IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE EIGHTEENTH DAY OF MARCH TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE RENUKA YARA

CIVIL REVISION PETITION NO: 4039 OF 2024

Petition under Article 227 of the Constitution of India, aggrieved by the Order Dated: 02.09.2024 passed in I.A.No. 606 of 2023 in OS No. 510 of 2014, on the file of the Court of the XI Additional District and Sessions Judge, at LB Nagar, Rangareddy District.

Between:

Mohammed Abdul Nayeem, S/o. Mohammed Abdul Raheem, aged about 54 years, Occ: Business, R/o. H.No. 22-6-1010, Irani Galli, Hyderabad

...PETITIONER/RESPONDENT/PLAINTIFF

AND

1. Sri Rajendra Prasad Sanghi, S/o. Late Bajrang Prasad Sanghi, A/a. 54 years, Occ: Business, R/o. H.No. 8-2-583/1, Road No.7, Banjara Hills, Hyderabad
2. Smt. Shakuntala Bai, W/o. Satyanarayana, A/a. 52 years, Occ: House Hold, R/o. H.No. 3-5-141/1/A/1, Ramkoti, Hyderabad.

Respondent No. 2 is not necessary party to this petition

...RESPONDENT/DEFENDANT

I.A. NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in OS No. 510 of 2014, pending on the file of Hon'ble XI Additional District and Sessions Judge, at LB Nagar, Rangareddy District.

Counsel for the Petitioner: Sri. Ali Farooq

Counsel for the Respondent No.1: Sri. Shyam S Agrawal

The Court made the following: ORDER

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HONOURABLE SMT. JUSTICE RENUKA YARA

CIVIL REVISION PETITION No.4039 of 2024

18th DAY OF MARCH, 2026

Between:
Mohammed Abdul Nayeem.

...Petitioner

AND

Sri Rajendra Prasad Sanghi and another.

...Respondents

ORDER:

Heard Sri Ali Farooq, learned counsel for the petitioner and Sri Shyam S.Agarwal, learned counsel for respondent No.1. Perused the entire record.

2. This Civil Revision petition is preferred by the petitioner/respondent/plaintiff aggrieved by the order passed by the learned XI Additional District Judge, Ranga Reddy District at L.B.Nagar (for short 'the Trial Court'), in I.A.No.606 of 2023 in O.S.No.510 of 2014, dated 02.09.2024, wherein, a petition filed by respondent No.1 herein/petitioner/defendant No.2 under Order XIII Rule 3 read with Section 151 of CPC, to de-exhibit/demark the insufficiently stamped agreement of sale dated 22.11.2006/Ex.A1 and receipt-cum-letter of delivery of possession dated 19.10.2011/Ex.A3 and expunging them from record, has been allowed.

Background of facts:

3. The brief facts of the case are that respondent No.1 herein filed suit in O.S.No.1568 of 2013 against the petitioner herein seeking perpetual injunction with respect to property consisting of plot No.14, forming part of Sy.Nos.357 and 358 situated at Attapur Village, Rajendranagar Mandal, Ranga Reddy District. The extent of plot is 800 Sq.Yds. While so, the petitioner herein filed suit in O.S.No.510 of 2014 seeking specific performance of agreement of sale dated 22.11.2006 with respect to property consisting of plot No.1, admeasuring about 241 Sq.Yds., and plot Nos.2, 3 and 4 total admeasuring about 339 Sq.Yds., both forming part of old plot No.14 in Sy.Nos.357 and 358 situated at Attapur Village, Rajendra Nagar GHMC, Ranga Reddy District, and also sought perpetual injunction to restrain the respondents herein from interfering with the possession of the property. Both the suits are being tried together, with common evidence being led. While leading common evidence, the petitioner had exhibited Exs.A-1 to A-23, which includes the agreement of sale dated 22.11.2006 as Ex.A1 and the receipt-cum-letter of delivery of possession dated 19.10.2011 as Ex.A3. These documents were not properly stamped as per Article 6 (b) of Schedule 1-A of the Indian Stamp Act, 1899 ('Stamp Act'). As per Stamp Act, the agreement of sale of immovable property attract

payment of stamp duty of 5% of the market value of the property. While so, the agreement of sale/Ex.A1 was executed only on a Rs.100/- stamp paper and the same is insufficient. Further, Ex.A3/receipt-cum-letter of delivery of possession attracts stamp duty in terms of Article 47-A of Schedule 1-A of the Stamp Act. Since there was deficit stamp duty paid on both the documents, said documents ought not to have been exhibited and ought not to be considered even for collateral purpose. Insufficiently stamped documents are inadmissible in evidence. Since said documents ought not to have been exhibited, respondent No.1 herein/defendant No.2 filed petition under Order XIII Rule 3 of CPC to de-exhibit said documents.

4. The petitioner herein filed counter before the trial Court denying the averments of the petition referring to each paragraph. However, the specific contention about insufficiency of stamp duty being the reason for de-exhibiting has not been addressed.

5. The learned trial Court considered the case of respondent No.1 for de-exhibiting referring to Sections 35, 36 and 61 of the Stamp Act and the judgment of this Court in the case of **Venu Gopal Baldawa v. Reddy Saritha Reddy** [1] rendered on 27.04.2023, wherein it is held that an unstamped or deficitly stamped document cannot be admitted into evidence

[1] MANU/TL/0704/2023

for any purpose including collateral purpose. Further, it is observed that the petitioner herein could not come up with any evidence or reason to oppose the petition. It is held that even in case an insufficiently stamped document gets marked it can be de-exhibited. An unregistered document affecting immovable property is governed by the Registration Act, 1908 and the Transfer of Property Act, 1882. An un-registered document can be received in evidence as a contract in a suit for specific performance. This exception is not applicable with respect to insufficiently stamped paper in terms of Section 35 of the Stamp Act and the bar is absolute. It is held that the view of Section 36 of the Stamp Act does not come in the way of de-exhibiting. Therefore, allowed the petition leading to filing of the present revision.

Grounds of revision:

6. In grounds of revision, it is pleaded that Exs.A-1 and A-3 were marked on 17.09.2019 in the presence of the counsel for respondent No.1 and several adjournments had been taken for the purpose of cross-examination. Thereafter, without proceeding for further cross-examination, respondent No.1 came up with I.A.No.130 of 2020 for impounding Exs.A-1 and A-3 and said petition was dismissed on 21.03.2023 with a finding that respondent No.1 remained silent at the time of marking of the insufficiently stamped documents and therefore, said documents cannot be

questioned at a later stage. It is held by the trial Court that as per Section 36 of the Stamp Act, a duty is cast upon the respondents to raise an objection when an insufficiently stamped document get tendered in proceedings to be marked. In the light of embargo under Section 36 of the Stamp Act, it is held that the respondents cannot claim that the documents under Exs.A-1 and A-3 cannot be admitted for want of stamp duty. Further, it is pleaded that there is failing to consider the judgment of this Court in cases of **Venu Gopal Baldava** (supra) and judgment of Hon'ble Supreme Court of India in the case of **Avinash Kumar Chauhan v. Vijay Krishna Mishra**[2]. It is submitted that having dismissed I.A.No.130 of 2020, the learned trial Court went wrong in de-exhibiting Exs.A-1 and A-3 by ignoring settled principle of law about Section 36 of the Stamp Act, prohibiting questioning the admission of an instrument in evidence on the ground of insufficiency of stamp duty except as provided in Section 61 of the Stamp Act. There is an erroneous conclusion that Section 36 of the Stamp Act does not come in the way of de-exhibiting the documents. Further, reference is made to the judgement of Hon'ble Supreme Court of India in the case of **Javer Chand v. Pukhraj Surana**[3], wherein, the Apex Court clearly stated that once a document is admitted in evidence, no objection can be raised on the ground

[2] AIR 2009 SUPREME COURT 1489
[3] 1961(0) Supreme (SC) 211

of insufficiency of stamp duty. On the basis of aforementioned, it is pleaded that the impugned order is liable to be set aside.

Contentions of the petitioner:

7. The learned counsel for petitioner relied upon judgment of the Hon'ble Supreme Court in **Javed Chand** (supra), wherein it is held that once a document has been marked as an exhibit and the trial has proceeded on the footing that the document was an exhibit and it has been used by the parties in examination and cross-examination of their witnesses Section 36 of the Act comes into operation. It is argued that once a document has been admitted in evidence, it is not open either to the trial Court or the Court of Appeal or Revision to go behind that order as Section 36 of the Stamp Act does not mention any exceptions. When there is a question of admissibility of a document on the ground of insufficient stamping, it has to be decided then and there when the document is tendered in evidence. Once the Court admits the document, as far as the parties are concerned the matter is closed. A document has been marked as an exhibit and when it is used by the parties in cross-examination, Section 36 of the Stamp Act comes into operation, and thus, the issue of admissibility cannot be revisited.

8. Further, as per judgment in **Shyamal Kumar Roy v. Sushil Kumar Agarwal**[4], Section 36 of the Stamp Act prohibits a Court from questioning the admission of an instrument in evidence on the ground of insufficient stamp duty, except as provided in Section 61 of the Stamp Act. Further, it is urged that if a party to the suit intends to produce an instrument which is insufficiently stamped to be admitted in evidence, the objection must be raised at the appropriate stage. The objection has to be specifically to the effect that the document is not duly stamped. Upon making of such an objection, the question is required to be determined judicially.

9. In the case of **R.V.E. Venkatchala Gounder v. Arulmigu Viswesaraswami & V.P. Temple**[5], it is held that failure to raise a prompt and timely objection about admissibility of a documentary evidence amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.

10. In the case of **T.A. Khaja Hussain v. C. Irshad Basha Nizami**[6], the Hon'ble Supreme Court has held that with regard to Section 49 of the Stamp Act about the effect of non-registration of documents required to be registered, Section 36 of the Stamp Act about admission of instruments

[4] 2006 0 Supreme (SC) 1007
[5] 2003 8 Supreme 193
[6] 2009 6 ALD 497

which were not questioned when said instrument was admitted in evidence, Section 61 of the Stamp Act deals with revision of decisions of Court regarding sufficiency of stamps.

11. In the case of **Isra Fatima v. Bismillah Begum**[7], the Hon'ble Supreme Court held that in a suit filed for perpetual injunction, when a petition is filed to be de-exhibit, document Ex.B-2 on the ground that it was not sufficiently stamped, when there is failure to raise objection at the time of marking of document, once the document is admitted in evidence, there can be no question of challenging the same subsequently.

12. Further, in the case of **Varri Jayalakshmi v. Badiga Eswara Rao**[8], the High Court of Andhra Pradesh held that it is well settled principle of law that *res judicata* applies at different stages of the same suit. Once a plea is not taken in a previous application and it is admitted by the petitioner, that such a plea though available was not taken, such a plea cannot be taken in a second application.

Contentions of respondent No.1:

13. Learned counsel for respondent No.1 relied upon the judgment of the Hon'ble Supreme Court in the case of **Veena Hasmukh Jain v. State of**

[7] 2002 5 ALD 660
[8] C.R.P.No.1306 of 2024, dated 11.11.2024.

Maharashtra[9], wherein it is held that the duty with respect to an agreement covered by the explanation under Entry No.44 of List No. 3 of concurrent listed shows that duty is leviable as if it is a conveyance. The conditions to be fulfilled are that the agreement is to sell immovable property and delivery of possession of such an immovable property. When there is delivery of possession of property, the same is deemed to be conveyance.

14. Further, reference is made to judgment of this Court in the case of **Venu Gopal Baldava** (supra), wherein it is held as follows at paragraph Nos.21 and 22:

> "21. In the present case, the trial Court received the documents along with chief affidavit of PW-1 and marked the documents as Exs.A2 to A13. However, supplementary deeds Exs.A2, A4, A6, A8, A10 and A12 require registration and receipts Exs.A3, A5, A7, A9, A11 and A13 are subject to stamp duty. The said exhibits which were tendered in evidence affidavit of plaintiffs were deemed to be formally approved. As held by the Hon'ble Supreme Court in Javer Chand's case (2 supra), the Court has to judiciously determine the matter as soon as the document is tendered in evidence before it is marked as an exhibit. Apparently, the record discloses that there is no judicial recognition with regard to admissibility of the documents Exs.A2 to A13 which were tendered by the plaintiffs along with the affidavits in the form of chief examination. Therefore, it cannot be said that the documents Exs.A2 to A13 are admitted in evidence, merely because they are marked.
>
> 22. For the above reasons, I am of the view that Exs.A2 to A13 were marked mechanically though there was no judicial determination of the admissibility of the said documents as required by law."

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[9] MANU/SC/0039/1999

15. On the basis of aforementioned judgments, the learned counsel for respondent No.1 submits that there is no infirmity in the order passed by the learned trial Court in de-exhibiting the documents Ex.A-1 agreement of sale and Ex.A-3 letter-cum-receipt and delivery of possession.

Findings of the Court:

16. The crux of the dispute is exhibiting of Ex.A-1 agreement of sale dated 22.11.2006 and Ex.A-3 receipt-cum-letter of delivery of possession dated 19.10.2011. The agreement of sale has been executed on a stamp paper of Rs.100/-. Any agreement or contract where the subject matter is above value of Rs.2,00,000/- said agreement has to be executed on a stamp paper of Rs.200/-. To said extent it can be said that the Ex.A-1 agreement of sale is executed on an insufficient stamp paper. When it comes to Ex.A-3, letter of delivery of possession-cum-receipt dated 19.10.2011, it exhibits delivery of possession of immovable property. For such a document, stamp duty has to be paid as it was existing in the year 2011, which would be a fixed amount as per the G.O. in operation in the said year and not 5% of market value of the property which is the current rate brought into force in the year 2021 by a G.O.Ms.No.59 dated 20.07.2021 issued by the Revenue Department. When these two documents were admitted in the presence of

the learned counsel for respondents before the trial Court without any objection, then the bar under Section 36 of the Stamp Act comes into force, i.e., an objection with respect to insufficiency of stamp duty cannot be raised at a later stage once the document is exhibited.

17. In the instant case, there is a specific plea in the counter filed by the petitioner in I.A.No.606 of 2023 that the documents were exhibited in the presence of the counsel for respondent before the trial Court and therefore, no objection can be raised after its admission in evidence. Respondent No.1 herein has not given any reply or rejoinder to the contention of the petitioner that the Ex.A-1 agreement of sale and Ex.A3 letter-cum-receipt have been exhibited in the presence of the counsel.

18. When the judgment relied upon by the learned counsel for respondent No.1 in the case of **Venu Gopal Baldava** (supra) is considered, it is seen that there is a specific finding about marking of the documents without application of mind, when admissibility is not decided. It was found that Exs.A-2 to A-13 were submitted along with the chief affidavit of P.W.1. The said documents were formally approved. There was no recognition with respect to admissibility of Exs.A-2 to A-13. About their admissibility merely because said documents were marked, it is held that

there was no judicial determination about admissibility of the documents and therefore, de-exhibiting of the documents was permitted.

19. In the instant case, said analogy cannot be applied because respondent No.1 had already filed I.A.No.130 of 2020 to send the Exs.A1 and A-3 for impounding and said petition was dismissed *vide* order dated 21.03.2023. The very dismissal of the petition in I.A.No.130 of 2020 clinchingly establishes that when the documents were produced for being marked in evidence and they were admitted, an interlocutory application was filed for the purpose of referring the documents for impounding. The learned trial Court considered the issue under Section 36 of the Stamp Act and dismissed the same holding that once a document is admitted, the issue of admissibility on the ground of insufficient stamp duty cannot be countenanced. Once the issue of insufficient stamp duty as to Exs.A1 and A-3 is considered in I.A.No.130 of 2020 and the same was dismissed, in case respondent No.1 had any grievance, respondent No.1 ought to have challenged said order. Once the order in I.A.No.130 of 2020 dated 21.03.2023 became final. Respondent No.1 had no locus to file the present petition under Order XIII Rule 3 of CPC to de-exhibit the very same documents on the very same ground of insufficiency of stamp duty. On account of filing of I.A.No.130 of 2020 and since the learned trial Court

had already applied his judicial mind to the issue of impounding the documents i.e. Exs.A-1 and A-3, this Court is of the opinion that the facts of the present case are not similar to the facts in the case of **Venu Gopal Baldava** (supra).

20. In view of the foregoing discussion, this Court is of the opinion that the learned trial Court already considered the issue of admissibility on account of insufficient stamp duty in I.A.No.130 of 2020 and passed an order on merits on 21.03.2023. Since said order was not challenged, said order has become final. Once said order has become final, there is no occasion for respondent No.1 to file the I.A. under revision to de-exhibit said documents on the ground of the same being executed on insufficient stamp paper.

21. In view of the foregoing discussion, this Court is of the opinion that the learned trial Court had exercised its jurisdiction improperly, having made a decision in I.A.No.130 of 2020 and revisiting the same in I.A.No.606 of 2023 (I.A. under revision). As such, the impugned order is liable to be set aside.

22. In the result, the Civil Revision Petition is **allowed** setting aside the order dated 02.09.2024 in I.A.No.606 of 2023 in O.S.No.510 of 2014 on the file of the learned trial Court and consequently, the said I.A.No.606 of

2023 is dismissed. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

SD/- A.JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The XI Additional District and Sessions Judge, at LB Nagar, Rangareddy District. (With Records)
2. One CC to Sri. Ali Farooq, Advocate [OPUC]
3. One CC to Sri. Shyam S Agrawal, Advocate [OPUC]
4. Two CD Copies

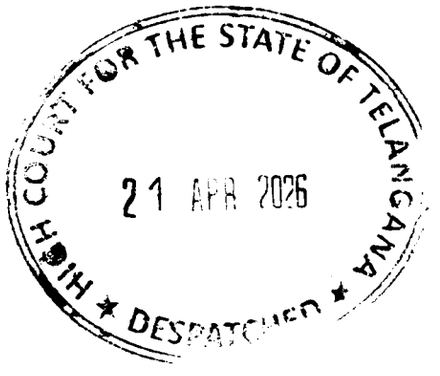
Pr/PSL

HIGH COURT

DATED: 18/03/2026

ORDER

CRP.No.4039 of 2024



ALLOWING THE CRP

(6) kp 4/4/26