and that a copy of an instrument could not be validated: *State of Bihar* v. *Karam Chand Thapar and Bros. Ltd.* [AIR 1962 SC 110 : 1962 (1) SCR 827] It is not necessary to examine the facts of that case except to note that the contention put forward was whether an instrument i.e. an award received in Court which had been prepared in triplicate, the other two having been sent to the parties, was an original instrument which could be used by the payment of stamp duty under Section 35 of the Stamp Act and validated. This Court held that although the document sent to the Court was marked as a certified copy, it was in reality an original instrument for the purpose of the Stamp Act.

18. The above judgment shows that if the document tendered in Court was not an original instrument but a copy the decision would have been otherwise. However we may point out that the passage which occurs at p. 835 of the report (reproduced hereinafter in part) as being quoted from the decision of the Judicial Committee is not to be found in Their Lordships' judgment. The latter portion of the passage occurs in the judgment of the Madras High Court in *Thaji Beebi* v. *Tirumalappa Pillai* [30 Mad 336 at 337] but this does not in any way detract from the weight of the opinion expressed by a Bench of five Judges of this Court.

xxxx xxxx xxxx

24. As we have expressed our view already Section 35 imposed a bar on the reception of any but the original instrument and forbade the reception of secondary evidence. Section 36 only lifted that bar in the case of an original unstamped or insufficiently stamped document to which no exception as to admissibility was taken at the first stage. It did not create any exemption in the case of secondary evidence which a copy would undoubtedly be. In the case before the Judicial Committee the copy was one other than the final draft of the original document which had been lost through no fault on the part of the person intending to prove it and yet it was held that the Stamp Act ruled out its admissibility in evidence.”

15. Same is the view reiterated by Supreme Court in ***Hariom Agrawal’s case*** (supra), observing as under:

> “12. The Evidence Act however does not purport to deal with the admissibility of documents in evidence which require to be stamped under the provisions of the Indian Stamp Act. The Stamp Act which is now in force is an Act of 1899 but it had a fore-runner in a statute of 1879. Chapter IV of the Stamp Act deals with instruments not duly stamped. Section 33(1) of this Act provides that:
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> > "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". The relevant portion of Section 35 is as below: -
> >
> > "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 duty stamped:
> >
> > Provided that
> >
> > (a) any such instrument not being an instrument chargeable with a duty not exceeding ten paise only, or a bill of

> exchange or promissory note, shall subject to all just exceptions, 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 duly, 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;
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> xx xx xx".

Section 36 lays down that :

> "Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped".

13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35.

'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words "an instrument" in Section 36 must have the same meaning as that in Section 35. The legislature only relented from the strict provisions of Section 35 in cases where original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later' stage. But this in no way extends the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped.

15. The above is our view on the question of admissibility of secondary evidence of a document which is unstamped or insufficiently stamped, as if the matter were res integra, It may be noted however that the course of decisions in India in the Indian High Courts, barring one or two exceptions, have consistently taken the same view."

16. In view of above, this Court finds that the Trial Court has rightly declined the application filed by the plaintiff/petitioner. The plaintiff wants to lead secondary evidence of an instrument which is chargeable with duty, but is insufficiently stamped. As per law, he cannot be permitted to do so in the absence of the instrument in original to make up deficiency of

stamp duty and to be dealt in accordance with Section 35 of the Stamp Act.

17. Resultantly, finding no merit in the instant revision petition, the same is ordered to be dismissed.

18. Pending application(s), if any, shall also stand disposed off.

May 28, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No