PAPER PRESENTED BY SRI T.RAJA VENKATADRI, SPL. JUDGE FOR TRIAL OF CASES UNDER SCs & STs (POA) ACT, 1989-CUM-VII-ADDL. DISTRICT & SESSIONS JUDGE, PRAKASAM DISTRICT AT ONGOLE.

ON THE TOPIC

RELEVANCY AND ADMISSIBILITY OF DOCUMENTS IN EVIDENCE

(a) Relevancy of documents with reference to the provisions of Indian Evidence Act. (Ex. Recitals in the 3rd party documents, public documents etc):-

'Relevancy' is a matter of judicial application of the mind by the court. But, 'admissibility' is governed solely by the legal principles. Whenever a document is admitted in court, the probative value thereof will be a matter for the court to determine**.**

Courts adjudicate matters on the basis of the evidence before it. Such evidence must be relevant and admissible.

Relevancy of Evidence

Sec. 5 and 136 of the Evidence Act stipulate that evidence can be given only on 'facts in issue' or 'relevant facts'. Relevant facts are enumerated in Sec.6 onwards. Documents used in a case have to pass through three steps.

They are:

- Production of documents in court
- Admittance and exhibition.
- Proof.

Evidence – Three Classes

On a broad classification, 'evidence' can be arrayed into following categories.

- First, oral evidence
- Second, documentary evidence including electronic records and material objects
- **Third, Opinions of experts** including views of persons specially skilled in foreign law, science or art, or in questions as to identify of handwriting or finger-impressions. It may also be termed as scientific evidence.

Admissibility, Relevancy and Proof – Three Check Posts

V. Ramasubramanian. J. in his picturesque speech in **Arjun Panditrao Khotkar v. Kailash Kushanrao, (2020)3 SCC 216**, observed as under:

> "2. Documentary evidence, in contrast to oral evidence, is required to pass through certain check posts, such as-
>
> - (i) admissibility
> - (ii) relevancy and
> - (iii) proof,

- before it is allowed entry into the sanctum. Many times, it is difficult to identify which of these check posts is required to be passed first, which to be passed next and which to be passed later. Sometimes, at least in practice, the sequence in which evidence has to go through these three check posts, changes. Generally and theoretically, admissibility depends on relevancy.
- Under Section 136 of the Evidence Act, relevancy must be established before admissibility can be dealt with."

Admissibility Tested First; Then only, Genuineness, Veracity, etc.

In Anvar PV v. PK Basheer, AIR 2015 SC 180: (2014)10 SCC 473, it is held as under:

- "Genuineness, veracity or reliability of the evidence is seen by the court only after the stage of relevancy and admissibility."

Generally speaking, all relevant documents are admissible. But, various provisions of the Evidence Act, Civil and Criminal Procedure Codes, Stamp Act, Registration Act, etc. stipulate various formalities or regulations for tendering documents in evidence. 'Relevancy' is a matter of judicial application of the mind by the court. But, 'admissibility' is governed solely by the legal principles.

Probative Value of Documents

Whenever a document is admitted in court, the probative value thereof will be a matter for the court to determine.

State of Bihar v. Radha Krishna Singh (AIR 1983 SC 684) it is observed:

- "Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil."

The admissibility and relevancy and probative value of recitals of the boundaries etc., in documents: Recital in a document of neighboring land, referring one of its boundary as suit land and it belongs to a particular person, for the person to rely on it, is not legal evidence and the same is not even admissible under Section 32(2) of the Evidence Act -vide in re **Daddapaneni Narayanappa (72) 1910 Indian Cases page-286 (Madras)**. It was held in **Karupaanna Konar v. Rangaswami Konar (73) AIR 1928 Madras 105(2)** at page-106 that, a mere statement of boundary cannot be classed with any of the verbs in Section 13 of the Evidence Act of created, modified, recognized, asserted or denied and is therefore not admissible; the same is not even admissible under Section 32(3) of the Evidence Act as it is a statement and not the document containing the statement that must be against the proprietary interest of the person making it. It was held further that, the lower court influenced by the idea of the document is an ancient one and the recitals obviously not intentionally false and are therefore presumably true; having overlooked the fact that parties making statements which are not material to their interests have no occasion to be accurate. In

Ramacharandas v. Girijachanddevi (74) AIR 1966 SC 323 it was held that the recitals in a document would operate as an estoppel against the author of the document. The only restriction in this regard is that, an estoppel is confined to the transaction covered by the document and the recital cannot be treated as an estoppel in a collateral transaction. Even this principle has several ramifications-For Example: if the deed is fairly old, the recitals cannot be altogether discarded and such recitals gain sufficient weight with the passage of time even as regards collateral transactions. This however depends upon the facts and circumstances of each case. An important area of interpretation of documents is the realm of the nature of the document. Ascertainment of nature of document including from the contents and attending circumstances, intention of the executant (unilateral) and parties to it (bilateral) assumes importance as law prescribes different patterns and procedures for different types of transactions covered by the documents and its execution and proof. It was laid down in **Rangayyan v. Inasimutthu (75) AIR 1956 Madras 226** that, recitals of the boundaries in a document inter-parties is admissible as a joint statement of the parties executed it to act as admission, where as recitals of a document between a party and stranger is relevant against the party as an admission but is not admissible in his favour unless the fact recited is deposed by executants of the document in Court to act as a corroborative evidence under Section 157 of the Evidence Act or to contradict under Sections 145 and 155(3) of the Evidence Act; whereas recitals as to boundaries in the document between third parties, it is not ordinarily admissible to prove possession or title as against a person, who is not party to the document, but for at best to corroborate or to contract. The probative value to be attached to such recitals in the documents even admitted in evidence is depending upon the facts and circumstances of each case right from to clinching evidence as the case may be from material on record of the respective cases-See also **Umarapartvathy v. Bhagvathy Amma (76) AIR 1972 Madras 151**.

Documents executed ante-(pre-liti), pendenti and post-litem motam:

In Harihar Prasad Singh v. Deonarayan Prasad (77) AIR 1956 SC 305 - it was held in para-5 that recitals in the documents executed ante (pre-liti) litem motam and inter parties held of considerable importance and their probative value as against them is high from the recital of private lands of the proprietor (which includes de facto/ dejure) in assertion of their title and for its admissibility under Section 13 of the Indian Evidence Act. It was however, observed that the respondents are right in contending that the recitals cannot be considered as admissions by the mortgagees as they were executed by the mortgagors. It is also held in Rangayyan v. Inasimutthu (75 supra) that depending upon the recitals in the documents executed ante-pre, pendenti and post-litem motam and from nature of recitals and other circumstances of between inter parties or third parties; the probative value to be attached to such recitals in the documents even admitted in evidence is depending upon the facts and circumstances of each case

right from to clinching evidence as the case may be from material on record of the respective cases. In Dolgobinda Paricha v. Nimai Charan Misra (78) AIR 1959 SC 914-it was held that- it is also well settled that statements or declarations before persons of competent knowledge made ante litem motam are receivable to prove ancient rights of a public or general nature. The admissibility of such declarations is, however, considerably weakened if it pertains not to public rights but to purely private rights. It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases or proceedings taken or declarations made ante litem motam, the element of bias and concoction is eliminated. Before, however, the statements of the nature mentioned above can be admissible as being ante litem motam they must not only be before the actual existence of any controversy.

M.B. Ramesh (D) By LRs. Vs. K.M. Veeraje Urs (D) By LRs. and others, 2013 (4) SCJ 358 (DB), Construction of a document of title or an instrument being foundational to rights of parties, necessarily raises a question of law.

Nawab Mir Barkat Ali Khan Waleshan Bahadur, Prince Mukkaram Jah Bahadur, H.E.H. The Nizam VIII of Hyderabad rep. by his Special Power of Attorney Holder Mir Hasan Ali Vs. Princess Manolya Jah, Dulkadir Sokak, Istanbul, Turkey and another, 2018 (3) ALT 691 (DB), The discretion is vested with the Family court to receive any evidence, any report, any relevant statement, documents, information etc., which is necessary for its assistance to deal effectually with a dispute We are of the considered view that since the provisions of Evidence Act have no application, the Family Court can receive documents Exs.A5 to A8 and the question of admissibility of Stamp Duty, registration and relevancy does not arise and the Court can receive those documents to adjudicate the dispute between parties. (Paras 38, 68, 69, 86 and 90).

John Santiyago and others Vs. Clement Dass and others, 2014 (3) ALT 83, Order 7 Rule 14 (3), CPC confers discretionary power on the Court to grant leave and receive documents at the hearing of the suit or at the end of trial if sufficient cause is shown to advance cause of substantial justice, more particularly when the documents sought to be filed are relevant and have bearing on the determination of real controversy involved in the suit. (Para 6 (d)).

ii) Admissibility of documents with reference to Stamp Act, Registration Act and other relevant laws :-

Throughout our lives, we come across various levels and types of transactions and documents. Some of these documents and transactions are of massive importance to us and the State. Without any mechanism of their regulation, it would be troublesome to keep a track of such transactions. For this reason, the State introduced the process of registration. Now once this mechanism was sorted State also wanted to gain some form of revenue from such transactions and documents and in order to gain that revenue State introduced the system of stamp duty. The Registration Act, 1908 was set up with the purpose of ensuring registration of documents and that all the important information related to deal regarding land or other immovable property. Having a document registered can add more authenticity to that of the document.

Section 35 of the Stamp Act says 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, nor shall it be acted upon or registered, or authenticated by any such person or by any public officer, unless it is duly stamped.

Order 13 Rules 3 and 4 of the Code of Civil Procedure, 1908 provide rules for admission or rejection of documents. The same read as follows:

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.

4. Endorsements on documents admitted in evidence. — (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely: (a) the number and title of the suit; (b) the name of the person producing the document; (c) the date on which it was produced; and (d) a statement of its having been so admitted; and the endorsement shall be signed or initialled by the Judge.

When absolute rights are conferred by a document in immovable property, it is required to be properly stamped and registered under Section 17 (1) of Registration Act, 1908. (Para 7), **Madala Jyothi and another Vs. Karanam Tirupalaiah and others, 2015 (5) ALT 472**. Even an agreement for execution of registered settlement deed/gift deed, executed

without consideration is void under Section 25 (1) of Contract Act, 1872 unless it is registered.

When an objection is raised at the stage of marking of a document as to its inadmissibility in evidence on the ground of deficiency of stamp duty of the document, the Court has to decide the said objection immediately before proceeding further without postponing the decision on it to the final stage of judgment. (Paras 16 and 19), Sheikh Qutubuddin and another Vs. Goli Vishwanatham and others , 2014 (2) ALT 275. A document required to be registered compulsorily is not admissible in evidence even if the requisite stamp duty and penalty are paid as per the provision of Stamp Act and the decision as to admissibility of such a document in evidence need not be postponed to the final stage of delivery of judgment.(Paras 12 and 17), Golla Dharmanna Vs. Sakari Poshetty and others, 2013 (6) ALT 205.

Sale deed affidavit sought to be marked in evidence is inadmissible in evidence under Section 35 of Stamp Act as it contains all terms of original white paper sale deed which is unstamped unless deficit stamp duty is paid as a conveyance as payable under the original document together with penalty. (Para 4), **Uppula Ramesh Vs. Elagandula Harinath and others, 2014 (1) ALT 700**.

Section 35 of the Act prohibits receipt of any document in evidence, if it is not duly stamped, **P.N. Varalakshmi (died) and others Vs. K. Chandra and another, 2023 (1) ALT 415**. Merely because the document is assigned an exhibit number, it cannot be treated as an admission of the same in evidence, as required under Section 36 of the Act. Malkapurapu Venkateswarlu and others Vs. M.Nageswara Rao and others, 2019 (5) ALT 82, a document, which is required to be stamped and which is not stamped or insufficiently stamped, is not admissible in evidence even for collateral purpose unless stamp duty deficit stamp duty and penalty payable thereon are paid.

All leases of immovable property irrespective of their duration executed after 01-04-1999 are compulsorily registerable after the amendment of Registration Act by A.P. Act No.4 of 1999 with effect from 1-4-1999. (Para 29), **Kiran Bansal Vs. T. Chandra Kala and another, 2015 (6) ALT 670**. Though a document (original) inadequately stamped can be validated under Section 35 of Stamp Act,1899 by paying deficiency

and penalty, a photo copy of such document cannot be validated under that provision. (Paras 32 and 33).

Though unregistered sale deed is inadmissible in proving title, it can be referred to as explaining the nature and character of possession thereof held by the party and from the transfer effected in violation of the law the transferee would be deemed to be in adverse possession ever since the date of transfer. (Para 43), **G.Narayan Reddy Vs. P. Narayana Reddy, 2016 (3) ALT 12**.

When a document not duly stamped is presented before Court, Court has to impound the document under Section 33 of the stamp Act and collect the proper stamp duty and penalty under the relevant provisions of the Stamp Act without going into the relevancy of the document as to its admittedly is evidence, at that stage. (See. Para 9), **Trinadha Patro Vs. Lingaraj Rana, 2016 (1) alt 174**.

P.Venkayamma Vs. Bhimavarapu Bhimeswara Prasad and another, 2022 (5)ALT 760, it was held that When a document is not duly stamped, but it is tendered for evidence, the first duty of the Court is to act in accordance with Section 33 of the Indian Stamp Act, 1899, which mandates that the Court shall impound the document. 'Impound' means to keep in custody of the law (vide Suresh Nanda v. CBI (1) 2008 (2) ALT (Crl.) 344 (SC) = (2008) 3 SCC 674)

Sirigiri Obulesu Vs. Duggineni Venkateswarlu, 2022 (4) ALT 612, the documents of agreement of sale executed before 01.04.1995. They do not require stamp duty on par with sale deed, but they can be received in evidence, if they are executed on stamp paper worth `100/-'. 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 in evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Where possession of property is delivered on receipt of full sale consideration pursuant to agreement of sale after its execution, the agreement be stamped as a sale as per Explanation-I of Article 47-A of the Stamp Act, even if there is no mention as to delivery of possession in the

document. (Paras 22 and 25), **Vanapalli Jayalaxmi @ Venkata Jayalaxmi Vs. A. Kondalarao and others, 2014 (1) ALT 356**.

P.Srinivas Reddy Vs. P. Madhav Yadav and others, 2021 (1) ALT 70, it was held that in fact, the suit itself is filed for specific performance of supplementary agreement of sale dated 17.04.2003, in which delivery of possession was recorded, but the said document is not properly stamped as per the explanation to Article 47-A under Schedule I-A of the Act. Explanation–I to Article 47-A under Schedule I-A of the Act, is extracted as under for ready reference:

> "An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "Sale" under this Article."

As far as the registration of the said document is concerned, it is compulsorily registrable under Section 17 of the Registration Act, 1908 and unless the same is registered, it cannot be admitted in evidence. But, in the present case, the suit is filed for specific performance based on Ex.A-3 unregistered supplementary agreement of sale. As per the proviso to Section 49 of the Registration Act, the said document can be received as evidence of a contract in a suit for specific performance. The said provision is extracted as under for ready reference:

49. Effect of non-registration of documents required to be registered:

No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

A.Archana Vs. D. Uma Maheswara Reddy , 2019 (5) ALT 299, - Marking of Unregistered Mortgage Deed in the course of trial when the petitioner wanted to exhibit the unregistered mortgage deed dated, an objection was taken by the trial Court that it is not admissible for want of registration, though required stamp duty and penalty was paid thereon The learned trial Judge considered the recital as the

main purpose and object of the document in question and not being an instance of collateral purpose The observations of the trial Court cannot stand and necessarily they have to be set aside In the result, the civil revision petition is allowed setting aside the order of the Court Trial Judge is directed to permit the petitioner to exhibit unregistered mortgage deed dated 27.08.2011, for collateral purpose on her behalf in the course of trial.

A document, though refers to a past transaction, is compulsorily registerable if it refers to present transaction of relinquishment of rights in a property.(Para 7), **Laxminarsamma and others Vs. N.Venkatreddy and others, 2013 (4) ALT 303.**

Promissory note executed in State of A.P. on impressed stamp paper purchased in another State is admissible in evidence. (Paras 13, 15 and 21), **V. Giridhar Kumar Vs. Miss Sellammal (died) per Lrs, 2013 (1) ALT 82.**

Article 6-B of Schedule I-A of Stamp Act is not applicable to a simple agreement to sell one of the flats proposed to be constructed by a builder-developer in terms of development agreement entered into by him with owners of land. (Para 8), **K.Sudhakar Reddy Vs. M/s. Sudha Constructions, rep. by its Managing Partner, V.Srinivasa Rao and others, 2012 (2) ALT 93.**

Revenue Divisional Officers were competent to impound a document under Stamp Act on payment of necessary stamp duty and penalty and make an endorsement to that effect on the document prior to 27-2-2008 when his powers of such impounding were withdrawn by Gazette Notification and the document so impounded is admissible in evidence as duly stamped, (Para 10), **Devarakonda Shankara Murthy and another Vs. Vemula Rajakmallu, 2012 (1) ALT 807.**

Application to send a document for impounding under Stamp Act for adjudicating proper stamp duty and penalty cannot be denied dismissing it only on the mere ground that it is unregistered and therefore not admissible in evidence. (Para 12), **Alwanpally Ashanna v. K. Narasimha Chary, 2011 (2) alt 344**.

In **Kanamathareddi Kanna Reddi v. Kanamatha Reddy Venakata Reddy**, of the judgment, it is held that non-registration of a document which is required to be registered under Section 17 (b) of the Registration Act, 1908 will not avail to create, declare, assign, limit or extinguish any right, title or interest in or to the immovable property comprised in the document. In short, the document will be ineffectual to achieve the purpose for which it was brought into being. The effect of Section 49(a) does not go further than this. The circumstance that the earlier partition was evidenced by an unregistered partition deed will not render proof of the factum of that partition by other evidence inadmissible under Section 91 of Evidence Act, because this section excludes oral evidence only in proof of the terms and not of the existence as a fact of a contract, grant or other disposition of property. (Ref. Meva Devi And Ors. Etc. vs Omprakash Jagannath Agrawal, AIR 2008 Chh 13).

P. Venkata Subba Rao Vs. J. Kesavarao, 1968 (1) ALT 14, "The contents of a document which is required to be executed on a stamp, if not stamped, cannot be proved by secondary evidence. Section 36, Stamp Act, is applicable only when an unstamped or insufficiently stamped instrument has to be

admitted in evidence, but where the instrument itself is not produced, the section has no application to the secondary evidence. (Ref. Moolchand v. Lachman, A.I.R. 1958 Raj. 72.)". Section 36 applies only in the case of original document. Hence, where the original document has been lost and a copy of the original has been admitted as secondary evidence by the trial court, the Appellate Court is entitled to consider on appeal whether the secondary evidence has or has not been properly admitted. I must notice two other decisions, which similarly take a contrary view. Mauno Po Htoo v. Ma Ma Gyi, A. I. R. 1927 Rang. 109 held that section 35 of the Stamp Act, read with the provisions of the Evidence Act, excludes both the original instrument itself and secondary evidence of its contents. Similarly, under section 36, when either the original instrument itself or secondary evidence of its contents has in fact been admitted, that admission may not be called in question in the same suit, on the ground that the instrument was not duly stamped. In that case, Raja of Bobbili v. Inuganti China Sitaramaswami Garu, I. L. R. (1900) 23 Mad. 49 : (1899) L. R 26 I. A. 262 (P. C.). was sought to be explained. It is difficult to agree with this view obviously because if the oral evidence is permitted to go on record as secondary evidence, it would amount to acting upon a document which is insufficiently stamped and on which no penalty can be levied because the original document is not before the Court.

Herbert Francis v. Mohammed Akbar, A. I. R. 1928 Pat. 134 can easily be distinguished on facts of that case. In that case, an unstamped mortgage deed relating to property in British India was executed in England and sent for registration to India. The deed was lost before registration. The mortgagee thereupon brought a suit to recover the money and tried to adduce secondary evidence of the deed treating it as a bond. The question raised before the High Court was whether in the circumstances the document can be and was proved by the secondary evidence. The Madras decisions noticed by me above earlier were cited before the High Court Their Lordships clearly observed that ?the true answer to this contention is that as the bond was executed in England there was no necessity to stamp the document under section 2 of the Act of 1899, and under section 3 the payment of stamp duty is excluded for such a document. "It was therefore held that there was no necessity to stamp the document as a bond although if it had been registered as a mortgage bond it would have attracted duty, at is only in passing that their Lordships observed :

> “There is a further answer to this question of admissibility, and that is contained in section 36, Stamp Act, which provides that an instrument having once been admitted in evidence, such admission shall not, except as provided by section 61 be called in question at any stage of the same suit or proceeding. This document was received by the Court below. Section 61 referred to in section 36, deals with cases where the Court is exercising its civil or revenue jurisdiction and has no connection with the present case. (However, these rulings are distinguished in P.Venkata Subba Rao vs. J. Kesavarao, 1968 (1) ALT 14)”

M/s. National Insurance Co. Ltd. Vs. Anugula Munaswamy Naidu and another, 2015 (1) An.W.R. (A.P) 561, While marking documents, courts shall check their relevancy and admissibility and confirm whether the same contain necessary details touching the pleas.

Laxminarsamma and others Vs. N.Venkatreddy and others, 2013 (4) ALT 303, A document, though refers to a past transaction, is compulsorily registrable if it refers to present transaction of relinquishment of rights in a property.(Para 7)

Satish Vs. Smt. A. Parijatham, 2012 (2) ALT 227, Mere receipt of documents in a suit cannot be said to be acceptance of the same as evidence Objections, if any, can be raised at the time of their marking in evidence. (Para 5).

In a recent decision in **Lachhmi Narain Singh v. Sarjug Singh (2021) SCC OnLine SC 606**, the Supreme Court has reiterated well-settled principles and held as follows:

> It is clear that plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such an objection was raised before the trial court, then the party concerned could have cured the mode of proof by summoning the original copy of document. But such an opportunity may not be available or possible at a later stage. Therefore, allowing such an objection to be raised during the appellate stage would put the party (who placed certified copy on record instead of original copy) in jeopardy and would seriously prejudice the interests of that party. It will also be inconsistent with the rule of fair play as propounded by Ashok Bhan, J. in R.V.E. Venkatachala (2003)8 SCC 1.

CONCLUSION:

From the above, it is definite that_

- Admission of a document in evidence and giving it an exhibit number is a formal act, which does not dispense with proof of the document.
- As a general rule, objections are to be raised and decided at the time when the document is tendered and can neither be raised nor entertained thereafter.
- An objection to deficiency or defect of stamp duty has to be raised at the time the document is tendered in evidence and cannot be raised or entertained after the document is already admitted in evidence and exhibited.
- Similarly, objection as to mode of proof has to be raised before the document is admitted in evidence and exhibited failing which such objection is treated as waived.
- As regards a document which is ab initio inadmissible in evidence, notwithstanding that such document is admitted in evidence and given an “exhibit” number, the same would not render it a part of admissible evidence or preclude an objection thereafter. It is the duty of the Court to exclude all inadmissible evidence, even if no objection is taken to its admissibility by the parties (Hemendra R. Ghia).
- The power of the Court is not fettered or limited to exclude an inadmissible document at a later stage of the same proceedings or even in appeal or revision and the bar of review is not applicable to such judicially inadmissible documents (Hemendra R. Ghia).
- Mere cross-examination upon an ab initio inadmissible document would not render it admissible or proved in evidence. Such principle would apply only to a document which is itself admissible in evidence but suffers from the defect of deficiency of stamp duty or if the mode of its proof is irregular [i.e. a document in categories (a) and (b) above] (Hemendra R. Ghia).
- In civil cases, ordinarily, the issue of admissibility is to be decided at the earliest and cannot be postponed to a later stage as can be done in a criminal trial (Hemendra R. Ghia).

- Assuming that it is possible to work out a different procedure as suggested in Bipin S. Panchal, and only by way of exception in a case which requires resolution of complex issues which may arrest the progress of the matter or if the admissibility of such evidence is itself dependent on receipt of further evidence, only then, the decision on admissibility can be deferred to a later stage, and not as a rule (Hemendra R. Ghia).
- Postponement of adjudication on the issue of admissibility of a document to an uncertain future date, would thwart the course of cross-examination/re-examination and would neither subserve the interests of justice nor expedition.
- The mere fact that an ab initio inadmissible document has been marked as an exhibit in evidence and that cross-examination is conducted thereon without any objection from the parties and also overlooked by the Court, the objection can be raised even at the revisional or appellate stage and such evidence is liable to be rejected under Order 13, Code of Civil Procedure, 1908, at any stage. (See R.V.E. Venkatachala Gounder and Hemendra R. Ghia).
- It is well settled that where evidence has been received without objection in direct contravention of an imperative provision of law, the principle on which unobjected evidence is admitted, be it acquiescence, waiver or estoppel is not available against a positive legislative enactment.
- A document which is ab initio inadmissible in evidence as well as the oral evidence led upon its terms are liable to be rejected in terms of Order 13 of the Code of Civil Procedure, 1908 at any stage of the proceedings, original, appellate or revisional.

Even when a document is technically admitted in court, the *probative value* thereof will always be a matter for the court and it is depended upon the nature of each case.

(ii) Whenever the court considers:

- (a) mere marking of a document **on admission** will not amount to proof, or evidence of the contents of the document or its truth; or
- (b) the **probative value** of a document ‘marked without objection’ is *low or nil,* for want of proper proof; or
- (c) there is a formal defect to the document for it is a secondary evidence because it is produced without adducing ‘foundational evidence’;

WORKSHOP-I
FOR THE YEAR 2023

Paper Presentation
on

RELEVANCY AND ADMISSIBILITY OF DOCUMENTS IN EVIDENCE

By

Smt.S.Hemalatha,
Additional Senior Civil Judge,
Ongole,
Prakasam District.

RELEVANCY OF DOCUMENTS

Evidence is factual knowledge or data that lends support to or casts doubt on the hypothesis .The term “evidence” means and includes —

(i) Oral evidence — i.e., all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; and

(ii) Documentary evidence — i.e., all documents, including electronic records, produced for the inspection of the Court.

General Rule as to Relevancy:

All admissible evidence is relevant but all relevant evidence is not admissible. Relevancy is the genesis, of which admissibility is the species.

According to Section 3 of the Act:

Relevancy - One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

Section 5 to 55 of the Evidence Act deals with those facts which are relevant and which can be allowed to be taken into evidence. The Indian evidence Act enumerates the following as relevant facts under different sections :

1. Facts necessary to explain or introduce a fact in issue or relevant fact;
2. Facts which support or rebut an inference suggested by a fact in issue or a relevant fact;
3. Facts which establish the identity of anything or person whose identity is relevant;
4. Facts which fix the time and place at which any fact in issue or relevant fact happened;
5. Facts which show the relation of parties by whom any fact in issue or relevant fact was transacted.

The Supreme Court in Ram Bihari Yadav vs. State of Bihar observed that the terms ‘Relevancy’ and ‘Admissibility’ are not interchangeable though sometimes they may be taken as synonymous. However, all relevant evidence may not be admissible but all admissible evidence is relevant. The legal implications of the relevancy and admissibility are distinct. It is determined by the ruler of the Act that the relevancy is the test of admissibility.

It is the duty of the Court to exclude all irrelevant documents even if no objection is taken to its admissibility by the parties. The question of relevancy of the document being a question of law can be raised and decided at any stage of the proceedings.

The relevancy of document sought to be marked can be decided only at the time of trail and it cannnot be decided at later stage. At the time of marking the documents, the opposite party has every right to oppose it. (Kwik Patch Limited vs. A.E.Logistics Pvt. Ltd., dated 14.10.2019, Madras High Court.) Relevancy of document cannot be decided in the unnumbered plaint stage, as held in the case of D.Bhaskaran vs. S.Kalpana, dated 28.02.2022, Madras High Court..

RELEVANCY OF DOCUMENTS OF THIRD PARTIES

Statements in documents not inter parties are admissible u/sec.13 of Indian Evidence Act in fitting cases where circumstances permit such a course. Similarly the recitals in the means of 3rd parties shall be relevant and admissible only if in the statement is relevant fact and it is made against the pecuniary or propriety interest of the person making it. The statement of a 3rd party in his document about the boundaries is inadmissible unless such person is examined or is proved to be dead.

Statement of a third party made in a document executed in favour of defendant about the boundaries of land in suit. Such third party not proved to be dead nor examined in the case. Statement is inadmissible in law against the plaintiff.

Where the recitals of boundaries in a document occurs in a document between a party and a stranger, it would be relevant against a party as an admission but not admissible in his favour (AIR 1958 Raj 206 (210) (DB).

Section 11 of Indian Evidence Act has no application in determining the question as to whether the recitals as regards the boundaries in documents between strangers are admissible. But two conditions must be satisfied before a statement is admissible under Section 32(3): firstly, that it must be a statement of a relevant fact and secondly must be a statement against the proprietary interest of the person making it. It is also necessary that the person making the statement must be aware of the fact that it is against his interest. (AIR 1976 Kant 75 (80 to 82): (1975) 2 Kant LJ 466).

The judgment obtained by the husband after institution of mortgage suit negativing the apparent ownership of his wife may be a relevant fact under Ss. 11 and 13. Decree on the foot of the mortgage would not be affected on account of the doctrine of lis pendents.

Judgment not inter parties is admissible in evidence u/Sec.13 of Evidence Act as evidence of an objection of a right to property in dispute. 2002 (1) Andh WR 131 (137) (DB).

ADMISSIBILITY OF DOCUMENTS

ADMISSION/ 'TO ADMIT IN EVIDENCE'– WHAT IS?

In **A.Sriranganyakulu v. G.Leelavathi**[1] it was held that mere receiption of documents is different from admitting the same in evidence.

The expression 'admit' means admitted for judicial purpose. A document can be exhibited under Rule 4 of Order 13 CPC only if it is found to be admissible in evidence.

A document can only be said to be admitted in evidence when it is formally tendered in evidence. There are two stages relating to documents filed by the parties in the Court. One is the stage when all the documents are filed by the parties in the Court. The other is when the documents are formally proved and tendered in evidence. It is after the document is formally proved that the endorsement referred to in Rule 4 of Order 13 is to be made. (see: ***Mantrala Simhadri v. Palli Varalakshmi***.[2]).

Admission of documents, like any other judicial function in the course of a suit, necessarily consists of two stages, the first being the strict judicial aspect of it, that is the weighing of pros and cons, and the the second, the mechanical process, giving a palpable and unmistakable shape to that judicial finding.

Order 13, Rule 4 CPC deals with later part. It provides that every document admitted in evidence shall bear an endorsement. The

---

1 2001(4) ALT 32
2 AIR 1962 AP 398

endorsement by the Court is intended to be a record of the fact that the document has been admitted in evidence after necessary legal formalities have been complied with. Provisions of Order 13, Rules 1,4 and 7 and Order 14, Rules 1 and 3 CPC have to be read together to constitute one continuous action of the parties and the court. It gives rise to two stages relating to documents, one stage is when all the documents on which the party rely are examined at the first hearing of the suit or the settlement of issues and it is at this stage that the documents which are not required to be proved by calling witnesses are to be admitted and marked by giving numbers, as provided under Order 13, Rule 4, which is in conformity with the meaning of an 'exhibit' as defined in Wharton's Law Lexicon (see: ***R.V.E.Venkatachala v. Arulmigu Visweswaraswami Temple and another.***[3])

In ***Gopal Das v. Sri Tahkurji***[4] it was held that where objection to be taken is that the document is not only in itself inadmissible but also that the mode of proof put forward is irregular, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record and that such an objection cannot be taken at the appellate stage. It was also held that an endorsement under the rule presupposes that the document has already been admitted in evidence. For that, the document must first be admitted in evidence and then follows the endorsement under the rule.

The next stage is when those documents, other than the documents not required to be proved, which have been marked for identification are proved and formally tendered in evidence.

Under Section 35 of the Indian Stamp Act, no document chargeable with duty, which is not duly stamped or unstamped, shall be admitted in evidence for any purpose, unless it is duly or properly stamped.

---

[3] AIR 2003 SC 4548
[4] AIR 1943 PC 83

Prior to the amendment of the proviso to Sec. 35 of the Act, an insufficiently stamped pronote is inadmissible in evidence. But after the amendment by the Finance Act with effect from 18.4.2006, an insufficiently stamped pronote is made admissible in evidence on payment of the requisite stamp duty and penalty as provided under the proviso.

However, as per proviso (d) to Sec. 35, it is not applicable to admission of an instrument in evidence in any proceeding in a criminal court other than a proceeding in Ch.XII (Disputes relating to Immovable Property) or Ch. XXXVI (Proceedings relating to Maintenance) of Cr.P.C. 1898. Under proviso (e) the provision does not apply to admission of an instrument in any court when such an instrument has been executed by or on behalf of the Government or whether it bears the certificate of the Collector as provided by Sec. 32 or any of the provisions of the Stamp Act.

Thus, it is clear from Sec. 35 of the Stamp Act that there is an absolute bar for receiving a document, which chargeable with duty but insufficiently or unstamped, for 'any purpose' unless it is duly stamped. It may not be out of place to mention here itself that admission or marking of a document arises when it is tendered in or as evidence through a witness.

In ***LINKWELL ELECTRONICS LIMITED V. A.P. ELECTRONICS CORPORATION OF INDIA***,[5] it was held that the question of payment of deficit stamp duty and penalty will arise only at the stage of evidence and that too when the document is sought to be tendered in evidence or marked through a witness and that the plaint cannot be rejected on the mere ground of non payment of deficit stamp duty or penalty payable on a document at the stage of registration of the suit.

In **G.Asiri Naidu v. L.Suryanarayana**[6], it was held that a pronote executed on an impressed NJ Stamp paper/adehesive stamp of the requisite value is admissible in evidence.

---

[5] 1997(3) ALD 336

[6] 2005(1) ALT 659 = 2005(1) ALD 713

In ***Sanjeeva Reddy v. Johanpatra Reddy***,[7] the expression 'for any purpose' occurring in Sec. 35 of the Stamp Act fell for consideration. Interpreting the said words, it was held that no part of document (be it a single sentence, word or signature), which is chargeable with duty can be received in evidence even though that document is sought to be admitted only for collateral purpose.

In **Ram Rattan v. Paramanand**[8] it was held that an unstamped document cannot be admitted in evidence even for collateral purpose as the section itself indicates that a such a document shall not be admitted in evidence 'for any purpose.'

In ***L.Radhakrishna v. P.Srirama Sarma***[9] referring to Secs. 35 and 36 of the Stamp Act and the proviso to Sec. 49 of the Registration Act, it was held that the bar contained in Sec. 35 of the Act as to admissibility of a document not duly stamped is absolute and that the bar operates in two ways i.e., such document cannot be received in evidence and cannot be acted upon for want of registration and that even for collateral purpose an unstamped or insufficiently stamped document cannot be received in evidence. It was further held that when a document cannot be received in evidence on the ground that it is not duly stamped, secondary evidence thereof is equally inadmissible.

The Court further held that certified copies of documents which were received in evidence in another suit or proceeding stand on a different footing and that Sec. 35 of the Act applies not only to Court but to any person or authority conferred with the power to receive in evidence. If any unstamped or insufficiently stamped document is received in a particular suit or proceeding before an adjudicatory authority, its admissibility cannot be questioned at a later point of time. Sec. 36 of the Act is very clear on this aspect and mandates that when once an instrument is admitted in evidence, its admissibility cannot be questioned at any subsequent stage and certified copy of document obtained from a forum cannot be subject to the test of Sec. 35 once

---

7 AIR 1972 AP 373
8 AIR 1946 PC 51
9 2007(1) ALT 460

again when/if it is produced before different forum. The reason is that the same document cannot be subject to scrutiny on more than one occasion on the same parameters provided under Sec. 35 of the Act.

In **S.Zaheer Ahmad Khan v. S.Nazeer Ahmad Khan**[10] it was held that a document can be given exhibit mark only if the witness to whom it is put admits its execution and contents and not if he denies the same, that if a witness denies his earlier statement it can be marked as a contradiction under Sec. 145 of the Indian Evidence Act. It was further held that a document cannot be admitted in evidence even if a witness admits the document if it is hit by the provisions of Stamp Act and Registration Act unless those provisions are complied with.

In **Ch.Kantam v. D.Venkateswara Rao**[11] it was held that while deciding the question relating to payment of stamp duty and penalty of a particular document, the recitals of the document may have to be looked into and not the pleadings of the parties. It was also held that the levy of stamp duty and penalty is always in relation to the document which has to be marked before the court and the said levy cannot depend upon the pleadings of the parties. To the same effect is another decision of our High Court in **M.Anjamma v. Vikram China Veeraiah and others.**[12]

IMPOUNDING OF DOCUMENTS

The expression 'impound' means taking possession of the document for being held in cusody in accordance with law. (see: **P.K.Mohanan v. MACT, Muvattupuzha.**[13])

The principle behind impounding seems to be that a party to litigation cannot escape the liability of payment of stamp duty under law whenever he wants to rely on the document in order to prove his case. (**U.Abraham v. State of Kerala**[14])

Sec. 33 of the Stamp Act deals with examination and impounding of documents. It provides that every person having by law or consent

---

10 2004(5) ALT 113
11 2004(1) ALD 380
12 2006(1) LS 354
13 2005(4) KLT 273
14 AIR 1997 Ker 345

of parties authority to receive evidence and that person in charge of a public office except an officer of Police, before whom any instrument chargeable with duty is produced or comes in the performance of his functions, shall, it if appears to him that such instrument is not duly stamped, impound the same. However, proviso (a) exempts any instrument being impounded by any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under Ch.XII or Ch. XXXVI of Cr.P.C., and proviso (b) exempts the Judge of a High Court the duty of examining and impounding any instrument under the section and it further says that such a power can be delegated to such officer as the court appoints in this behalf.

It may be pertinent to note that it is the date of the document which should be taken into consideration for impounding and not the date on which it is produced before the Court.

Whenever the Court impounds the document, two options are open to the party (i) it can pay the stamp duty and penalty as determined by the Court and get the document marked; and (ii) it can make an application to the Court to send the document to the Collector for impounding. Whenever an application is made before the Court under Sec. 38(2) of the Act, the court has no option to refer or send the document to the Collector for impounding. When a party applies for sending the document to the Collector, he cannot ask the court to stay the trial pending decision of the Collector. (see: **P.Venkayya v. R.D.O., Guntur**[15]). If a party does not pay the stamp duty and penalty, the court shall impound the document under Sec. 35 and forward the same to the Collector under Sec. 38(2). Then it is for the Collector to give his decision under Sec. 40. The Collector should not abdicate his function of determining the correct amount of duty and penalty and mechanically direct recovery of the amount suggested by the Judge impounding the document not refuse to act on the ground that the document was already impounded by the Court.

---

[15] AIR 1981 AP 274

The Court has no discretion while collecting the stamp duty and penalty, whereas the Collector or the competent authority under the Act has got discretion to collect penalty less than 10 times.

Under Sec. 40(1)(a), when the Collector impounds any instrument under Sec. 33 or receives any instrument under Sec. 38(2) and if he is of the opinion that the instrument is duly stamped or is not chargeable with duty, he shall certify an endorsement thereon that it is duly stamped or that it is not so chargeable, as the case may be. Under sub-sec.(1)(b), if he is of the opinion that such instrument is chargeable with duty and is not duly stamped, he shall require payment of proper duty or the amount required to make up the same together with penalty of Rs.5/- or if he thinks fit an amount not exceeding 10 times of amount of proper duty or of the deficient portion thereof whether such amount exceeds or falls short of Rs.5/-. Under sub-sec.(2), the certificate or endoresement made on the instrument under sub-sec.(1)(a) shall be conclusive evidence of the matters stated therein. Under sub-sec.(3) where an instrument has been sent to the Collector under Sec. 38(2), after dealing with the same, he shall return it to the impounding officer.

In **Government of A.P. And Ors v. P.Laxmi Devi**[16] it was held that where a document was impounded but not validated cannot be returned to the party and it is mandatory to impound the document produced before the court by sending the same to the concerned authorities for collection of stamp duty and penalty. Further, the Hon'ble High Court of A.P., also issued a circular vide Roc.No. 1628/SO/2005 dt. 10.7.2006. giving directions to the P.Os., of the Courts that such documents shall not be returned to the party and the same shall be sent to the Collector for appropriate action.

OBJECTION AS TO ADMISSIBILITY – WHEN TO BE TAKEN – DUTY OF THE COURT TO DETERMINE SUCH OBJECTION.

The mode of proof of document is a matter of procedure while its admissibility is a matter of substantive law, such as Registration Act or

[16] 2008(3) ALD 56 (SC)

the Stamp Act or other specific provisions. If the objection is as to admissibility of a document, then the mere marking of the document as an exhibit, does not preclude any objection being raised later as to admissibility. But so far as the mode of proof is concerned, it is well settled that, if an objection as to the mode is not raised at the time when it is tendered in evidence in the case, such an objection cannot be raised at any subsequent stage. (see: ***LAO v. Nutalapati***.[17])

An objection as to the admissibility of a document should be raised before an endorsement as contemplated by Rule 4 of Order 13 CPC is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence.

Ordinarily an objection to the admissibility of a document should be taken when it is tendered in evidence and not subsequently. Such objection is classified into two classes:

i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and

ii) where the objection does not dispute the admissibility of the document but is directed towards the mode of proof alleging the same to be irregular or insufficiently stamped.

In the first case, merely because a document has been marked 'as an exhibit' an objection as to its admissibility is not excluded and is available to be raised even at the later stage in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered. Once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. (see: *Venkatachala*, supra of the Supreme Court).

---

[17] AIR 1991 AP 31 (FB)

The crucial test is whether an objection if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proofs as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the document in evidence, for two reasons. Firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there itself and secondly in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such a practice and procedure would be fair to the parties. Out of the two types of objections, referred to above, in the later case, failure to raise a prompt and timely objection 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. In the first case, acquiescence would be no bar to raise the objection in superior court. (Also see: ***P.C.Purchothama v. S.Perumal***,[18] ***Bhagat Ram v. Khetu Ram***[19] and ***Roman Catholic v. State of Madras***.[20])

Where an objection as to admissibility relates to deficiency of stamp duty of a document, it is the bounden duty of the Court to decide such objection before proceeding further. (see: ***Ram Retan v. Bhajranglal***,[21] ***Bipin Shantilal v. State of Gujarat***.[22]). To the same effect is another recent decision of our High Court in **P.Satish Kumar v. Kapil Chit Funds (P) Ltd.**[23]

---

18 AIR 1992 SC 608
19 AIR 1929 PC 110
20 AIR 1966 SC 1457
21 AIR 1978 SC 1393
22 AIR 2001 SC 1158
23 AIR 2008 AP 3

In ***Javer Chand v. Pukhraj Surana,***[24] it was held as follows:

> **"The party challenging the admissibility of a document has to be circumspect and alert to see that the document is not admitted in evidence by the Court and the Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court rightly or wrongly decides to admit the document in evidence, the matter is closed. ... Once the document sought to be marked as an exhibit in evidence has been marked in evidence without any objection being raised by the other party in cross examination, its admissibility cannot be questioned as Sec. 36 comes into operation. Once a document has been admitted in evidence as aforesaid, it is not open to the trial court or the appellate or the revisional court to go behind that order and such an order is one of those judicial orders which are liable to be reviewed or revised by the appellate or revisional court having appellate jurisdiction."**

To the same effect are the decisions in ***P.C.Purushtohama v. S.Perumal,***[25] ***M.A.Dastagiri v. B.Pullamma,***[26] ***Santosh Kumar v. Jay Prakash***[27] and ***G.Annapurna v. G.Rajanna.***[28]

In **Santhakumari v. Susheela Devi**[29] it was held that if objection is taken as to admissibility for want of stamp duty and registration, both questions should be decided at once.

Where a document which cannot be received in evidence due to some prohibition in law, even if it is admitted into evidence without objection, the Court can give a finding that the document though admitted is legally inadmissible.

In **Burra Anitha v. Elagari Mallavva and others**[30] it was held that Rule 60 of Civil Rules of Practice provides for marking of documents in interlocutory proceedings in the same manner as in a suit

---

[24] 1962(2) SCR 333
[25] AIR 1972 SC 608
[26] 2004(2) AT 271
[27] AIR 1978 SC 1393
[28] 2007 (3) APLJ 84
[29] AIR 1961 AP 424
[30] 2010(5) ALD 438

and that the bar under Sec. 35 of the Indian Stamp Act applies even against marking of unstamped or insufficiently stamped documents at interlocutory stage.

In ***D.Chennakesava Rao v. N.Narendra***[31] , relying on a Division Bench Judgment of the Madras High Court in ***Rajamanickam v. Elangovan***[32], it was held that marking of a document at interlocutory stage has nothing to do with the marking of the same during the course of a trial and that marking of documents in interlocutory proceedings is not admission of document during the course of trial and so objection regarding the document being insufficiently stamped can be taken at the stage of trial.

In ***R.Ramakoteswara Rao v. M/s Manohar Fuel Center and another***[33] an unstamped document was sought to be introduced for collateral purpose of proving signature of attestor. Dealing with the admissibility of the said document, it was held that the bar contained in Sec. 35 of the Stamp Act is an absolute bar and the document cannot be received for any purpose. Under the proviso to Sec. 49 of the Registration Act though an unregistered document can be received in evidence for collateral purpose, without receiving the document in evidence, it cannot be used for collateral purpose and that for receiving a document in evidence even for collateral purpose, it has to be duly stamped although the purpose might be a different one. It was further held that the document in the first instance shall have to be received or admitted in evidence.

In ***Smt. B.Lakshmi Devi v. B.Bapanna and others***[34] it was held that a partition deed which is insufficiently stamped and unregistered is inadmissible in evidence and cannot be looked into even for collateral purpose, unless stamp duty and penalty is paid.

---

31 2006(4) ALD 263
32 1998(1) Mad LW 443
33 2002(3) LS 159 : 2003(2) ALD 638
34 2003(1) LS 382

In ***M/s Hindustan Steel Limited v. M/s Dilip Plast Co. Ltd***.,[35] it was held that Sec. 36 of the Stamp Act does not create any bar against an instrument not duly stamped being acted upon and that the provisions being fiscal in nature are not meant to arm a litigant with technicalities to defeat the claim of the opponent.

In ***L.Sambasiva Rao v. Balakotaiah***[36] the question that fell for consideration before the Seven-Judge Bench of the High Court is whether a suit can be maintained for recovery of money on the original cause of action when the negotiable instrument i.e., the promissory note has become inadmissible in evidence. The question was answered in the affirmative holding that necessary pleadings also will have to be made in the plaint claiming the amount on the original cause of action.

In ***S.Hymavathi v. Nageswara Rao***[37] and ***P.Suryanarayana v. M.Kamaraju***[38] it was held that when once a document has been admitted into evidence without any objection, it cannot be questioned subsequently either in appeal or revision, in view of Sec. 36 of the Stamp Act.

In ***Isra Fathima v. Bismilla Begum***[39] it was held that documents which are admitted as exhibits without any objection being raised at the time of marking, cannot be de-exhibited on the ground that they are not properly stamped.

Under Sec. 36 of the Stamp Act, when once a docoument has been admitted in evidence, such admission shall not, except as provided in Sec. 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.

---

35 AIR 1969 SC 1238
36 AIR 1973 AP 342 (FB)
37 2006(1) ALD 655
38 1998(5) ALD 166
39 2002(5) ALD 660

ADMISSION OF DOCUMENTS FILED ALONG WITH AFFIDAVIT IN LIEU OF CHIEF EXAMINATION.

In view of the amendment to Order 18 of C.P.C., it has become necessary to incidentally consider whether the Commissioner, who was appointed to record the cross-examination of a witness, has power to decide about the admissibility of the documents tendered before him during the course of recording of evidence. The answer to this question, should be in the negative. He has no power to decide the admissibility of a document tendered during the course of recording of evidence. What all is required in such circumstances, is that he has to record the objections raised by the parties at the time of recording the cross examination and submit the same to the Court, and it is the Presiding Officer of the Court, who will decide the same before the suit is finally disposed of. (see: ***Salem Advocate Bar Association v. Union of India***.[40])

In ***V.Kota Reddy v. V.Prabhakar Reddy***[41], the plaintiff has filed his affidavit as part of evidence with certain documents. They were marked as exhibits in the absence of the defendant and without considering the nature of the documents. Considering the admissibility of the said documents, it was held that it cannot be said that they are admitted in evidence and it is not a bar for the defendant to question the admissibility of the documents on any valid grounds. It was further held that once the documents are filed along with the affidavits in the form of chief examination, the courts shall give a specific date for the purpose of marking of the documents in the presence of the counsel and the respective parties, on which date the admissibility of the documents have to be judicially determined before marking the documents and there shall be a specific endorsement of the Judge concerned to the effect that 'admitted in evidence' as exhibit, and that merely because an affixture of the exhibit seal mechanically stamped and the Judge initialled cannot be said the document is admitted in evidence.

---

[40] 2005(6) SCC 344
[41] 2004(3) ALD 187

In ***Supreme Music, Hyderabad v Manilal G.Purohit***[42] it was held that marking given to documents when they were presented along with the affidavit in lieu of chief examination is only tentative and the actual admissibility of such documents can be considered only at the stage of cross examination of concerned witness. It was further held that admission of a document subject to payment of stamp duty and penalty is a misnomer when Sec. 35 of the Act strictly prohibits admission of any document in evidence unless it is properly stamped and, therefore, the marking given to documents when they were presented along with the chief examination affidavit can, by any stretch of imagination, be treated as a step in the admission of document in evidence.

In ***T.Arti v. K.Anand Reddy***[43] it was held that adhoc or provisional identification mark given to a document when presented along with affidavit cannot be treated as a step taken by the court receiving it in evidence and that opposite party will certainly be entitled to raise objection at the stage of cross examination. It was held that a document can be said to have been received in evidence if only the Court had an occasion to address itself to the admissibility of the document and mark of exhibit was assigned to it.

MARKING OF AN UNREGISTERED OR UNSTAMPED DOCUMENT FOR COLLATERAL PURPOSE – CONDITIONS TO BE SATISFIED.

Sec. 17 of the Registration Act, 1908 provides for compulsory registration of the documents mentioned in the said provision, where it relates to transfer of tangible immovable property whose value is more than Rs.100/-.

In ***G.Jayarami Reddy v. M.Padmavathamma***[44] dealing with Sec. 17(1)(b) of the Registration Act, a Full Bench of our High Court held that transfer of immovable property by way of 'Pasupukumkuma' by a document is a 'gift' within the meaning of Sec. 122 of the Transfer of Property Act and hence such a document is compulsorily registerable in

---

42 2005(6) ALD 228
43 2006(3) LS 72
44 2001(5) ALT 130 (FB)

view of Sec. 123 of the Transfer of Property Act and Sec. 17(1)(b) of the Registration Act. (AIR 1980 AP 139 over ruled in this decision).

In **Durga Emporium v. Munafa Dress and Cloth Merchants Association, Cuddapah,**[45] considering the question whether a letter or a memorandum evidencing deposit of title deeds for obtaining loan, requires registration under Sec. 17 of the Registration Act, it was held as follows:

> **"A letter evidencing deposit of title deeds as security for the debt due from the executant is not liable to be compulsorily registered. It was observed that for an equitable mortgage to come into existence what all is needed is the deposit of title deeds by the mortgagor with the mortgagee in the form of security for repayment of the amounts borrowed or due by that time. Unlike other types of mortgages, equitable mortgage does not involve in execution of any document and registration of the same. However, when the parties creating security by way of deposit of title deeds intend to reduce their bargain regarding deposit of title deeds to the form of a document, such document must be registered. (V.G.Rao v. Andhra Bank : AIR 1970 SC 1613). It was, therefore, held that since the document in question does not by itself created mortgage or formed part of the transaction and it was a letter executed evidencing factum of deposit of title deeds which had already taken place, as such such the said letter does not require registration."**

To the same effect are the decisions in **John Noel and Ors v. Andhra Bank, Warangal**. [46] and **V.Subba Rao v. Indian Bank.**[47]

In **M.Chelamayya v. M.Venkataratnam**[48] it was held that if the document contains two transactions, one required to be registered and the other not required, the seperable transaction can validly be ignored and the rest is admissible.

In **V.Anjaneyulu v. V.Peddanna @ Peddaiah**[49] dealing with an unregistered document evidencing two separate transactions out of which one is compulsorily registerable, it was held that the document is not rendered completely inadmissible and that it can be admitted insofar as it related to the transaction which does not require registration. In the said case, the document referred to two

---

45 2002(2) LS 135
46 2006(4) ALD 194
47 1997(4) ALT 112
48 AIR 1972 SC 1121
49 2005(5) ALD 206

transactions, (1) adoption, which is not registerable and (2) settlement, which is.

In ***B.Ratnamala v. G.Rudramma***[50] it was held that an agreement of sale followed by delivery of possession, whether it refers to past or present possession, amounts to sale, and thus requires stamp duty and penalty, to be admitted in evidence, even for collateral purpose and that even symbolic delivery of possession between landlord and tenant amounts to sale and requires stamp duty and penalty.

In **V.Venkatachalapathi and others v. P.Jayalakshmi**[51] it was held that a document merely recording past transaction of partition is exempt from stamp duty and registration and that admissibility of document cannot be questioned on the ground of want of stamp duty and registration.

In **Inspector General of Registration and Stamps v. Tayyaba Basha**[52] it was held that the very fact that the document was attested by two witnesses as required under sec. 123 of the Transfer of Property Act would indicate the desire of the executant that it should serve as evidence of the gift and not as a memorandum of past transaction and hence the document comes within the scope of Sec. 17 requiring stamp duty and requires registration.

In ***Mohd. Mohiuddin v. Mohd. Mohammad Ali and others***[53] it was held that a document evidencing previous transaction does not require registration but if the transaction of oral gift found to have taken place contemporaneously with the document itself, it requires registration. In this regard reliance was placed on **Syed Fatahuddin v. Golla Shadrak.**[54]

COLLATERAL PURPOSE, TRANSACTION OR MATTER – WHAT IS? -- DISTINCTION BETWEEN THEM.

Sec. 49 of the Registration Act deals with effect of non registration of documents required to be registered. According to the said provision, no document required by Sec. 17 or by any provisions of the Transfer of Property Act, 1882, to be registered shall affect any immovable

50 1999(6) ALT 59 = AIR 2000 AP 167 (DB)
51 2008(3) LS 262
52 AIR 1962 AP 199 (FB)
53 2005(6) ALD 109
54 2004(6) ALT 753

property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

The proviso, which is important for our purpose, lays down that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered, may be received as evidence of a contract in a suit for specific performance or *as evidence of any collateral transaction* not required to be effected by registered instrument.

The proviso does not sweep away the necessity for registration but only removes the bar in the law of evidence only in restricted cases.

Thus under the proviso to Sec. 49 of the Registration Act, an unregistered document, though inadmissible to prove the main or principal transaction, can be received as evidence of any collateral transaction or matter or purpose, not required to be effected by a registered document.

There is a distinction between Sec. 35 of the Stamp Act and Sec. 49 of the Registration Act. The documents requiring registration can be used for collateral purpose of proving the nature or character of possession of the party concerned.

A distinction is made between admissibility of a document for collateral purpose and collateral matter. Collateral matter is something which is totally different, divorced and different from the transaction evidenced by a document. The document may contain certain recitals which are totally unrelated to the transaction which it intends to bring about. For example, the age of the vendor as on the date of execution of the document is shown at a particular figure. The recital in that regard cannot be said to be collateral to the transaction by any stretch of imagination. If a dispute arises in a different set of proceedings as to the age of the vendor, reliance upon such document for the limited purpose of questioning the same on the said aspect cannot attract the prohibition contained under Sec. 35 of the Act. The reason is that the

purpose for which reliance is placed on the document is related neither to the main transaction nor to the collateral purpose and it is pressed into service in a collateral matter. Another example is the proof of payments which have been made and endorsed on the back of a promissory note. For this purpose, the endorsements would be receivable in evidence as the proof of the payments does not depend on the proof of the transaction for which the promissoy note was given. Thus, an unstamped or insufficiently stamped document is inadmissible if it is intended to prove the transaction covered by it or any purpose collateral to it. It is admissible, if it is relied on for a totally different but collateral matter.

On the other hand, a collateral purpose is any matter the proof of which depends on the proof of the transaction. Sec. 35 bars admission of an unstamped document in evidence for such purpose.

Thus, although a document is inadmissible for the purpose of proving a claim, it may be admissible for the purpose foreign and not subordinate to the purpose for which the document was executed. If there are recitals in a document which as such are not chargeable with duty, then it may be possible to use such recital as evidence for an entirely different and independent matter.

Collateral purpose is a purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. It is a purpose related to the main transaction gathered from the document itself, but it is other than the one which is sought to be brought out by it. For example, in a sale transaction, delivery of possession is one of the important aspects. In a sale deed, the principal purpose is to convey the property by way of sale and other factor such as delivery of possession, payment of consideration are collateral to it. The expression 'collateral' connotes that it exists by the side of the main entity. Such purposes are never independent of the main transaction.

In order that a transaction may be considered a collateral transaction and, therefore, admissible in evidence, it must (a) be

independent of, or divisble from, the transaction to effect which the law required registration, and (b) 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 immovable property of the value of one hundred rupees and upwards.

In **Ram Laxmi Ramchold Lal v. Bank of Baroda**[55] it was held as follows:

> **The expression 'collateral transaction' is not used in the sense of anciliary transaction to a principal transaction or subsidiary transaction of a main transaction. The real meaning of tbe word 'collateral' is running together or running on parallel lines. The transaction as recorded would be a particular or specific transaction, it would be possible to read both transaction what may be called the purpose of the transaction and what may be a collateral purpose fulfilment of that collateral purpose would bring into existence collateral transaction which will be said to be part and parcel of the said transaction, but nonetheless the transaction which runs together with or on parallel lines with the same."**

In ***K. B.Saha & Sons (P) Ltd v. Development Consultant Limited***[56] it was held that an unregistered document which is inadmissible in evidence can be admitted for collateral purpose and that a collateral transaction must be independent of or divisible from transaction which requires registration and must not by itself registerable. It was also held that a document if inadmissible in evidence for want of registration, none of the terms of it, can be admitted in evidence and that use of a document to prove an important clause would not be using it as collateral purpose.

It is settled position in law that an unregistered lease deed is not admissible in evidence to prove the terms, duration of the lease, quantum of rent etc., however, it can be received in evidence for the collateral purpose of knowing the nature and character of the possession of the lessees, whether it is adverse or permissive. It can be looked into to establish the jural relationship between the parties and in which capacity he is occupying the property and the nature of

---

[55] AIR 1953 Bom 50

[56] (2008) 8 SCC 564 : 2008 AIR SCW 4879

the possession. (see: **Bajaj Auto Limited v. Behari Lal Kotli**[57] and **Ravi Chand Jain v. Chandra Kanta Khosla**[58])

A partition which requires to be effected by a registered instrument may be inadmissible but the severance of 'joint status' which is not required to be effected by a registered instrument would be collateral transaction, evidence of which would certainly be admissible under the proviso to the section. An antecedent title, the nature and character of possession, an admission or an acknowledgment, relationship of parties and their state of mind may be some of the instances of collateral purpose for which a document requiring registration may be looked into even though it is unregistered.

A Full Bench of our High Court in ***Muthyala Reddy v. Venkat Reddy***[59] had an occasion to deal with the question of admissibility of an unregistered partition deed. Considering the said question, it was held as follows:

> **"Where a partition takes place, the terms of which are incorporated in an unregistered document, that document is inadmissible in evidence and cannot be looked into for the terms of the partition. It is in fact a source of title to the parties held by each of the erstwhile coparceners. That document, though unregistered can, however, be looked into for the purpose of establishing severance in status though that severance would ultimately bring the nature of possession held by the members of the separated family who form thence on wards held as cotenants."**

To the same effect are the decisions in ***Bhaskara Ramamurthy v. K.Satyavathi Devi***[60] and ***A.Prameela and another v. P.Venkat Reddy***[61])

However, an unregistered partition deed cannot be received in evidence to prove a covenant to pay compensation in order to equalise

---

57 AIR 1989 SC 1806
58 AIR 1991 SC 744
59 AR 1969 AP 242 (FB)
60 2004(2) ALD 336
61 2004(3) ALD 66

the shares as it cannot be called a collateral transaction and it is one of the terms of the partition itself.

In ***Bandar Singh and others v. Nihal Singh and others***[62] it was held that in law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear that a document like a sale deed even though not admissible in evidence for want of registration, can be looked into for collateral purpose of knowing the nature of the possession.

In ***Avinash Kumar Chouhan v. Vijay Krishna Mishra***[63] it was held that an unregistered sale deed which was an instrument requiring payment of stamp duty applicable to a deed of conveyance, is not admissible in evidence even for collateral purpose, if no proper stamp duty or penalty is paid.

In ***S.Kaladevi v. V.R.Sivasundaram and others***[64] it was held that a sale deed required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.... By admission of an unregsitered sale deed in evidence in a suit for specific performance as evidence of a contract, none of the provisions of the Registration Act 1908 are affected and the court acts in consonance with the proviso appended to Sec. 49 of the Act.

In ***T.Bhaskar Rao v. T.Gabriel***[65] it was held that there is no prohibition under Sec. 49 of the Registration Act to receive an unregistered document in evidence for collateral purpose, but the document so tendered should be duly stamped and should comply with the requirements of Sec. 35 of the Stamp Act. It was further held that if no stamp duty is paid, the document cannot be received in evidence even for collateral purpose unless it is so stamped or duty and penalty are paid under Sec. 35 of the Stamp Act. It was also held that when the transaction itself is admitted in pleading, it is not necessary to produce the deed at all to prove its execution.

---

62 (2003) 4 SCC 161
63 AIR 2009 SC 1489
64 AIR 2010 SC 1654
65 AIR 1981 AP 175

To the same effect are the decisions in ***T.Obulamma v. Balu Narasimhulu***[66] and ***A.Sriramulu v. A.Baji Naidu***.[67]

In **Bhojram v. Wadla Gangadhar**[68] it was held that a document required to be registered but not registered can be used as evidence for collateral transaction not required to be effected by a registered document and it prohibits only the using of a document for establishing any right, title or interest in immovable property. It was further held that an unregistered simple mortgage evidencing any covenant undertaking to discharging the liability personally by mortgagor without reference to the mortgaged property is admissible in evidence to prove the debt.

In **G.Lalitha Kumari v. B.Neelakantam**[69] it was held that an unregistered simple mortgage deed can be admitted in evidence for the limited purpose of enforcing the claim for a money decree.

In **Ranga Reddy v. Sadhu Padamma and others,**[70] our High Court, considering the admissibility of an unregistered gift deed held that : (a) a document produced for inspection of the court cannot be admitted in evidence under Sec. 49(c) of the Registration Act if it requires registration under Sec. 17 of the Registration Act; (b) Any document by whatever name is called not creating, declaring, assigning, limiting or extinguishing the right, title or interest, but merely reciting to obtain another document does not require registration under Sec. 17 of the Registration Act; (c) as a necessary corollary a document of contract for sale of immovable property creating right to obtain another document does not require registration by reason of the payment of earnest money, whole or part of purchase money by the purchaser, and (d) In any case the prohibition under Sec. 49(c) of the Registration Act does not apply to an unregistered document effecting immovable property in a suit for specific performance under Specific Relief Act or in case of part performace of contract or in case of collateral transactions not required to be registered. (with reference to unamended Regisration Act)

---

66 2003(5) ALD 133
67 2004(1) ALD 865
68 2004(2) ALT 367
69 2004(2) ALD 315
70 2003(1) ALT 228

Thus, it is clear from the above decision that an unregistered gift deed which is compulsorily registerable cannot be received in evidence for any purpose including collateral purpose.

In **Shaik Khadar Mastan v. Smt. Sayyad Fathimun Bee**[71] dealing with a Muslim gift it was held as follows:

> "Oral gift by delivery of possession under Mohammaden Law is valid. It is not required to be in writing and need not be registered. However, for the gift to be complete, there must be declaration of gift by donor, acceptance of the gift by the donee, express or implied, delivery of possession of property i.e., the subject matter of the gift; the donor should divest himself completely physically of all ownership and dominion over the subject matter of the gift and must physically depart from premises with all his goods and donee should take delivery of possession of property either actually or constructively."

After making the above observations, it was held that an unregistered gift deed effecting immovable property cannot be admitted in evidence even for collateral purpose, by placing reliance on the decision in Ranga Reddy's case (supra).

But the Privy Council in **Varada Pillai v. Jeevarathanammal**[72] held that although the petition of 1895 and the changes of names made in the register in consequence of those petitions are not admissible to prove a gift, they may nevertheless be referred to as explaining the nature and character of the possession thenceforth held by Durashani (donee).

The effect of the decision of the Privy Council is that it enables a Court to ascertain the character of the possession by reference to unregistered document which is inadmissible under Sec. 49 as evidence of a transaction.

Following the decision of the Privy Council in Varadapillai (supra), the Oudh High Court in **Secretary of State v. Mahant Haricharan**

---

[71] 2007(6) ALT 220
[72] AIR 1919 PC 44

Das[73] held that a deed of gift of immovable property executed after the passing of the Transfer of Property Act (IV of 1882) is invalid for want of registration, but it is relevant for a collateral purpose to show the continuous possession of the party.

Thus, there seems to be some divergence of opinion with regard to admissibility of an unregistered gift deed for collateral purpose.

It may be remembered that the nomenclature given to a particular document does not by itself determine the nature of the transaction covered by such document and the contents of the document have to be read as a whole to determine the nature of the document and construe the same. In the interpretation or construction of a document, the salutary principle is that the entire document should be read as a whole and construed in a reasonable manner which the Court feels, is consistent with the intention of the executant.

ADMIBSSIBILITY OF ELECTRONIC RECORDS

Admissibility of electronic record or electronic document:

The word '**admissible**' means the evidence which can be admitted in court and taken on record. The concept of admissibility is completely different from concept of relevancy and probative value of the evidence adduced. Section 65 B makes electronic evidence admissible, it does not dispense with the relevancy and probative value. In **State of Uttar Pradesh Vs. Raj Narain (1975)4 SCC 428,** it has been held that facts should not be received in evidence unless they are both relevancy and admissible. The Apex Court in **State of Bihar Vs Sri Radha Krishna Singh 1983 AIR 684** has further held that admissibility of document is one thing and its probative value is quite another thing – these two aspects cannot be combined. In **Arjun Panditrao Khotkar (2020 (5) CTC 200)** the Hon'ble Supreme Court has observed that Section 65 differentiates between existence, condition and contents of a document. Whereas existence goes to 'admissibility' of a document 'contents' of a document are to be proved after a document becomes admissible in evidence. Section 22-A of the

[73] AIR 1926 Oudh 98

Evidence Act provides that if the genuineness of the electronic record produced is questioned, the oral evidence would be admissible as to the contents of the electronic records. However, the Hon'ble Madras High Court reiterated the same in **Santhoshkumar Vs State rep. by Inspector of Police Perundurai Police Station 2021(2) MLJ (Crl) 225** wherein it has been held that oral evidence cannot take the place of section 65-B (4) certificate. Further Section 4 of IT Act also provides that if a document in electronic form is (a) rendered or made available in an electronic form and (b) accessible so as to be usable for a subsequent reference, then it would be sufficient compliance. Moreover, the electronic evidence is made admissible by the amendment of section 92 of Information Technology Act-2000 in the Indian Evidence Act. Section 3(2) of Indian Evidence Act states that evidence includes all documents including electronic records produced for the inspection of the court. Such documents are called as documentary evidence. As stated supra, the word 'electronic records' is defined under section 2(t) of Information Technology Act. It has been held in **Thana Singh Vs Central Bureau of Narcotics (2013)2 SCC 590)** that a digital charge sheet was held to be a document and it can be accepted as electronic record. Hon'ble Supreme Court has directed to supply of charge sheet in electronic form additionally.

Requirement of Section 65-B of Indian Evidence Act :-

Primary evidence means when the document itself is produced for the inspection of the Court. In **Anvar P V V/S P K Basheer And Others 2014 LawSuit(SC)783** in Para 24 it is clarified that primary evidence of electronic record was not covered under Sections 65A and 65B of the Evidence Act. The expression “document” is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

In Anvar PV (stated supra), it is observed in Para 14 that any documentary evidence by way of an electronic record under the

Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non-obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the fourconditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act :

i. The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer.

ii. The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity.

iii. During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breakshad not affected either the record or the accuracy of its contents; and

iv. The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

Under Section 65B (4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

a. There must be a certificate which identifies the electronic record containing the statement;

b. The certificate must describe the manner in which the electronic record was produced;

c. The certificate must furnish the particulars of the device involved in the production of that record;

d. The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

e. The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

It is further clarified in Anvar PV (stated above) that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence.

Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

In **Arjun Panditroa Khotkar Vs Kailsh Kushanrao Goraytyal 2020(5) CTC 200 : 2020(7)SCC 1**, the Hon'ble Supreme Court has held as follows :

“The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65- B(4) is not always mandatory. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.”

Next important position of law to be bear in mind is that only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of electronic evidence.

The above said position has been well explained in **Arjun Panditroa Khotkar Vs Kailsh Kushanrao Goraytyal 2020(5)CTC 200 : 2020(7)SCC 1,** wherein the Hon'ble Supreme Court has held in Paras 21 to 23 that Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that “special provisions” as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to 11“admissibility of electronic records”.

Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that “document” as defined by Section 3 of the Evidence Act does not include electronic records. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections 2(a) to 2(d) must be satisfied cumulatively. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of “relevant activities” – whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the “best of the knowledge and belief of the person stating it”

It has been held in **Anvar P V v/s P K Basheer And Others 2014 LawSuit(SC)783** at Para 14 that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India. It has been further reiterated in **Ravinder Singh VS State of Punjab 2022(7) SCC 581** that the certificate under Section 65B(4) of the Evidence Act is mandatory to produce electronic evidence and that the oral evidence in the place of such certificate cannot possibly suffice.

However, interestingly, while deciding the question as to who is to give certificate under section 65-B of the Evidence Act, in **Shafhi Mohammad v/s State of Himachal Pradesh 2018 AIR(SC) 714** at Para 11 it has been held that the applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.

Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.

However, regarding the interpretation of section 65-B of the Indian Evidence Act, a Bench of Three judges made reference to the Honb'le Larger Bench of the Supreme Court in the case of **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal** (Civil Appeal No. 20825-20826 dated 14 July, 2020) wherein the Hon'ble Supreme Court (Four Judges Bench) has overruled the judgment rendered in **Shafhi Mohammad's** case and upheld the law down in the PV Anvar case.

As held in **Arjun Panditroa Khotkar** (stated supra), only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A opinion of Examiner of Electronic Evidence.

It is also pertinent to bear in mind that non-production of certificate at an earlier stage is not fatal, it is a curable defect. The Hon'ble Supereme Court, in **Union of India & Ors v/s CDR Ravindra Vs Desai (2018 Law Suit(SC) 358)** has held as follow :

> "*We are in agreement with the aforesaid findings. Learned counsel for the appellants rightly argued that non-production of the certificate under Section 65-B of the Indian Evidence Act, 1872 on an earlier occasion was a curable defect which stood cured*".

CONCLUSIONS

- Thus, the following points would emerge with regard to the admissibility of documents in civil cases:
- Mere receiption of document is different from admitting the document in evidence.
- To admit/admission means 'admission for judicial purpose.
- To enable a party to adduce secondary evidence, it is necessary to prove the existence and execution of original document and secondary evidence of a document can be permitted only when the existence of any one of the conditions mentioned in the provision are fulfilled.
- Copies of copies are not admissible as they do not satisfy any of the requirements of Sec. 63 of Evidence Act.
- Copies certified as true copies by the Information Officer under Right to Information Act canot be treated as certified copies under Evidence Act.

- Evidence in civil and criminal cases can be recorded by video conferencing.
- Under Sec. 35 of the Stamp Act, no document chargeable with duty but not stamped or properly stamped can be admitted in or as evidence for any purpose, unless it is properly or duly stamped.
- If any document is admitted in evidence in the absence of a party or its counsel, objection can be raised by the opposite party at any stage and such objection has to be considered and decided before judgment is pronounced in the case.
- But if a document is admitted in evidence, without any objection being raised by the opposite party, objection cannot be taken about its admission in evidence subsequently, even though it is not duly or properly stamped, as per Sec. 36 of the Stamp Act.
- An objection as to the admissibility of a document should be raised before an endorsement is made on the document.
- Whenever any objection is taken with regard to the admissibility of a document, it can be be recorded and such objection can be considered at the time of trial in the suit before pronouncing judgment. But, if the objection relates to payment of stamp duty and penalty, it has to be decided then and there itself without proceeding further and the document cannot be marked subject to payment of stamp duty and penalty, as Sec. 35 of the Stamp Act is an absolute bar.
- The bar under Sec. 35 of the Stamp Act applies even against admissibility of documents at interlocutory stage.
- Marking of a document at interlocutory stage has nothing to do with the marking of the same during the course of trial and that marking of documents at interlocutory stage is not admission of document during the course of trial and so

objection regarding the document being insufficiently stamped can be taken at the stage of trial.

- A document cannot be admitted in evidence even if a witness admits the document if it is hit by the provisions of Stamp Act and Registration Act unless those provisions are complied with.
- After the amendment to Stamp Act, an insufficiently stamped pronote can be marked in evidence on payment of stamp duty and penalty. (wef 18.4.2006).
- A plaint cannot be rejected for non payment of stamp duty and penalty on a document, because the payment of stamp duty and penalty arises when the document is sought to be marked in evidence through a witness.
- An unregistered partition deed can be admitted in evidence for the collateral purpose of knowing the severance in status between the parties.
- An unregsitered gift deed cannot be marked in evidence for any purpose since the defect of registration is incurable.
- (But as per the Judgment of the Privy Council in Varadapillai's case, an unregistered gift deed can be looked into to know the nature and character of possession.)
- A document which is not registered can be admitted in evidence for collateral purpose if necessary stamp duty and penalty is paid on the document.
- A collateral purpose is one which is other than the main purpose.
- A collateral transaction must be independent and divisible from the main transaction and not by itself registerable.
- An agreement of sale followed by delivery of possession, whether it refers to past or present possession amounts to

'sale' and thus requires stamp duty and penalty to be admitted in evidence even for collateral purpose.

- Even symbolic delivery of possession between landlord and tenant amounts to sale and requires stamp duty and penalty.
- An unregistered lease deed can be received in evidence for the collateral purpose of knowing the jural relationship between the parties and the nature and character of possession, whether it is adverse or permissive.

RELEVANCY & ADMISSIBILITY OF DOCUMENTS

Prepared by

Masala Bujjappa,
Principal Junior Civil Judge,
Addanki of Prakasam District.

RELEVANCY AND ADMISSIBILITY OF DOCUMENTS IN EVIDENCE

I. What is meant by relevancy?

The word relevant not defined by the Indian Evidence Act but it lays down that a fact becomes relevant only when it is connected with other facts in any of the ways referred to in this Act relating to the relevancy of facts enshrine in the Chapter II from sections 5 TO 55. Therefore a fact in order to relevant fact must be connected with the facts in issue or with any other relevant fact in any of the ways referred to sections 5 to 55.

Section 3 of the Indian Evidence Act lays down that "One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to the provisions of this Act relating to the relevancy of facts

LOGICAL RELEVANCE VS. LEGAL RELEVANCE

A fact is said to be logically relevant to another when it bears such a causal relation with the other as to render probable the existence or non- existence of the latter. All facts which are logically relevant are not legally relevant. One fact is said to be legally relevant to another, only when the one is connected with the other in any of the ways referred to in Ss. 5 to 55 of the Evidence Act. Logical relevancy is wider than legal relevancy; every fact which is legally relevant is logically relevant, but every fact which is logically relevant is not necessarily legally relevant. Thus, a confession made to a police officer may appear to be logically relevant, but such a confession is not legally relevant. Sec.25 of the Act declares that it cannot be used as evidence against the person making it. Very often, public considerations of fairness and the practical necessity for reaching speedy decisions necessarily cause the rejection of much of the evidence which may be logically relevant.

2.What is the "Admissibility" and how dose it is distinct from "Relevancy"

The word Admissibility is no where defined but is rudiment and integral part as to authentication of the fact or believability. **But power to determine to determine admissibility is vested with the court trying the case.**

Who Shall decide the admissibility of document or Evidence ?:-

Section 139 of the Indian Evidence Act explains which all evidence are admissible. This section states that the it is the discretion of the judge to decide whether an evidence is admissible or not. The presiding officer may ask the party to clarify how the particular fact or evidence is relevant under the provisions of section 5 to 55 of the Indian Evidence Act. So, technically the question of the relevancy comes first and then the question of the admissibility arises. The presiding officer has the full power in deciding whether an evidence is admissible or not in a particular case. Therefore, this power comes with ultimate responsibility to the judge to make sure that every relevant evidence which is obtained legally made admissible, so that the parties can obtain justice without undue advantage to one side.

More often the expression " relevancy" and " Admissibility" are used as synonymous but their legal implications are distinct. More often than not facts, which are relevant, may not be admissible, for example, communication made by spouses during marriage or between any advocate and his client though are relevant are not admissible. Facts may be admissible but not relevant, for example, question permitted to be put in cross-examination to test the veracity or impeaching, credit of witnesses, though not relevant, are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstance of each case. ***Ram Bihari Yadav Vs State of Bihar AIR 1998 SC 1850.***

Thus, **all evidence that is admissible is relevant, but all that is relevant is not necessarily admissible**. Relevancy is the genus of which admissibility is a species. Thus, oral statements which are hearsay may be relevant, but not being direct evidence, are not admissible. Legal relevancy is, for the most part, based upon logical relevancy, but it is not correct to say that all that is logically relevant is necessarily legally relevant and vice versa. Certain classes of facts which, in ordinary life, are relied upon as logically relevant are rejected by law as legally irrelevant.

Cases of exclusion of logically relevant facts by positive rules of law are:

(I) Exclusion of oral by documentary evidence: Ss. 91-99. (ii) Exclusion of evidence of facts by estoppel: Ss. 115-117. (iii) Exclusion of privileged communications, such as confidential communications with a legal adviser, communication during marriage, official communications, etc.: Ss. 121-130.

In yet another decision in State of U.P. V. Ram Veer Singh and Another ***reported in 2007 (6) Supreme 164 the Hon'ble Apex Court has held as follows:***

"The golden thread which runs through the web of administration of justice in criminal cases is that if two view are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re- appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not."

2. <u>ADMISSIBILITY OF EVIDENCE</u>

Admissibility means that the facts which are relevant are only admissible by the Court. According to section 136 of the Indian Evidence Act, however, the final discretion on the admissibility of evidence lies with the judge.

Section 136 states that: “When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only

upon proof of Recording of Evidence – Relevance, Admissibility and Appreciation 5some other fact, such last- mentioned fact must be

proved before evidence is given of the fact first- mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact."

The essential ingredients of the above section are:

1. It is the judge who decides the questions of relevancy and admissibility.
2. When a party proposes to adduce evidence of any fact, the judge may ask the party to clarify „in what manner" the fact would be relevant.

The judge would „admit" the particular adduced fact only if he is satisfied with the answer of the party that it is, indeed, relevant under one or the other provisions of S. 5 to 55. Thus the consideration of relevancy comes first and of admissibility later and the judge will admit the fact only if it is relevant."

In the case of **Ram Bihari Yadav v. State of Bihar (AIR 1998 SC 1859)** the Hon'ble Supreme Court observed that "More often the expressions" **relevancy and admissibility" are used as synonyms but their legal implications are distinct and different** from for more often than not facts which are relevant are not admissible; so also facts which are admissible may not be relevant, for example questions permitted to put in cross examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regards to the fact and circumstances of each case."

In the case of **Lakshmandas Chaganlal Bhatia v. State, (AIR 1968 Bom. 807)** the Hon'ble Bombay High court laid down the following to be "relevant facts":

1. Facts necessary to explain or introduce a fact in issue or relevant fact;
2. Facts which support or rebut an inference suggested by a fact in issue or a relevant fact;
3. Facts which establish the identity of anything or person whose identity is relevant;
4. Facts which fix the time and place at which any fact in issue or relevant fact happened;
5. Facts which show the relation of parties by whom any fact in issue or relevant fact was transacted.

Another section of the Evidence Act which deals with admissibility is the Section 11. Section 11 deals with those facts which are not otherwise relevant but become relevant if they are inconsistent with any relevant fact or they make the existence or non-existence of any relevant fact highly probably or improbable.

Admissibility, relevancy and proof -- Three check points:

1. The Hon'ble Supreme Court in Arjun Panditrao Khotkar VS. Kailash Kushan Rao(2020) 3 SC 216 observed as follows:

"Documentary evidence, in contrast to oral evidence is required to pass through certain check points such as_

1. Admissibility
2. Relevancy and
3. Proof

Therefore, the document must pass the test of admissibility first then only its relevancy and genuineness or veracity etc., comes into play. Further, genuineness, veracity or reliability of the evidence is seen by the court only after stage of relevancy and admissibility. Generally and theoretically, admissibility depends on relevancy. Therefore whenever a document is admitted in the court, the probative value thereof will be a matter for the court to determine.

3. What is documentary evidence?

Documentary evidence means and includes all documents including electronic records produced for the inspection of the Court.

Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter.

Proof of documents: A document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial. **Hardeep Singh vs. State of Punjab, 2014 (3) SCC 92: 2014 Cri. LJ 1118: 2014(1)**Crimes 133: AIR 2014 SC 1400: 2014 (1) Scale241: JT**2014 (1) SC 412: 2014 (1) Ker. LT 336: 2014 (2) ALD (Cri)**

152 (SC).

In order to prove the documents original document is to be produced. Contents of it are to be proved so also signature on the same have to be proved. When document appears to the conscious of the Court that it is genuine, contents of the same need not be proved **(AIR 2001 SC 318 "M. Narsinga Rao vs. State of AndhraPradesh")**.

Proof of contents of document: Mere marking of a document cannot be said to be the proof of said document. The document has to be proved in accordance with law and the same has to be appreciated in order to ascertain the genuineness of the document with other materials available on record. In that context, both the parties would get ample opportunity to counter those documents as well to submit their arguments with reference to the evidencealready recorded by the court. S. Ravichandra vs. M/s. Elements Development Consultants, Bengaluru, 2018 Cri. LJ 4314 (Kar).

Proof of contents of documents: The legal position is not in dispute that mere production and making of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can **Birendra Kumar Jaiswal, 2003 (8) SCC 745: AIR 2004 SC 175; see also, Alamelu vs. State represented by Inspector of Police, 2011 (2) SCC 385: AIR 2011 SC715.**

who is competent to prove contents of document: Normally, any party who wants to prove the content of the document is required to lead evidence by production of the original document before the court through its author. Under Section 61, the original document can be presented before the Court through the author, who created the document and it can be proved. **G. Subbaraman vs. State, 2018 Cri. LJ 2377(Mad).**

Recitals in documents: The recitals in the document do not become a part of the evidence. They are assertions by a person who is alive and who might have been brought before the Court if either of the parties to the suit had so desired. This distinction is frequently overlooked and when a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence. **Nihar Bera vs. Kadar Bux Mohammed, AIR 1923 Cal290.**

5. RELEVANCY AND ADMISSIBILITY OF DOCUMENTS IN EVIDENCE

i) **Relevancy of documents with reference to the provisions of Indian Evidence Act. (Ex. Recitals in the 3 rd party documents, public documents etc):**-

Broadly and most often we deal with private documents such as letters, agreements, emails etc., exchanged between contesting parties to the litigation are called private documents and the next set of documents which one deals with or public documents such as Birth certificates, marriage certificates, a bill of public water utility or electronic company or an FIR filed before the police etc. A public document is one which is

basically a reproduction of an entry contained in some kind of public register,

book or record relating to relevant facts or certified copy issued by authority as per example a Birth Certificate providing details such as date of birth, place,

where birth is taken place, the name of the mother etc. Generally speaking, courts do accept public documents more readily than the private documents as there is a presumption that the risk of tampering with the public document is far less as it has come from a reliable source such is the public record or the register duly maintained in an official capacity.

The Courts consider in entries in such public record maintained by public authorities to be relevant facts. Courts generally lean in favour of accepting or admitting the contents of public documents since these documents have as their genesis some reliable source and can be traced back to that reliable source for verification if necessary. However, even a public document still does not stand prove by mere fact of its production. It must be proved in a normal manner of proof of other documents if court insist for the same.

Relevancy of Public Documents:

Section 114 of Evidence Act read with 35 of Evidence Act

The evidence/proof of contents of documents may be given by proving circumstances for the same or by invoking presumptions also. Commons course of natural events, human conduct etc., U/sec.114 of Evidence Act can be used to prove the existence and genuineness/truth of a document.

Section 35 of Evidence Act reads as below:

"35. Relevancy of entries in public record or an electronic record made in performance of duty:

An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact and made by public servant in discharge of his official duty or by any other person in performance of duty specially enjoying by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

U/sec.114, illustration (e) for judicial and official acts there is a presumption as to "regularity". It is not presumption as to correctness or truth. For such presumption, one can resort to main section, section 114 i.e., common course of natural events, human conduct etc., [and not regularity in illustration (e)].

In Sivaram Vs. Siva Charan Singh, AIR 1964 RAJ 126, it is observed as under:

“where section 35 properly comes into play, an entry made by the public servant in any public or official book in discharge of his official duties became relevant by

itself and no other proof of such entry is required as a matter of law by our evidence act, but this does not exclude the possibility that such an entry may became admissible otherwise if it is properly proved to have been made by a person ordinarily competent to make it.

Coming to the admissibility and relevancy and probative value of recitals of the boundaries etc., in documents: Recital in a document of neighboring land, referring one of its boundary as suit land and it belongs to a particular person, for the person to rely on it, is not legal evidence and the same is not even admissible under Section 32(2) of the Evidence Act -vide in re Daddapaneni Narayanappa (72) 1910 Indian Cases page-286 (Madras). It was held in Karupaanna Konar v.Rangaswami Konar (73) AIR 1928 Madras 105(2) at page-106 that, a mere statement of boundary cannot be classed with any of the verbs in Section 13 of the Evidence Act of created, modi ed, recognized, asserted or denied and is therefore not admissible; the same is not even admissible under Section 32(3) of the Evidence Act as it is a statement and not the document containing the statement that must be against the proprietary interest of the person making it. It was held further that the lower court in uenced by the idea of the document is an ancient one and the recitals obviously not intentionally false and are therefore presumably true; having overlooked the fact that parties making statements which are not material to their interests have no occasion to be accurate. In Ramacharandas v. Girijachanddevi (74) AIR 1966 SC 323 it was held that the recitals in a document would operate as an estoppel against the author of the document. The only restriction in this regard is that, an estoppel is con ned to the transaction covered by the document and the recital cannot be treated as an estoppel in a collateral transaction. Even this principle has several rami cations- For Example: if the deed is fairly old, the recitals cannot be altogether discarded and such recitals gain sufficient weight with the passage of time even as regards collateral transactions. This however depends upon the facts and circumstances of each case. An important area of interpretation of documents is the realm of the nature of the document. Ascertainment of nature of document including from the contents and attending circumstances, intention of the executant (unilateral) and parties to it (bilateral) assumes importance as law prescribes different patterns and procedures for different types of transactions covered by the documents and its execution and proof. It was laid down in Rangayyan v. Inasimutthu (75) AIR 1956 Madras 226 that, recitals of the boundaries in a document inter-parties is

admissible as a joint statement of the parties executed it to act as admission, where as recitals of a document between a party and stranger is relevant against

the party as an admission but is not admissible in his favour unless the fact recited is deposed by executants of the document in Court to act as a corroborative evidence under Section 157 of the Evidence Act or to contradict under Sections 145 and 155(3) of the Evidence Act; whereas recitals as to boundaries in the document between third parties, it is not ordinarily admissible to prove possession or title as against a person, who is not party to the document, but for at best to corroborate or to contract. The probative value to be attached to such recitals in the documents even admitted in evidence is depending upon the facts and circumstances of each case right from to clinching evidence as the case may be from material on record of the respective cases-See also Umarapartvathy v. Bhagvathy Amma (76) AIR 1972 Madras 151.

Documents executed ante-(pre-liti), pendenti and post-litem motam: In Harihar Prasad Singh v. Deonarayan Prasad (77) AIR 1956 SC 305 - it was held in para-5 that recitals in the documents executed ante (pre-liti) litem motam and inter parties held of considerable importance and their probative value as against them is high from the recital of private lands of the proprietor (which includes de facto/dejure) in assertion of their title and for its admissibility under Section 13 of the Indian Evidence Act. It was however, observed that the respondents are right in contending that the recitals cannot be considered as admissions by the mortgagees as they were executed by the mortgagors. It is also held in Rangayyan v. Inasimutthu (75 supra) that depending upon the recitals in the documents executed ante-pre, pendenti and post-litem motam and from nature of recitals and other circumstances of between inter parties or third parties; the probative value to be attached to such recitals in the documents even admitted in evidence is depending upon the facts and circumstances of each case right from to clinching evidence as the case may be from material on record of the respective cases. In Dolgobinda Paricha v. Nimai Charan Misra (78) AIR 1959 SC 914-it was held that-it is also well settled that statements or declarations before persons of competent knowledge made ante litem motam are receivable to prove ancient rights of a public or general nature. The admissibility of such declarations is, however, considerably weakened if it pertains not to public rights but to purely private rights. It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases or proceedings taken or declarations made ante litem motam, the element of bias and concoction is eliminated. Before, however, the statements of the nature mentioned above can be

admissible as being ante litem motam they must not only be before the actual existence of any controversy.

M.B. Ramesh (D) By LRs. Vs. K.M. Veeraje Urs (D) By LRs. and others, 2013 (4) SCJ 358 (DB), Construction of a document of title or an instrument being foundational to rights of parties, necessarily raises a question of law.

Nawab Mir Barkat Ali Khan Waleshan Bahadur, Prince Mukkaram Jah Bahadur, H.E.H. The Nizam VIII of Hyderabad rep. by his Special Power of Attorney Holder Mir Hasan Ali Vs. Princess Manolya Jah, Dulkadir Sokak, Istanbul, Turkey and another,2018 (3) ALT 691 (DB),

The discretion is vested with the Family court to receive any evidence, any report, any relevant statement, documents, information etc., which is necessary for its assistance to deal effectually with a dispute We are of the considered view that since the provisions of Evidence Act have no application, the Family Court can receive documents Exs.A5 to A8 and the question of admissibility of Stamp Duty, registration and relevancy does not arise and the Court can receive those documents to adjudicate the dispute between parties. (Paras 38, 68, 69, 86 and 90).

John Santiyago and others Vs. Clement Dass and others, 2014 (3) ALT 83, Order 7 Rule 14 (3), CPC confers discretionary power on the Court to grant leave and receive documents at the hearing of the suit or at the end of trial if sufficient cause is shown to advance cause of substantial justice, more particularly when the documents sought to be led are relevant and have bearing on the determination of real controversy involved in the suit. (Para 6 (d)).

ii) Admissibility of documents with reference to Stamp, Registration Act and other relevant laws :-

When absolute rights are conferred by a document in immovable property, it is required to be properly stamped and registered under Section 17 (1) of Registration Act, 1908. (Para 7), **Madala Jyothi and another Vs. Karanam Tirupalaiah and others, 2015 (5) ALT 472**. Even an agreement for execution of registered settlement deed/gift deed, executed without consideration is void under Section 25 (1) of Contract Act, 1872 unless it is registered.

When an objection is raised at the stage of marking of a document as to its inadmissibility in evidence on the ground of deficiency of stamp duty of the document, the Court has to decide the said objection immediately before proceeding further without postponing the decision on it to the final stage of judgment. (Paras 16 and 19), **Sheikh Qutubuddin and another Vs. Goli**

Vishwanatham and others, 2014 (2) ALT 275. A document required to be registered compulsorily is not admissible in evidence even if the requisite stamp duty and penalty are paid as per the provision of Stamp Act and the decision as to admissibility of such a document in evidence need not be postponed to the final stage of delivery of judgment.(Paras 12 and 17), **Golla Dharmanna Vs. Sakari Poshetty and others, 2013 (6) ALT 205.**

Sale deed affidavit sought to be marked in evidence is inadmissible in evidence under Section 35 of Stamp Act as it contains all terms of original white paper sale deed which is unstamped unless defici stamp duty is paid as a conveyance as payable under the original document together with penalty.(Para 4), **Uppula Ramesh Vs. Elagandula Harinath and others, 2014 (1) ALT 700**

Section 35 of the Act prohibits receipt of any document in evidence, if it is not duly stamped, **P.N. Varalakshmi (died) and others Vs. K. Chandra and another, 2023 (1) ALT 415**. Merely because the document is assigned an exhibit number, it cannot be treated as an admission of the same in evidence, as required under Section 36 of the Act. Malkapurapu Venkateswarlu and others Vs. M.Nageswara Rao and others, 2019 (5) ALT 82, a document, which is required to be stamped and which is not stamped or insufficiently stamped, is not admissible in evidence even for collateral purpose unless stamp duty de cit stamp duty and penalty payable thereon are paid.

All leases of immovable property irrespective of their duration executed after 1-4-1999 are compulsorily registerable after the amendment of Registration Act by A.P. Act No.4 of 1999 with effect from 1-4-1999. (Para 29), **Kiran Bansal Vs. T.Chandra Kala and another, 2015 (6) ALT 670**. Though a document (original) inadequately stamped can be validated under Section 35 of Stamp Act,1899 by paying deficiency and penalty, a photo copy of such document cannot be validated under that provision. (Paras 32 and 33).

Though unregistered sale deed is inadmissible in proving title, it can be referred to as explaining the nature and character of possession thereof held by the party and from the transfer effected in violation of the law the transferee would be deemed to be in adverse possession ever since the date of transfer. (Para 43), **G. Narayan Reddy Vs. P. Narayana Reddy, 2016 (3) ALT 12**.

When a document not duly stamped is presented before Court, Court has to impound the document under Section 33 of the stamp Act and collect the proper stamp duty and penalty under the relevant provisions of the Stamp Act without going into the relevancy of the document as to its admittedly is evidence, at that stage. (See. Para 9), **Trinadha Patro Vs. Lingaraj Rana, 2016 (1) alt 174.**

P. Venkayamma Vs. Bhimavarapu Bhimeswara Prasad and another, 2022 (5) ALT 760, it was held that When a document is not duly stamped, but it is tendered for evidence, the rst duty of the Court is to act in accordance with Section 33 of the Indian Stamp Act, 1899, which mandates that the Court shall impound the document. 'Impound' means to keep in custody of the law (vide Suresh Nanda v. CBI (1) 2008 (2) ALT (Crl.) 344 (SC) = (2008) 3 SCC 674).

Sirigiri Obulesu Vs. Duggineni Venkateswarlu, 2022 (4) ALT 612, the documents of agreement of sale executed before 01.04.1995. They do not require stamp duty on par with sale deed, but they can be received in evidence, if they are executed on stamp paper worth ` 100/-. 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 in evidence, or shall be acted upon, registered or authenticated by any such person or by any public of cer, unless such instrument is duly stamped.

Where possession of property is delivered on receipt of full sale consideration pursuant to agreement of sale after its execution, the agreement be stamped as a sale as per Explanation-I of Article 47-A of the Stamp Act, even if there is no mention as to delivery of possession in the document. (Paras 22 and 25), **Vanapalli Jayalaxmi @ Venkata Jayalaxmi Vs. A. Kondalarao and others, 2014 (1) ALT 356.**

P. Srinivas Reddy Vs. P. Madhav Yadav and others, 2021 (1) ALT 70, it was held that in fact, the suit itself is led for speci c performance of supplementary agreement of sale dated 17.04.2003, in which delivery of possession was recorded, but the said document is not properly stamped as per the explanation to Article 47-A under Schedule I-A of the Act. Explanation–I to Article 47-A under Schedule I-A of the Act, is extracted as under for ready reference:

"An agreement to sell followed by or evidencing delivery of possession of the

property agreed to be sold shall be chargeable as a “Sale” under this Article.”

As far as the registration of the said document is concerned, it is compulsorily registrable under Section 17 of the Registration Act, 1908 and unless the same is registered, it cannot be admitted in evidence. But, in the present case, the suit is led for specific performance based on Ex.A-3 unregistered supplementary agreement of sale. As per the proviso to Section 49 of the Registration Act, the said document can be received as evidence of a contract in a suit for specific performance. The said provision is extracted as under for ready reference:

49. Effect of non-registration of documents required to be registered: Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

A. Archana Vs. D. Uma Maheswara Reddy , 2019 (5) ALT 299, - Marking of Unregistered Mortgage Deed In the course of trial when the petitioner wanted to exhibit the unregistered mortgage deed dated, an objection was taken by the trial Court that it is not admissible for want of registration, though required stamp duty and penalty was paid thereon The learned trial Judge considered the recital as the main purpose and object of the document in question and not being an instance of collateral purpose The observations of the trial Court cannot stand and necessarily they have to be set aside In the result, the civil revision petition is allowed setting aside the order of the Court Trial Judge is directed to permit the petitioner to exhibit unregistered mortgage deed dated 27.08.2011, for collateral purpose on her behalf in the course of trial.

A document, though refers to a past transaction, is compulsorily registrable if it refers to present transaction of relinquishment of rights in a property.(Para 7), **Laxminarsamma and others Vs. N.Venkatreddy and others, 2013 (4) ALT 303.**

Promissory note executed in State of A.P. on impressed stamp paper purchased in another State is admissible in evidence. (Paras 13, 15 and 21), V**. Giridhar Kumar Vs. Miss Sellammal (died) per Lrs, 2013 (1) ALT 82.**

Article 6-B of Schedule I-A of Stamp Act is not applicable to a simple agreement to sell one of the as proposed to be constructed by a builder-developer in terms of development agreement entered into by him with owners of land. (Para 8), K.Sudhakar Reddy Vs. M/s. Sudha Constructions, rep. by its **Managing Partner, V. Srinivasa Rao and others, 2012 (2) ALT 93.**

Revenue Divisional Officers were competent to impound a document under Stamp Act on payment of necessary stamp duty and penalty and make an endorsement to that effect on the document prior to 27-2-2008 when his powers of such impounding were withdrawn by Gazette Notification and the document so impounded is admissible in evidence as duly stamped, (Para 10), **Devarakonda Shankara Murthy and another Vs. Vemula Rajakmallu, 2012 (1) ALT 807.**

Application to send a document for impounding under Stamp Act for adjudicating proper stamp duty and penalty cannot be denied dismissing it only on the mere ground that it is unregistered and therefore not admissible in evidence.(Para 12), **Alwanpally Ashanna v. K. Narasimha Chary, 2011 (2) alt 344.**

In Kanamathareddi Kanna Reddi v. Kanamatha Reddy Venakata Reddy, of the judgment, it is held that non-registration of a document which is required to be registered under Section 17 (b) of the Registration Act, 1908 will not avail to create, declare, assign, limit or extinguish any right, title or interest in or to the immovable property comprised in the document. In short, the document will be ineffectual to achieve the purpose for which it was brought into being. The effect of Section 49 (a) does not go further than this. The circumstance that the earlier partition was evidenced by an unregistered partition deed will not render proof of the factum of that partition by other evidence inadmissible under Section 91 of Evidence Act, because this section excludes oral evidence only in proof of the terms and not of the existence as a fact of a contract, grant or other disposition of property. (Ref.Meva Devi And Ors. Etc. vs Omprakash Jagannath Agrawal, AIR 2008 Chh 13).

P. Venkata Subba Rao Vs. J. Kesavarao, 1968 (1) ALT 14, "The contents of a document which is required to be executed on a stamp, if not stamped, cannot be proved by secondary evidence. Section 36, Stamp Act, is applicable only when an unstamped or insufficiently stamped instrument has to be admitted in evidence, but where the instrument itself is not produced, the section has no

application to the secondary evidence. (Ref. Moolchand v. Lachman ,A. I. R. 1958 Raj. 72.)". Section 36 applies only in the case of original document. Hence, where

the original document has been lost and a copy of the original has been admitted as secondary evidence by the trial court, the Appellate Court is entitled to consider on appeal whether the secondary evidence has or has not been properly admitted. I must notice two other decisions, which similarly take a contrary view. Mauno Po Htoo v. Ma Ma Gyi, A. I. R. 1927 Rang. 109 held that section 35 of the Stamp Act, read with the provisions of the Evidence Act, excludes both the original instrument itself and secondary evidence of its contents. Similarly, under section 36, when either the original instrument itself or secondary evidence of its contents has in fact been admitted, that admission may not be called in question in the same suit, on the ground that the instrument was not duly stamped. In that case,

Raja of Bobbili vs. Inuganti China Sitaramaswami Garu, I. L. R. (1900) 23 Mad. 49 : (1899) L. R 26 I. A. 262 (P. C.). was sought to be explained. It is dif cult to agree with this view obviously because if the oral evidence is permitted to go on record as secondary evidence, it would amount to acting upon a document which is insufficiently stamped and on which no penalty can be levied because the original document is not before the Court.

Herbert Francis v. Mohammed Akbar, A. I. R. 1928 Pat. 134 can easily be distinguished on facts of that case. In that case, an unstamped mortgage deed relating to property in British India was executed in England and sent for registration to India. The deed was lost before registration. The mortgagee thereupon brought a suit to recover the money and tried to adduce secondary evidence of the deed treating it as a bond. The question raised before the High Court was whether in the circumstances the document can be and was proved by the secondary evidence. The Madras decisions noticed by me above earlier were cited before the High Court Their Lordships clearly observed that ? the true answer to this contention is that as the bond was executed in England there was no necessity to stamp the document under section 2 of the Act of 1899, and under section 3 the payment of stamp duty is excluded for such a document. "It was therefore held that there was no necessity to stamp the document as a bond although if it had been registered as a mortgage bond it would have attracted duty, at is only in passing that their Lordships observed :

" There is a further answer to this question of admissibility, and that is contained in section 36, Stamp Act, which provides that an instrument having once been

admitted in evidence, such admission shall not, except as provided by section 61 be called in question at any stage of the same suit or proceeding. This document

was received by the Court below. Section 61 referred to in section 36, deals with cases where the Court is exercising its civil or revenue jurisdiction and has no connection with the present case. (However, these rulings are distinguished in P.Venkata Subba Rao vs. J. Kesavarao, 1968 (1) ALT 14).

M/s. National Insurance Co. Ltd. Vs. Anugula Munaswamy Naidu and another, 2015 (1) An.W.R. (A.P) 561, While marking documents, courts shall check their relevancy and admissibility and con rm whether the same contain necessary details touching the pleas.

Laxminarsamma and others Vs. N.Venkatreddy and others, 2013 (4) alt 303, A document, though refers to a past transaction, is compulsorily registerable if it refers to present transaction of relinquishment of rights in a property.(Para 7).

Satish Vs. Smt. A. Parijatham, 2012 (2) ALT 227, Mere receipt of documents in a suit cannot be said to be acceptance of the same as evidence Objections, if any, can be raised at the time of their marking in evidence. (Para 5)

CONCLUSION:

Human being perpetuate his memory relating to important transactions such as conveyance as to property by reducing the same into writing on the document. The state such as Government came up with an idea to give sanctity to those documents of individuals and introduced mechanism of stamping of documents and the process of registration for regulation of documents which would not only helpful to the individuals and giving authenticity to the transactions between the individuals but it also add value to the public exchequer. So documents and its governing mechanism introduced by the government assumes greater importance in the human sphere. Therefore the rules or principles incorporated in the Evidence Act relating to the admissibility and relevancy which are ancillary to the above said mechanism is also equally gain prominence.

Even when a document is technically admitted in court, the *probative value* thereof will always be a matter for the court and it is depended upon the nature of each case.

(ii) Whenever the court considers:

- (a) mere marking of a document **on admission** will not amount to proof, or evidence of the contents of the document or its truth; or
- (b) the **probative value** of a document 'marked without objection' is *low or nil,* for want of proper proof; or
- (c) there is a formal defect to the document for it is a secondary evidence because it is produced without adducing 'foundational evidence';

Prepared by

Masala Bujjappa
Principal Junior Civil Judge,
Addanki

PAPER PRESENTATION SUBMITTED BY P. SANTHI, JUNIOR CIVIL JUDGE, PARCHUR ON THE SUBJECT OF ADMISSIBILITY OF DOCUMENTS UNDER STAMP ACT, REGISTRATION ACT AND OTHER RELEVANT ACTS WORK-SHOP ON 16-09-2023.

ADMISSIBILITY OF DOCUMENTS UNDER STAMP ACT, REGISTRATION ACT AND OTHER RELEVANT ACTS

INTRODUCTION

The transfer of property necessarily involves conveyance and such conveyance requires payment of stamp duty and some of the deeds of conveyance require compulsory registration. Day in and day out, the courts are dealing with different types of documents while discharging their duties and the courts has to be very cautious while dealing with admissibility of documents. Admissibility of documents are dealt mainly under two aspects, one is Registration Act and the other is Stamp Act. The Registration Act, 1908 was set up with the purpose of ensuring registration of documents and that all the important information related to deal regarding land or other immovable property. Having a document registered can add more authenticity to that of the document. Throughout our lives, we come across various levels and types of transactions and documents. Some of these documents and transactions are of massive importance to us and the State. Without any mechanism of their regulation, it would be troublesome to keep a track of such transactions. For this reason, the State introduced the process of registration. Now once this mechanism was sorted State also wanted to gain some form of revenue from such transactions and documents and in order to gain that revenue, State introduced the system of stamp duty.

ADMISSIBILITY OF DOCUMENTS UNDER REGISTRATION ACT

A property document is registered for the purpose of conservation of evidence, assurance of title, publicity of documents and prevention of fraud. In India, the word “transfer” is defined with reference to the word “convey”. The word “transfer” in English law in its narrower and more usual sense refers to the transfer of an estate in land. Section 205 of the Law of Property Act in England defines: “Conveyance” includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument. The word “conveys” in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership. It is seminal to see that a document which purports or operates to create, declare, assign, limit or extinguishes any right, title or interest of the value of Rs. 100/- (one hundred rupees) and upwards, is to be registered. If registration is not done, as specified under Section 17 and other relevant provisions of the Registration Act,1908, title will not pass in respect of such property. Under purview of Section 49(*c*) of the Act, in case of a deed of

which registration is compulsory as stated in Section 17 of the Registration Act, has not been registered, such document cannot be produced as an evidence in a court of law. Sale agreement, GPA and Will transfers do not convey title and do not amount to a transfer of immovable property as was pointed put in *Suraj Lamp & Industries (P) Ltd. Vs State of Haryana* , (2012) 1 SCC 656. In *M/S. Dharmaratnakara Rai Bahadur vs M/S. Bhaskar Raju And Brothers , (2020) 4 SCC 612*, it was held that Section 35 of the Stamp Act provides that instruments not duly stamped are inadmissible in evidence and cannot be acted upon. Section 35 of the Stamp Act is distinct and different from Section 49 of the Registration Act in regard to an unregistered document. Section 35 of the Stamp Act, does not contain a proviso like Section 49 of the Registration Act enabling the instrument to be used to establish a collateral transaction. First of all to consider the document, there must be a transaction between two parties in respect of transfer of some property.

"**Transfer of property" defined** :- Section 5 of the Transfer of Property Act defines 'Transfer of property'. This provision says as under: "In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to him- self, or to himself and one or more other living persons and "to transfer property" is to perform such act. In this Section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

In ***Krishna Kumar Khemka vs Grindlays Bank P.L:C. And Ors, 1990 SCR (2) 961***, it was held that "The word "transfer" is defined with reference to the word "convey". This word in English Law in its narrower and more usual sense refers to the transfer of an estate in hand; but it is sometimes used in a much wider sense to include any form of an assurance inter vivos. The definition in Sec. 205(1)(ii) of the Law of Property is "conveyance includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release of every other assurance of property or of any interest therein by any instrument except a will." This is a special definition adopted for the purposes of the Law of Property Act, 1925. The word "con- veys" in Sec. 5 of the Indian act is obviously used in the wider sense referred to above. Transferor must have an interest in the property. He cannot serve himself from it and yet convey it."

It is clearly explained under Registration Act, as to what are the documents that are to be compulsorily registered and documents of which registration is optional.

Section 17 of Registration Act:- Documents of which registration is compulsory is clearly specified in Section 17 of the Registration Act,1908. Section 17 (1) vividly specifies what are the deeds that shall be required to be registered.

The following documents shall be registered :-

An instrument of gift of immovable property, an instrument which purports to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest in immovable property, the value of which exceeds Rs. 100, any instrument which acknowledges the receipt or payment of consideration on account of the creation, declaration, assignment, limitation or extinction of any right, title or interest, leases of immovable property from year to year or for a term exceeding one year and instruments transferring or assigning any decree or order of court or any award where such decree or order or award operates to create, declare, assign, limit or extinguish any right, title or interest in immovable property, the value of which exceeds Rs. 100.

What sub-section 1-A of section 17 says is that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

***Documents of which registration is optional*:-**

Section 18 of the Registration Act,1908 is relevant in this context as it speaks about certain documents of which registration is optional. According to this section, registration of documents is optional in the following cases –

(*a*) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(*b*) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction, of any such right, title or interest;

(*c*) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property;

(*d*) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(*e*) wills; and (*f*) all other documents not required by Section 17 to be registered.

Time for presenting documents :- Section 23 of the Act stipulates time for presenting a document for registration subject to the provisions contained in sections 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution: Provided that a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Place for registering documents:- As is seen from section 28 of the Registration Act,1908, it is clear that every deed referred to in Section 17 (1) clauses (*a*), (*b*), (*c*), (*d*), (*f*) and (*g*) of Section 17 (2), which affects immovable property, and Section 18 clauses (*a*), (*b*) and (*cc*) of the Registration Act, those deeds shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such deeds relates is situate. Section 32 of the Act speaks about persons to present documents for registration.

In ***Bondar Singh & Ors vs Nihal Singh & Ors***, it was held that under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of

the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized.

Collateral purpose :- Under the proviso to Section 49 of the Registration Act, an unregistered document can also be admitted into evidence for a collateral fact/collateral purpose, let us now look at the meaning of "collateral purpose"as was explained by the Hon'ble Supreme Court of India in *M/S K.B.Saha And Sons Pvt. Ltd vs M/S Development Consultant Ltd*. In *Haran Chandra Chakrvarti Vs. Kaliprasanna Sarkar [AIR 1932 Cal 83(2)]*, it was held that the terms of a compulsorily registrable instrument are nothing less than a transaction affecting the property comprised in it. It was also held that to use such an instrument for the purpose of proving such a term would not be using it for a collateral purpose and that the question as to who is the tenant and on what terms he has been created a tenant are not collateral facts but they are important terms of the contract of tenancy, which cannot be proved by admission of an unregistered lease-deed into evidence.

In *Ratan Lal & ors. Vs. Harisankar & Ors. [AIR 1980 Allahabad 180]*, the Hon'ble Allahabad High Court, while discussing the meaning of the term "Collateral Purpose", held as follows:

"The second contention was that the partition deed, even if it was not registered could certainly be looked into for a collateral purpose, but the collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property …….term collateral purpose would not permit the party to establish any of these acts from the deed."

To know the meaning of 'Collateral Purpose', see also. *Bajaj Auto Limited vs Behari Lal Kohli AIR 1989 SC 1806 , Rana Vidya Bhushan Singh Vs. Ratiram [1969 (1) UJ 86 (SC)* . In Rana Vidya Bhushan Singh's case, it was held that "A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

From the principles laid down in the various decisions of the Supreme Court and the High Courts, as referred to herein above, it is evident that :-

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 immovable 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.

The Hon'ble Andhra Pradesh High Court, in *K. Ramamoorthi vs C. Surendranatha Reddy,* examined the legal position with reference to catena of judgments and arrived at the following conclusions:

i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17 (b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.

ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.

iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.

v) The phrase “collateral purpose” is with reference to the transaction and not to the relief claimed in the suit.

vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.

vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document.

Having culled out the legal propositions, the discussion on this issue will be incomplete if a few illustrations as to what constitutes collateral transaction are not enumerated as given out in *Radhomal Alumal Vs K.B. Allah Baksh Khan Haji Muhammad Umar, AIR 1942 Sind 27*, and other Judgments. They are as under:

a) If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendant’s possession.

b) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: Queen-Empress v Rama Tevan20, P.V.M.Kunhu Moidu v T.Madhava Menon21 and Vani v Bani22). Q*ueen Empress Vs Rama Tevan -ILR (1892) 15 Mad 352, P.V.M. Kunhu Moidu Vs T. Madhavan Menon* – ILR (1909) 32 Mad 410 and *Vani Vs Bani* – ILR (1896) 20 Bom 553.

c) In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (*Hanmant Apparao Deshpande Vs Ramabai Hanmant Meghashyam*, AIR 1919 Bom 38).

d) An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by

virtue of deed of gift but by setting up the plea of adverse possession (*Varatha Pillai Vs Jeevarathnammal,* ILR (1920) 43 Mad 244 *).*

(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alumal (2-supra), *Bondar Singh Vs. Nihal Singh* (AIR 2003 SC 1905) and *A. Kishore Vs. G. Srinivasulu* (2004 SCC OnLine AP 386). See also. R.Suresh Babu vs G.Rajalingam And 2 Others , 2016 SCC OnLine Hyd 429 .

The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs. 100/- can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. Unless there was a registered document of sale in favour of the proposed transferee agreement-holders, the title of the land would not get divested from the vendor and would remain in his ownership. A sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear under law, that a document like unregistered sale deed, though not admissible in evidence, can be looked into for collateral purposes. Section 35 of the Stamp Act, does not contain a proviso like Section 49 of the Registration Act enabling the instrument to be used to establish a collateral transaction.

LAW RELATING TO STAMP DUTY AND PENALTY

The Stamp Act is a fiscal measure enacted to secure the revenue for the State, and not to arm the opponent with a weapon of technicality. The object of charging stamp duty stamp duty is to secure revenue for the State on transactions, the consideration in respect of which, are determined by market forces created by the activities of the State. The Indian Stamp Act, 1899 is a fiscal enactment which was enacted to consolidate and amend the law relating to stamps. The occasion for the levy of stamp duty under the Act is execution of the document and it is not connected with the transfer of property. The primary object is to impose duty on the instrument, but not to regulate the transaction between the parties. Deficit Stamp duty mistake could be rectified under Section 41-A of the Act. The Indian Stamp Act is concerned with non-judicial stamps which are used in respect of instruments charged under

the Act. When a document is produced in the Court by a party to the suit, then it can be admitted in evidence, subject to certain limitations

• The document which does not require stamp duty and registration can be received and admitted in evidence, for instance letter addressed by plaintiff/defendant.

The document which requires stamp duty, but does not require registration can be received in evidence, only if the said document is stamped as provided under the Indian Stamp Act. For instance promissory note which requires only stamp duty.

• The document which requires stamp duty and also registration can be received in evidence only if the said document is stamped as provided under the Indian Stamp Act and registered as provided under the Indian Registration Act. For instance a Sale deed.

The levy of the stamp duty and penalty is always in relation to the document which is to be marked before the Court and such levy cannot depend upon the pleadings of the parties, as is pointed out in *Kota Ganta Rao Vs. Kamineni Anjaneyulu (died) and others, 2023 (1) ALT 676*. The rule is such that when plaintiff filed suit seeking specific performance on the basis of possessory agreement of sale Unless the document is sufficiently stamped it cannot be marked even for collateral purpose. It was held in *P.N.Varalakshmi (died) and others Vs. K. Chandra and another, 2023 (1) ALT 415* that merely because the document is assigned an exhibit number, it cannot be treated as an admission of the same in evidence, as required under Section 36 of the Act. In the matter of collection of deficit stamp duty, the District Registrar is no way verifying the truth or otherwise of the said document nor certifying the execution of such document by the person who is shown to have executed such document unlike registration of a document under the provision of the Registration Act, 1908 nor he is entitled to undertake any such exercise, as was held in *P. Balabhaskar Reddy and others Vs. State of Telangana, rep. by its Principal Secretary, Revenue Department and others, 2023 (3) ALT 144*. In a case of suit filed for partition also, even for collateral purpose of showing possession of the property, when an unregistered document is sought to be filed in evidence it must necessarily be stamped as required under law as pointed out in *Yerra Narasimha Rao Vs. Yerra Koteswara Rao and others, 2022 (6) ALT 118.*

Impound the document:

'Impound' means to keep in custody of the law. (vide *Suresh Nanda v. CBI (1) 2008 (2) ALT (Crl.) 344 (SC) = (2008) 3 SCC 674*). What is required under Section 33 of the Act is only

to impound the document when it is not duly stamped. (vide *Jetti Madhumai Vs. Chigurupati Girija Lakshmi and another, 2022 (4) ALT 479*). The documents of agreement of sale executed before 01.04.1995. They do not require stamp duty on par with sale deed, but they can be received in evidence, if they are executed on stamp paper worth ` 100/- as was held in ***Sirigiri Obulesu Vs. Duggineni Venkateswarlu, 2022 (4) ALT 612***. 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 in evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Duty of the Court:-

If an insufficiently stamped document comes before a Court, a duty is cast upon the Court to impound the document by following the procedure under the stamp Act and ensure that the requisite stamp duty is paid Only after the requisite stamp duty is paid, the document becomes admissible in evidence, *Tatineni Venkata Subba Rao (died Lrs brought on record) Vs. Kodali Jayalaxmi Devi, Kanur, Krishna District, 2018 (4) ALT 1*. Subsequent conduct of the party is not important and the recitals in the document are important. As was held in *Ms. Stella Mary Vs. M. Devender Reddy, 2017 (5) ALT 532*, instrument not duly stamped is liable for impounding and can be admitted in evidence on payment of duty chargeable together with the penalty payable, if any on such instrument. It was held in S. *Mohan Krishna Vs. V. Varalakshmamma and others, 2017 (5) ALT 264*, that it is the duty of court, who is competent to receive a document in evidence, to determine judiciously about the admissibility of the document if it is insufficient or unstamped to levy stamp duty and penalty by exercising power under Section 33 of Stamp Act.

When a document is not duly stamped, but it is tendered for evidence, the first duty of the Court is to act in accordance with Section 33 of the Indian Stamp Act, 1899, which mandates that the Court shall impound the document. Failure to adjudicate on a fact that was presented before it for adjudication is failure to exercise jurisdiction and then such order suffers from that illegality requiring interference. The trial Court shall verify these documents and evaluate the need for payment of any stamp duty and penalty and then proceed in accordance with law after consultation with the petitioner as to whether the petitioner is inclined to pay the stamp duty and penalty at the Court or would have it done at

the office of the learned Registrar, as was held in *P. Venkayamma Vs. Bhimavarapu Bhimeswara Prasad and another , 2022 (5) ALT 760.*

In *S. Kaladevi's case*, the Apex Court has relied upon its earlier judgment in *K.B. Saha & Sons Private Limited v. Development Consultant Limited [(2008) 8 SCC 564 = 2009 (5) ALT 32.1 (DN SC)]*. In the said judgment, the Apex Court has culled out certain principles which are as under:

"1. A document required to be registered, if unregistered 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 immovable 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."

One more principle observed is such that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

Once an insufficiently stamped document is submitted for registration, the registering authority has a right to keep the said document pending, for collection of deficit stamp duty and imposition of penalty, if any, under Section 33 of the Indian Stamp Act, 1899. (Para 13), vide *Mandala Anjaneyulu and another Vs. District Registrar, Medchal-Malkajgiri District at Keesara and others, 2020 (6) ALT 134*.

1). There is no period of limitation for registration of a document, once the document is presented and accepted for registration.

2). Once a sale deed is presented for registration, the recitals made therein were admitted by the vendors/ executants in the presence of witnesses subsequent death of the party will not change the character of the document.

3). The document shall be presented for registration where the whole or some portion of the property is situate.

4). Limitation for presenting the document is 4 months from its execution.

Objections as to Stamp duty should be decided then and there itself:

In *Bipin Shantilal Panchal v. State of Gujarat and another AIR 2001 SC 1158*, the Supreme Court has made it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. In S*halimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and others (3) (2010) 8 SCC 423*, the Supreme Court held that the issue of admissibility of documents cannot be left open and hanging by the trial Court and should be decided as and when such objection is raised. In the cited case, it was observed as under:

On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial Court should not have "marked" as exhibits the xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to objection of proof and admissibility. The appellant, therefore, had a legitimate grievance in appeal about the way the trial proceeded. See. *M. Pentamma Vs.B. Seshagiri Rao , 2016 (5) ALT 580.*

Collection of deficit stamp duty – Duty of District Registrar:

In the matter of collection of deficit stamp duty, the District Registrar is no way verifying the truth or otherwise of the said document nor certifying the execution of such document by the person who is shown to have executed such document unlike registration of a document under the provision of the Registration Act, 1908 nor he is entitled to undertake any such exercise. Registering authorities are not entitled to refuse registration of a document on mere ground that the title of the executants of the respective document is based upon the validated document. See. *P. Balabhaskar Reddy and others Vs. State of Telangana, rep. by its Principal Secretary, Revenue Department and others, 2023 (3) ALT 144*. The suit and other connected proceedings shall go on according to law, without waiting for the return of the documents from the Collector. In *Chintalapudi Annapurnamma and another vs.*

Andukuri Punnayya Sastry and others, 2000 (3) ALT 159 (DB); Y. Peda Venakayya Vs. R.D.O. Guntur, 1981 (2) ALT 1.

Even if the document is sought to be admitted in a suit for specific performance or as evidence of any collateral transaction, it must be properly stamped. Once the instrument is duly impounded, it is as good as originally duly stamped. The question of impounding by Court arises when tendered in evidence to exhibit and not from mere filing with plaint. An agreement containing a specific recital of delivery of possession or indicating delivery of possession even in the past, it is liable for stamp duty as a sale under the explanation to Art.47-A of Schedule 1-A of the Stamp Act. When there is no recital in the agreement of sale as to delivery of possession and when there is nothing to show that possession was delivered though the agreement, the agreement is not liable to be stamped as a sale deed under Article 47-A of stamp Act Delivery of possession should be intimately and inextricably connected with the agreement to attract the said provision. If instrument is forwarded to the Collector for collection of stamp duty and penalty, the Court need not stall the proceedings till the document is received and proceed with trial.

CONCLUSION :

When a document is tendered in evidence, it is the duty of the Court to consider as to whether the document is duly stamped or not, even if the opposite party raises objection or not. An unstamped or insufficiently stamped instrument or unregistered document cannot be admitted in evidence, even with the consent of both parties. If it is found that the document is not duly stamped, then it cannot be admitted in evidence, unless the stamp duty is paid thereon. When the opposite party raises an objection to the marking of the said document, the Court has to record in the deposition as to objection raised by the party and what has happened in the proceedings. The Court only after deciding on the aspect of admissibility of the document shall proceed to record evidence.

****