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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 21.01.2026

Order pronounced on : 06.02.2026

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.5489 of 2025
& CMP.No.27621 of 2025

T.Shanmuga Bharathivel

... Petitioner

Vs.

1.Prema
2.Radhika

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order in E.A.No.192 of 2025 in E.A.No.128 of 2024 in E.P.No.104 of 2019 in O.S.No.67 of 2018 dated 24.09.2025 on the file of the Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.N.Manoharan
for Mr.D.Vasanth

ORDER



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The petitioner took out an application under Order XXI Rule 97 of CPC, in E.A.No.192 of 2025, for receipt of two documents, namely, the registered sale deed dated 05.08.1996 and an unregistered sale deed dated 25.03.2016 as exhibits in E.A.No.128 of 2024 (Application under Order XXI Rule 97 of CPC).The said application, on contest, came to be dismissed, as against which, the present revision petition has been filed.

2.I have heard Mr.N.Suresh, learned counsel for the revision petitioner and Mr.N.Manoharan for Mr.D.Vasanth, learned counsel for the respondents. I have also gone through the records, including the order impugned in the revision petition, besides various decisions on which reliance has been placed on by both the learned counsel.

3.Mr.N.Suresh, learned counsel for the revision petitioner would state that the revision petitioner claims to be in possession of the subject property under an unregistered sale deed. It is his further contention that the antecedent original sale deed in favour of his vendor, who is also the vendor of the contesting respondents, was also handed over to the petitioner and the



petitioner was also willing to pay the necessary stamp duty, together with penalty, in order for the unregistered sale deed to be exhibited and received as evidence in the Order XXI Rule 97 of CPC application.

4.In fact, Mr.N.Suresh, learned counsel for the revision petitioner, pointing out to the certified copies of the said unregistered sale deed, would bring to my attention that the said document, along with the registered sale date that, in fact, already marked as Ex.P1 and Ex.P2 and the Court, while assigning the exhibit number, has not noted any objections to have been raised on the side of the respondents. It is therefore the submission of Mr.N.Suresh, that once the documents have been marked, then there was no occasion or necessity for the Court to refuse permission to receive the said document.

5.Mr.N.Suresh, learned counsel for the revision petitioner would also invite my attention to the chief examination, where an objection with regard to marking of the said unregistered sale deed is found. Doubting the said endorsement, regarding the objection, Mr.N.Suresh, learned counsel would further contend that it appears to be introduced later as the objection portion



in brackets is in bold print, unlike the other portions available in the said page. He would also state that specific grounds have been raised in this regard in the CRP as well.

6. Without prejudice to the preliminary submissions made herein above, Mr. N. Suresh, learned counsel would state that the petitioner is admittedly in possession and the right of the decree holder to enter into possession are being tested in the application filed under Order XXI Rule 97 of CPC. Even assuming the sale deed, under which the petitioner claims, according to Mr. N. Suresh is unregistered, even then, for collateral purposes to establish the character of possession of the revision petitioner, especially the starting point, his possession being prior in point of time to even the right of the respondent/decreed holder is concerned would state that the documents are absolutely necessary and the trial Court ought not to have refused permission to receive the documents.

7. The learned counsel for the revision petitioner would further contend that Section 35 of the Stamp Act deals with insufficiently stamped documents and no objection was taken by the respondent/decreed holder with



regard to the same. Referring to Section 36 of the Stamp Act, Mr.N.Suresh contends that once a document has been marked, then it is not open to the other party to question the document on the ground that it is insufficiently stamped. As regards Section 17 of the Registration Act and inadmissibility of the document, Mr.N.Suresh would invite my attention to the proviso to Section 49, which enables the Court to look into the document for establishing a collateral transaction. Mr.N.Suresh, in support of his submissions, has relied on the decisions of the Hon'ble Supreme Court in *Sirikonda Madhava Rao vs N.Hemalatha & others*, in SLP(C)No.14882-14883 of 2022 dated 14.11.2022; *Ramratan (Dead) through legal representatives Vs. Ramkalai Bai and others*, in Civil Appeal No.3593 of 2025 dated 04.03.2025; *Bondar Singh and others Vs. Nihal Singh and others*, reported in AIR 2003 Supreme Court 1905 and *Bipin Shantilal Panchal Vs. State of Gujarat*, reported in CDJ 2001 SC 119. Relying on the above decisions, Mr.N.Suresh, learned counsel contends that the proper procedure would be to mark the document and decide the admissibility of the document at the time of final hearing. According to Mr.N.Suresh, learned counsel for the revision petitioner, the trial Court has not followed the said procedure and therefore, the order has to necessarily go.



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8.Per contra, Mr.N.Manoharan, learned counsel appearing for the respondents would straight away invite my attention to the prayer portion in the application in Order XXI Rule 97 of CPC, where the petitioner challenges the sale deed in favour of the respondent/deGREE holder and therefore, it is his first submission that when the petitioner is attempting to establish his right and title under the unregistered sale deed, in the light of the prayer, the Court was right in refusing to receive the unregistered sale deed.

9.Mr.N.Manoharan, learned counsel would further state that the marking of the documents as Ex.P1 and Ex.P2 were not in the application under Order XXI Rule 97 of CPC, but only in the application in E.A.No.192 of 2025, which was filed for receiving the documents. It is therefore his submission that merely because the documents have been marked in the said application, it would be of no avail to the petitioner and he cannot take advantage of the document being given an exhibit number. Even otherwise, it is the submission of Mr.N.Manoharan, learned counsel that the chief examination clearly records the fact that the marking of the unregistered sale



deed has been objected on the side of the respondent/decreed holder and the deposition has also been signed by the petitioner himself.

10. In such circumstances, Mr. N. Manoharan, learned counsel would contend that an argument, contrary to Court record cannot be placed before this Court, or any other Court for that matter. In support of his submissions, the learned counsel for the respondents relies on the decisions of the Hon'ble Supreme Court in *Yellapu Uma Maheshwari and another vs Buddha Jagadheeswararao and others*, reported in (2015) 16 SCC 787, *Avinash Kumar Chauhan vs Vijay Krishna Mishra*, reported in (2009) 2 SCC 532; the decisions of this Court in *Saroja and others vs Vasantha Duraisamy and others*, reported in 2022 SCC Online Mad 5840 and my order in *L.V. Velusamy Vs. L.V. Palanisamy (Died) and others* in CRP.(PD).No.2991 of 2019 dated 19.06.2025.

11. I have carefully considered the submissions advanced by the learned counsel on either side.

12. With regard to the submission regarding the document being already marked and without objections, it is seen from the chief examination



that has been recorded before the executing Court in E.A.No.192 of 2025, that the petitioner has chosen to lead evidence. In the said application, he has chosen to mark the registered sale deed, as well as the unregistered sale deed. In fact, it is evident from the deposition recorded by the Court, which has been duly signed by the petitioner himself and also by the learned Principal Subordinate Court Judge. Ex.P2, which is an unregistered sale deed has been marked with objections. Merely because the objection is projected in bold font or style, does not give rise to a ground for suspecting the very endorsement. The entire deposition has been printed on computer and it is not manually typed. It is impossible for the bold portion in brackets to have been inserted in the appropriate place after the petitioner had signed the deposition.

13.In any event, once the Court, that is the Presiding Judge has signed the said record, stating that the deposition has been recorded by him in open Court and read over and interpreted to the witness, who has acknowledged it to be correct, I see no reason to doubt the objection portion that has been recorded by the learned Subordinate Judge. In fact, merely because the learned Judge has not made a noting on the document, namely Ex.P2 that



the marking of the document has been objected to, is again not a ground to hold that the document was marked without any objection.

14. In fact, as rightly pointed out by Mr. N. Manoharan, Order XIII Rule 4 of CPC does not mandate any endorsement regarding objection of the adversary party to the marking of any particular document. Therefore, even though it has been the normal practice of the Court to make an endorsement on the document itself that the document has been marked subject to the objection of the other party, I do not see such omission being fatal, when the deposition of the petitioner himself clearly indicates that marking of Ex.P2 has been objected on the side of the respondent. The deposition, as already found, has not only been signed by the petitioner himself, but countersigned by the learned Principal Subordinate Judge as well. Even with regard to the challenge to the said endorsement regarding objection in the grounds of revision, I find that the petitioner, in ground No.14 of memorandum of grounds of revision may be relevant and the same is extracted hereunder for easy reference:

“14. The Court below ought to have seen that at the time of marking Ex.P2 there was no objection and even the



Court below did not record in the adjudication that the same was objected too. But however there is a doubt in the so called note included while recording the document in the chief examination as the note appended is found typed in bold Tamil letters.”

15. Even though such a ground has been raised, the petitioner does not state or aver that the note regarding objection of the marking of the document was not there, when he signed the deposition. If such a ground had been raised, then the matter would have been more serious and probably this Court would not have hesitated to even call for a report from the learned Principal Subordinate Judge. However, in the light of the ground raised, I do not see any merit with regard to the apprehension and doubt raised by the revision petitioner now.

16. Coming to the next question as to whether once the document has been marked, the said document could not have been refused to be received, it is the contention of Mr.N.Suresh, learned counsel for the revision petitioner that the document has already been assigned and marked as Ex.P2 and in such circumstances, the only course open to the Court was to test the



validity and admissibility of the document, at the time of final hearing of the case and not in a miscellaneous application. In fact, Mr.N.Suresh also contended that despite a detailed order being passed in E.A.No.192 of 2025, the Court has not even whispered about the documents having been marked as Ex.P1 and Ex.P2.

17.It is therefore the submission of Mr.N.Suresh that the trial Court having followed a non-existent and illegal procedure. I am unable to countenance the said submissions made by the learned counsel for the revision petitioner. Under Order XIII Rule 3 of CPC, there is ample provision for a Court to reject irrelevant or inadmissible documents. The rule is extracted hereunder for easy reference and appreciation:

“3. Rejection of irrelevant or inadmissible documents.-The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”

Therefore, the mere fact that the documents have been assigned an exhibit number, it is not an embargo for the Court to reject the same as being inadmissible.



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18. Even otherwise, it is to be noted that the documents have been marked, not in the application under Order XXI Rule 97 of CPC, but only in the very application to receive the said documents, namely E.A.No.192 of 2025. Therefore, I do not see how even marking of the document as Ex.P2 in E.A.No.192 of 2025 would lend support or strength to the petitioner to contend that the document has already been marked as evidence. The marking of Ex.P2 in E.A.No.192 of 2025, by no stretch of imagination, would amount to the document being marked as a “document in evidence” in the Order XXI Rule 97 of CPC application. In fact, there was no requirement for any evidence being let in by the parties in E.A.No.192 of 2025. However, the petitioner, on his own, had chosen to lead evidence and in the course of the same, he has chosen to exhibit the unregistered sale deed in his favour. I have already found that the document has been marked, subject to the objection of the respondents. Therefore, I do not see any error in the procedure adopted or committed by the Subordinate Court, in refusing permission to the petitioner to receive the unregistered sale deed.

19. In fact, I had an occasion in *Velusamy's case*, referred herein



supra, where taking note of the ratio laid down by the Hon'ble Division Bench of this Court in *A.C Lakshmipathy v. A. M. Chakrapani Reddiar and others*, reported in *2001-1 law weekly*, 257, I held that so long as Section 36 of the Stamp Act does not indicate that when the document is assigned an exhibit number with objections, then the Court cannot reject the document and when even at the stage of marking the document an objection has been raised and the document has been marked only subject to such objection, then the Court is entitled to reject the document as being inadmissible. In the light of the above, I do not see any merit in the submissions advanced on the side of the revision petitioner with regard to the point that once a document is marked, it cannot be undone and it can only be considered at the final stages.

20. The decisions relied on by the learned counsel for the petitioner have to be necessarily discussed at this juncture. In *Bipin Shantilal's case*, referred herein *supra*, the Honourable Supreme Court, in order to expedite trial and avoid undue delays, devised a practice where, whenever an objection is raised during evidence regarding admissibility of any document, the trial Court can make a note of such objection and mark the objected



document tentatively as an exhibit in the case subject to such objections to be decided at the last stage and that at the final stage, the Court can decide on the objection and accordingly keep such evidence included or excluded from consideration.

21.The ratio laid down in the above case was subsequently followed by the Honourable Supreme Court in *Ram Ratan's case* as well in *Sirikonda Madhava Rao's case*. The Honourable Supreme Court held that once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings, on the ground that the instrument has not been duly stamped and that any objection as to admissibility on the ground of sufficiency of stamp has to be raised when the document is tendered in evidence and thereafter, it was not open to the parties or even the Court to re-examine the issue. However, I have already found that the document has been marked subject to objection of the respondent.

22.No doubt, Mr.N.Suresh states that in view of the ratio laid down in *Bipin Shantilal Panchal's case*, referred herein supra and subsequently



followed by the Honourable Supreme Court as well, even as late as in 2022, the document viz., the unregistered sale deed having been already marked as Ex.P2, the admissibility of the said document can be decided while finally deciding Order XXI Rule 97 of CPC application. I see things from a different perspective altogether. It is the petitioner, who attempted to mark the said document, by taking out an application in E.A.No.192 of 2025. Therefore, the Court was called upon to render a finding as to whether the said document was admissible in evidence and whether it could be received as requested by the revision petitioner.

23.It is only in the said application that the unregistered sale deed has been marked as Ex.P2. Therefore, as I have already discussed, it was not even required for the petitioner to lead any evidence, much less, mark the unregistered sale deed as an exhibit in the said miscellaneous application. Therefore, the mere fact that the document has been marked as Ex.P2, in my considered opinion, in the application to receive the document itself, is of no avail. The marking of the document will not tantamount to having received it in evidence, which is the moot point for consideration in so far as Sections 35 and 36 of the Stamp Act are concerned. Therefore, even applying the ratio laid down in *Bipin Shantilal Panchal's case* and *Ram Ratan's case*, the



marking of the unregistered sale deed as Ex.P2 can only be taken as a tentative marking, subject to the final decision in E.A.No.192 of 2025. Therefore, I do not see any procedural irregularity or illegality committed by the Court in refusing permission to mark the unregistered sale deed.

24.In *Bondar Singh's case*, referred herein supra, the Honourable Supreme Court held that though the law requires a sale deed to be properly stamped and registered, before it can convey title to the vendee and such document not being registered and inadmissible in evidence, it can still be looked into for collateral purposes. In the facts of the case before the Honourable Supreme Court in *Bondar Singh's case*, the Honourable Supreme Court was of the opinion that the nature of possession of the plaintiffs over the suit land was a collateral purpose and therefore, the document could be looked into, in view of provision to Section 49 of the Registration Act. However, the decision in *Bondar Singh's case* was discussed by the Honourable Supreme Court in *Avinash Kumar's Chauhan's case* and the Honourable Supreme Court, referring to Sections 35 and 36 of the Stamp Act, as well as the provisions of the Registration Act, held that the Honourable Supreme Court was concerned only with the provisions of



interpretation of the provisions of the Registration Act in *Bondar Singh's case* and not with regard to the statutory obligation cast on all authorities to impound an insufficiently or un-stamped document in terms of Section 33 of the Stamp Act. In fact, the Honourable Supreme Court further held that when a document cannot be admitted for any purpose whatsoever, then it cannot be relied on even for collateral purposes.

25. The same ratio was also laid down by this Court in *Saroja's case*, referred herein supra, where it has been held that if a document is inherently bad for non-registration, it cannot be cured by payment of deficit stamp duty and penalty.

26. In *Yellapu Uma Maheshwari's case*, referred herein supra, the Honourable Supreme Court held that an unregistered and un-stamped partition deed though not admissible in evidence for primary purpose, can be relied upon for collateral purposes of severance of title and nature of possession of various sharers, subject to the document being impounded and payment of stamp duty, together with penalty. The Honourable Supreme Court further held that nomenclature given to the document will not be



decisive, but the nature and substance of the transaction has to be determined with reference to the terms of the document and the question of admissibility of a document is entirely dependent upon the recitals contained in the said document and not on the basis of pleadings set up by the party, who seeks to introduce the document in evidence.

27. In the present case, as already found in the application under Order XXI Rule 97 of CPC, the petitioner seeks to establish his right under the said unregistered sale deed. In such view of the matter, the document cannot be looked into even for establishing a collateral transaction as available under proviso Section 49 of the Registration Act. In light of the above, I do not find any infirmity in the findings rendered by the executing Court, dismissing the application to receive the unregistered sale deed dated 25-03-2016. Once the document is found to be inadmissible, the findings in this regard being rightly arrived at by the executing Court, I do not see any real purpose being served in even permitting the said document to be received as evidence in the application under Order XXI Rule 97 of CPC and it would only be an empty formality, since it cannot be looked into, even for establishing a collateral transaction.



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28.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

06.02.2026

Neutral Citation: Yes
Speaking Order
Index : Yes
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To

The Principal Subordinate Judge, Villupuram.

P.B. BALAJI, J.

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Pre-delivery order made in
CRP.No.5489 of 2025
& CMP.No.27621 of 2025

06.02.2026