Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE SANDIP KUMAR DE

C.O. 1670 of 2017

BHOLANATH BISWAS
VS.
SUBHAS CHANDRA BISWAS (SINCE DECEASED) SUBSTITUTED BY HIS HEIRS AND LEGAL REPRESENTATIVES, SUKHENDU BISWAS & ORS.

For the plaintiff/petitioner : Mr. Soumyadeep Biswas,
Mr. Mrinmoy Mohan Barat.

For the defendant/
Opposite parties : Mr. Tulshi Das Ray,
Mr. Tirthankar Roy.

Heard & Judgment On : 19.11.2026

SANDIP KUMAR DE, J:

1. Order No. 87 dated March 28, 2017 passed by the learned Civil Judge (Junior Division), 2nd Court, Krishnagar, Nadia in Title Suit

No. 75/2012 is under challenge in the present revisional application under Article 227 of the Constitution of India.

2. The plaintiff/petitioner filed a suit for declaration of title and consequential permanent injunction. The defendant/opposite party is contesting the suit by filing written statement denying the materials allegations in the plaint. The defendant/opposite party has also raised the plea of adverse possession in the written statement.

3. The defendant/opposite party filed an application to mark a document being an unregistered agreement to sell executed between the parties as an exhibit and to admit the same as evidence during trial. The plaintiff/petitioner filed objection to the same wherein the plaintiff/petitioner pointed out that the said application is not maintainable in terms of the relevant provision of the Indian Stamp Act,1899.

4. The learned Trial Judge heard the matter and passed the order impugned by allowing the said application by marking the said document tendered by the defendant/opposite party as an exhibit tentatively with objection raised by the plaintiff/petitioner.

5. The learned Trial Judge took note of the submissions advanced by the plaintiff/petitioner that the document is not duly stamped and as such, in view of Sections 35 and 36 of the Indian Stamp Act, 1899, the same cannot be admitted in evidence.

6. The plaintiff/petitioner relied on a decision of a Coordinate Bench of this Court in the case of ***Biswajit Chakraborty –Vs.- Mira Sen Ray*** reported in 2002 ***SCC OnLine Cal 283: (2002) 3 CHN 151: (2002) 2 Cal LJ 449*** before the Learned Trial Judge for the proposition that in a case of tendered document to be admitted in evidence which is insufficiently stamped, it is obligatory on the part of the Court to apply its mind and in appropriate cases, taking recourse to Section 33 of the Indian Stamp Act, 1899, the document should be impounded.

7. On the other hand, the defendant/opposite party submitted that the said document was sought to be admitted in evidence not to claim title but to show that the defendant/opposite party is in possession of the suit property. The defendant/opposite party relied on Section 49 of the Registration Act,1908.

8. The defendant/opposite party relied on a decision in the case of ***Saran Dass & Ors. –Vs.- Smt. Situ & Ors***. reported in ***AIR 1986 Himachal Pradesh page 1*** before the Learned Trial Judge for the proposition that an unregistered document could be received in evidence for collateral purposes. The defendant/opposite party further relied on a decision reported in the case of ***Bipin Shantilal Panchal –Vs.- Statae of Gujarat & Anr.*** Reported in ***AIR 2001 SC 1158*** before the Learned Trial Judge wherein the Hon'ble Supreme Court laid down the

guidelines to admit the documents tentatively with objections. However, at the end of the said guidelines, the Hon'ble Supreme Court clearly held that if the objection relates to deficiency of stamp duty of document, the Court has to decide the objection before proceeding further.

9. The defendant/opposite party further relied on a decision in the case of ***K. Anjaneya Setty –Vs. K. H. Rangiah Setty*** reported in ***2002 (4) CCC 13 (Kar.)*** before the Learned Trial Judge for the proposition that the unregistered document could be admitted in evidence for collateral purposes.

10. The learned Trial Judge took note of the submissions and relied on Section 91 of the Indian Evidence Act,1872. By referring to Section 91 of the 1872 Act, the learned Trial Judge held that the effect of the Section is that when the terms of a contract, grant etc. have been reduced in writing, the document itself is admissible as an evidence of its terms.

11. The learned Trial Judge referred to the decisions in the case of ***Girija Nandan Singh & Ors. –Vs. Girdhari Singh & Ors***. reported in ***AIR 1951 Patna 277*** in the order impugned for the proposition that a document inadmissible in evidence for the purpose of Section 49 of the Registration Act,1908 is nevertheless admissible in evidence for collateral purposes. He further placed reliance on another decision in the case of ***Ram Chetty –Vs.-***

Panchammal reported in ***AIR 1926 Madras 402*** in the order impugned for the same proposition as aforesaid.

12. It is pertinent to note here that reference to Section 91 of the Indian Evidence Act, 1872 and reliance placed on the aforesaid two decisions by the learned Trial Judge were made by himself, as neither the said statutory provision nor those two decisions were cited or placed by any of the parties.

13. Finally, the learned Trial Judge followed the guidelines laid down by the Hon'ble Supreme Court in the case of ***Bipin Shantilal Panchal*** (Supra) and held that the document in question be marked tentatively with objection etc.

14. The learned Counsel for the plaintiff/petitioner submitted that Section 49 of the Registration Act,1908 is relevant in a case of admissibility of document otherwise inadmissible, for the collateral purposes. However, in the present case, the document is unduly stamped and unregistered. In such a situation, according to the learned Counsel for the plaintiff/petitioner, Section 35 of the Indian Stamp Act,1899 comes into play.

15. Section 35 of the 1899 Act makes it clear that 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 public officer, with certain exceptions.

16. The learned Counsel for the plaintiff/petitioner further relied on Section 36 of the 1899 Act which envisages 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. Relying on Section 36 of the 1899 Act, the learned Counsel of the plaintiff/petitioner submitted that in view of the order impugned, his client would be precluded from raising the question at the later stage of the suit with regard to admissibility of the document.

17. The learned Counsel for the plaintiff/petitioner placed reliance on a decision in the case of ***Javer Chand & Ors. –Vs.- Pukhraj Surana*** reported in ***AIR 1961 AIR SC 1655*** before this Court for the proposition that once the Court, rightly or wrongly, decides to admit the document in evidence so far as the parties are concerned, the matter is closed. He placed reliance on another decision in the case of ***Avinash Kumar Chauhan –Vs.- Vijay Krishna Mishra*** reported in (***2009)2 SCC 532*** before this Court for the proposition that the scope and ambit of Section 49 of the 1908 Act is different from scope and ambit of Sections 35 and 36 of the 1899 Act. Section 35 of the Act rules out applicability of

Section 49 of the 1908 Act as it is categorically provided therein that a document of the nature having deficient stamp shall not be admitted for any purpose whatsoever. If all purposees for which the document is sought to be brought in evidence are excluded, there cannot be any reason as to how the document would be admissible for collateral purposes.

18. The learned Counsel relied on the decision rendered in ***Bipin Shantilal Panchal*** (Supra) and emphasized on the exception carved out in the guidelines laid down by the Hon'ble Supreme Court insofar as it relates to the deficiency of stamp duty of a document.

19. The learned Counsel for the defendant/opposite party supported the order impugned and submitted that the defendant/opposite party, only in order to place his case with regard to possession of the suit property, sought to rely on the unduly stamped and unregistered agreement to sell.

20. The learned Counsel for the defendant/opposite party submitted that Section 36 of the 1899 Act would not be applicable in the present case as the document has not yet been admitted and it has only been marked as exhibit. The learned Counsel for the defendant/opposite party placed reliance on the decisions already cited before the learned Trial Judge and prayed for dismissal of the revisional application.

21. In reply, the learned Counsel for the plaintiff/petitioner submitted that the defendant/opposite party has solely relied on Section 49 of the 1908 Act. He further submitted that the learned Trial Judge although relied on the guidelines laid down by the Hon'ble Supreme Court in the case of ***Bipin Shantilal Panchal*** (Supra) but did not follow the exception carved out therein in respect of unstamped document.

22. Heard the learned Counsel for the parties and considered the materials on record.

23. It is clear from the Judgment and Order impugned that the learned Trial Judge sought to follow the guidelines laid down by the Hon'ble Supreme Court in the case of ***Bipin Shantilal Panchal*** (Supra), but misdirected himself in considering the same in its letter and spirit. The learned Trial Judge failed to take note of the exception carved out in the said guidelines insofar as it relates to the insufficiently stamped document.

24. It further appears that the learned Trial Judge failed to take note of the observations of the Coordinate Bench made in the case of ***Biswajit Chakraborty***(Supra) and wholly and solely concentrated on the admissibility of a document in view of Section 49 of the Registration Act,1908.

25. The learned Trial Judge, as it appears from the Judgment and Order impugned, relied on the decisions of ***Girija Nandan Singh***

& Ors.(Supra) and ***Ram Chetty*** (Supra) by himself as those were cited by neither of the parties, for the purpose of admitting the document in evidence in the light of Section 49 of the Registration Act for collateral purposes.

26. It appears that the learned Trial Judge also misdirected himself in relying on Section 91 of the 1872 Act as the mandate of Section 91 of the 1872 Act is not in dispute but shall not relevant for the purpose of deciding the application before the Learned Trial Judge. The moot question was whether the document being unduly stamped and unregistered could be admitted in evidence. Therefore, the reliance placed on Section 91 of the 1872 Act by the learned Trial Judge was otiose to the context.

27. The submission of the learned counsel for the defendant/opposite party that the document was not admitted but was merely marked as exhibit is also misconceived.

28. For the reasons aforesaid, the direction contained in the Judgment and Order impugned to mark the document tentatively with objection to be raised by the plaintiff/petitioner at the time of final hearing cannot be sustained.

29. Thus, the order impugned being Order No.87 dated March 28, 2017 passed by the learned Civil Judge (Junior Division), 2nd Court, Krishnagar, Nadia in Title Suit No. 75/2012 is set aside.

The revisional application being C.O.1670 of 2017 is, thus, allowed on contest.

30. Since the suit is of 2012, I request the learned Trial Judge to expedite the trial of the suit and conclude the same as early as possible, preferably within a period of six months from the date of communication of this order.

31. There shall be no order as to costs.

32. Urgent Photostat certified copy of this judgement, if applied for, be supplied to the parties upon compliance of all legal formalities.

(**SANDIP KUMAR DE,J.)**

Srimanta, A.R.(Ct.)

High Court
सत्यमेव जयते
Calcutta