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**(2005) 08 MAD CK 0108**

**In the Madras High Court**

**Case No :** Civil Revision Petition (P.D.) No. 2665 and 2666 of 2001

Jayalakshmi Trading Co. APPELLANT

Vs

Krishnamurthy and Others RESPONDENT

**Date of Decision :** 01-08-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 91
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 59

**Citation :** AIR 2006 Mad 179 : (2005) 4 LW 418

**Hon'ble Judges :** R. Banumathi, J

**Bench :** Single Bench

**Advocate :** S.V. Jayaraman for R. Gunasekaran, for the Appellant; T.N. Rajagopalan, 5 and 6 in CRP No. 2665/01 and K.V. Anantha Krishnan in CRP No. 2666/01, for the Respondent

**Final Decision :** Allowed

## Judgement

R. Banumathi, J.—These revisions are preferred against the order dated 19.2.2001, made in I.A.Nos. 16843 and 16486/2000 in O.S. No.

9054/1996, by the V Additional City Civil Court, Chennai, allowing the applications filed under Order 13, Rules 3 and 6 CPC r/w Section 151

CPC, deleting Ex.A.14. Plaintiff - Jayalakshmi Trading Company is the Revision Petitioner.

2. C.S.No. 1040/1992 - Original Side, High Court Madras.

Transferred to the City Civil Court, Chennai and renumbered as O.S.No. 954/1996:-

The first Defendant is the absolute owner of the property bearing Door No. 4, III Street, Balaji Nagar, Madras-14. The Defendants 1 and 3 approached the Plaintiff for financial loan for promoting multi-storeyed building in the above said property. The Defendants agreed to pay the

interest regularly and they offered to pay the money back by constructing and selling flats to the prospective purchasers. Borrowing a sum of Rs.

5,00,000/- the Defendants have executed Promissory Notes on various dates. In security for the loan, the Defendants have also executed a

Memorandum of Agreement on 12.02.1990 in favour of Plaintiff and deposited the Title-Deeds creating equitable mortgage over the above said

property. The Defendants are liable to pay Rs. 7,32,800/-. Hence the Plaintiff has filed the suit for recovery of Rs. 7,32,800/- with subsequent

interest and hand over the constructed plaint schedule properties to be sold and to adjust the sale proceeds towards the amount payable.

3. Trial commenced in the suit. Exs.A-1 to A-8 were marked. Partner of the Plaintiff firm was examined as PW-1. He was further examined on

14.09.2000 and on the subsequent dates, Exs.A-9 to A-14 were marked. Exs.A-9 to A-13 are the Documents of Title. Ex.A-14 is the

Memorandum of Agreement.

4. I.A.Nos. 16843 and 16846/2000:-

These applications were filed under Order 13 Rule 3 and 6 CPC r/w Section 151 CPC to reject Exs.A-1 to A-14 as inadmissible in evidence.

According to the Defendants - D-15 and D-4 to D-12, the documents are inadmissible in evidence. The suit was filed on the strength of deposit of

Title-Deeds made by the Defendants and the same is also supported by a Memorandum of Agreement. The Plaintiff was examined in part; he filed

an application for condonation of delay in I.A.No. 4685/2000 to deposit the Title-Deeds and the original Registration Certificate of the Firm. The

same was allowed on 04.07.2000. According to the Defendants, Ex.A-14 is not a memorandum merely recording the deposit of Title-Deeds. It

represents bargain of contract between the parties and the same has been reduced to writing and the documents by itself is a partition document,

which needs registration and the same is inadmissible in evidence. Exs.A.11 to A.13 are the Title-Deeds which form part of Ex.A-14 and hence

those documents are irrelevant and the same cannot be marked. These applications have been filed for setting aside the marking of documents

Exs.A.11 to A.14.

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5. Resisting the application, the Plaintiff Firm has filed the counter statement contending that the suit was filed for recovery of money on the basis of

equitable mortgage. When the order of injunction was in force, the Defendants - D-15 and D-4 to D-12 have purchased the property and had

their sale-deeds executed at their own risk and responsibility. Knowing fully well the legal implications, they purchased the property during the

pendency of proceedings. Respondents have been examined in part and at that time, Application I.A.No. 4685/2000 was filed and the Court had

allowed the application permitting the Petitioner to produce the document subject to proof and relevancy. The Defendants cannot prevent the

Plaintiff from adducing oral evidence regarding deposit of Title-Deeds. Ex.A-14 is the Memorandum for deposit of Title-Deeds, which is

admissible in evidence. According to the Plaintiff, once the evidence has been recorded and the documents marked in the presence of junior

counsel appearing for the Defendants, the Defendants cannot raise any objection on the documents which have already been admitted and marked.

6. Upon consideration of the averments in the affidavit and in the counter statement, the lower court found that the Court has got power to delete

the document which has already been admitted in evidence. Finding that Ex.A-14 creates a charge over the property which needs to be registered

and Ex.A-14 is inadmissible in evidence for want of registration and further finding that the document already admitted in evidence could be

challenged at any point of time, the learned Judge has allowed the application in part, finding that Ex.A-14 is not admissible in evidence and

ordered its marking as Ex.A-14, deleted from the evidence. The marking of document Exs.A-11 to A-13 has been confirmed.

7. Aggrieved over the order of the V Additional Judge, Plaintiff/Revision Petitioner has preferred these revisions. The learned Senior Counsel,

Mr.S.V.Jayaraman, appearing of the Revision Petitioner/Plaintiff has submitted that the documents have been admitted after granting number of

adjournments. It is submitted that the trial Court erred in passing elaborate order regarding the admissibility of the document in the initial stages

when the trial is at progress. In support of his contention, the learned Senior Counsel has relied upon AIR 2001 SC 1158 [Bipin Shantilal Panchal

v. State of Gujarat and Anr.]. It is further contended that the lower court having admitted the documents, ought not to have later reconsidered the

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matter rejecting Ex.A-14. It is the further contention that the going into the question of admissibility of the document ought to have been relegated

to the final stage of hearing arguments and pronouncing the Judgment.

8. Opposing the marking of Ex.A-11, the learned counsel for the Respondents/ Defendants has contended that Ex.A-14 creates a right/creating

charge and the document requires to be registered. Submitting that the document Ex.A-14 cannot be looked into for any purpose for want of

stamp duty and registration, the learned counsel for the Respondents has relied upon a number of decisions. It is the further contention that Ex.A-

14 is not a mere Memorandum of Title-Deeds, but a document creating right and charge which needs to be registered. It is further submitted that

the Court has got power to reconsider the document which has already been incorrectly admitted. Placing reliance upon Mehboob Alam and

Another Vs. Smt. Nasira Begum and Others, , it is submitted that questioning the marking of the document, revision is not maintainable.

9. Upon consideration of the contention of both parties, the impugned order and other materials on record, the following points arise for

consideration in these revisions:

(i)Whether the trial court was right in deleting Ex.A-14 from evidence ?

(ii)At that stage of trial, whether the trial court was right in finding that Ex.A-14 is not a memorandum of Title-Deeds but creates a charge on the

property which need to be registered ?

(iii)Whether the impugned order deleting Ex.A-14 from evidence suffers from material irregularity warranting interference ?

10. The crucial document is Ex.A-14 Agreement/Memorandum of Title-Deeds. Exs.A-9 to A-13 are the Documents of title. The details of the

above documents are as follows :-

Ex.A-9 - Certificate of Registration of Plaintiff Firm, issued by the Registrar of Firms.

Ex.A-10 - Encumbrance Certificate

Ex.A-11 - Power of Attorney issued by D-1 to D-3

Ex.A-12 - Payment of receipt issued by first Defendant to third party

Ex.A-13 - Sale Deed

Ex.A-14 - Memorandum of Agreement

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11. The above documents - Exs.A-9 to A-14 were not filed along with the plaint. When the trial commenced, I.A.No. 4685 of 2000 was filed

under Order 13 Rule 2 CPC to receive the documents. The documents Exs.A-9 to A-13 were marked. Later agreement/Memorandum of Title-

Deeds Ex.A-14 was marked. Submitting that regarding the admissibility of Ex.A-14, objections could be raised by cross examining PW-1, the

learned Senior counsel has submitted that the Supreme Court has disapproved the practice of passing elaborate order regarding the admissibility of

the documents. It is submitted that the proper course would have been to admit the document subject to objection and determine the objection

regarding the admissibility or otherwise at the final stage. In support of his contention, the learned Senior Counsel has relied upon AIR 2001 SC

1158 (Bipin Shantilal Panchal v. State of Gujarat and Anr.) where the Supreme Court held thus :

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the

admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively

as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final

Judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded

from consideration. In our view there is no illegality in adopting such a course. [However we make 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]. For all other objections the procedure suggested

above can be followed.

14. The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be

wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if

not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final

Judgment of the trial court can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the

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case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation

and would not add to their misery or expenses.

12. In the above decision, the Supreme Court has made it clear that if the objection relates to deficiency of stamp duty on a document, the Court

has to decide the objection before proceeding further. The learned counsel for the Respondents lays emphasis upon that observation of the

Supreme Court and contended that when objection has been raised regarding the stamp duty payable on Ex.A-14/ Registration of the document,

the Court has rightly determined the objection on its admissibility before proceeding with the trial. The learned counsel for the Respondents has

further submitted that the impugned order does not suffer from any impropriety calling for interference.

13. Whether Ex.A-14 is a Memorandum for deposit of Title-Deeds or whether it contains terms of the bargain relating to the transaction, which is

inadmissible in evidence is the crucial question arising for consideration. Defendants 1 and 2 borrowed the amount/secured financial assistance,

from the Plaintiff company to put up multi-storyed construction over the lands. The first Defendant was the absolute owner of the property and the

second Defendant was the Agreement Holder and Power of Attorney holder. In security for the finance, Defendants 1 and 2 have deposited their

Title-Deeds and the property at Door No. 4, III Street, Balaji Nagar Madras 14. The documents of title have been deposited with a view to

create a equitable mortgage over the suit property for the amount already borrowed or to be borrowed. For better appreciation of the contentious

points urged in these revisions, we may usefully refer to the recitals in Ex.A-14 :

In view of the above, today we are herewith depositing the Title-Deeds of our property No. 4, III Street, Balaji Nagar, Madras 600 014, (more

fully described in the schedule) with a view to create an equitable mortgage over th said property for the amounts already borrowed or to be

borrowed. Whenever there is necessity for funds for construction purposes, we will be borrowing from you and repay as per the mutual

understanding and you can keep the Documents deposited already with you until all your monies are repaid along with interest without any upper

limit and this is treated as continuing Guarantee. Any shortfall will be

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compensated from and other resources belonging to us.

Even the Second of us borrow from you without First of us signature, we undertake to hold responsible for all the amounts borrowed from you.

As and when funds come we will be repaying you. The main source of funds will be out of Registration of undivided share of the land and the

advances from the prospective buyers towards the construction of superstructure. The maximum duration required is one year.

The interest is paid monthly and any interest arrears will carry stipulated interest on the outstanding interest arrears. We will further undertake to

pay your interest correctly by 5th of next month.

This is the fist charge we are creating over the said property and there is no other Charge, Lien, Encumbrance, Court Proceedings, Maintenance

Charge etc., except the one we have created against your over the said property. We will not further encumber the property without written

permission. Whatever superstructure that comes over the property also comes under this understanding. We assure you that we will not do any act

which will deteriorate in the value of the property.

Undivided share of land will be registered to the prospective buyers with your consent and knowledge and pass on the whole amounts relating to

the Registration.

We are fully competent to execute this Document with our full understanding and meaning and effect of this document. We will keep the property

in proper fit condition and pay Taxes etc. regularly.

Any violation of the above conditions, you are at liberty to take suitable action to recover your monies.

14. When Title-Deeds are deposited with intention to create a security, the law implies the creation of a mortgage, and no registered instrument is

necessary u/s 59 of the Transfer of Property Act. But if the parties choose to reduce the contract to writing, the document will be the sole evidence

of its terms and the deposit and the document together form an integral part of the transaction. As the deposit alone cannot create a mortgage, the

document which constitutes the bargain regarding the security requires registration u/s 17, Registration Act, where the value of the property is Rs.

100/- or upwards. The crucial question is: did the parties intend to reduce their bargain to the form of a document ? If so, it requires registration. If,

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on the other hand, proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, then there

being no express bargain, the mortgage arises by implication of the law from the deposit itself with the requisite intention, the document being

merely evidential does not require registration - Rachpal Mahraj Vs. Bhagwandas Daruka and Others, ; United Bank of India Ltd. Vs. Lekharam

Sonaram and Co. and Others, .

15. In the light of the above principle, now the crucial point is by writing Ex.A-14, did the parties intend to reduce the bargain regarding the deposit

of Title-Deeds to the form of a document ? If the memorandum is in the nature of a forwarding letter or an acknowledgment of the fact that the

mortgager has deposited the deed of title as security against the Promissory Note, which has been executed much earlier, registration is not

necessary. In other words, if the memorandum merely records a past transaction and includes money to be advanced in future, the document may

not require registration. If the memorandum merely records past transaction of loan, the equitable mortgage does not require to be registered. But

if the memorandum constitutes a contract, the writing requires to be registered.

16. A mortgage could be executed not only for security debt which had already arisen, but also as security for payment of money to be advanced.

The following aspects emerge from Ex.A.14:-

1.the Defendants have deposited their Title-Deeds as security for the finance;

2.in view of providing security, they have deposited their Title-Deeds with intention to create equitable mortgage.

17.The stamp paper of Ex.A-14 is dated 10.02.1990. Ex.A.14 was written on 12.02.1990. Even prior to Ex.A.14, an amount of Rs. 70,000/- +

Rs. 30,000/- had already been advanced to the Defendants, for which the Defendants have executed two promissory notes on 10.02.1990. In

Ex.A.14, the Defendants have made clear that the security in Ex.A.14 shall hold good for all monies to be advanced in future and that the same is

to be treated as a continuing guarantee. Thus Ex.A.14 seems to be the Memorandum of Title-Deeds with intention to create equitable mortgage for

the loan already advanced and to be advanced in future. The Defendants have borrowed the amount from the Plaintiff on Promissory Notes as

noted below :

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1. 10.02.1990 Rs. 70,000/- Repayable with interest at 36% p.a.

2. 10.02.1990 Rs. 30,000/- -do-

3. 12.02.1990 Rs. 2,00,000/- -do-

4. 12.02.1990 Rs. 50,000/- -do-

5. 27.03.1991 Rs. 50,000/- -do-

6. 28.03.1991 Rs. 50,000/- -do-

7. 30.03.1991 Rs. 50,000/- -do-

Whether Ex.A.14 is a Memorandum of Title-Deeds for the above said loan is the crux of the matter.

18. Only if the loan and deposit of Title-Deeds are contemporaneous or form integral part of the transaction, Ex.A.14 needs registration u/s 17 of

the Registration Act. Merely by the recitals in Ex.A.14 and upon hearing the arguments advanced on behalf of the parties, the Court cannot come

to the conclusion that whether Ex.A.14 is an equitable mortgage reducing the terms of bargain into writing. Likewise, merely upon hearing the

arguments and by a reading of Ex.A.14, the Court cannot arrive at a proper conclusion whether loan and the deposit of Title-Deeds are

contemporaneous requiring registration or otherwise.

19. Without much going into the details of Ex.A.14, it is to be noted that there are no recitals in Ex.A.14 showing terms of bargain. The deposit of

Title-Deeds made by a letter stating that the Title-Deeds are deposited as security with intention to create equitable mortgage for the loan

advanced and to be advanced in future. The parties are yet to come on trial. This Court is not expressing any opinion whether Ex.A.14 needs

registration or not. Suffice it to point out the deposit of Title-Deeds appears to be only a security. The following questions of fact are to be

determined only after the parties adduce evidence :

1. Whether the deposit of Title-Deeds was only a security ?

2.Whether advancing loan and Ex.A.14 are integral part of the same transaction ?

3.Whether Ex.A.14 contains terms of bargain ?

20. The said facts and these questions will have to be decided just like any other facts on presumptions and assessment of oral, documentary or

circumstantial evidence. There is no presumption of law that by mere execution

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of memorandum of deposit of Title-Deeds, the transaction and the

Memorandum are contemporaneous with the advancement of loan. All that is a matter of evidence and assessment of evidence.

21. It may be argued that the transaction being reduced into writing, in view of Section 91 of the Indian Evidence Act, the parties cannot lead oral

evidence in respect of the transaction. It is relevant to note that Section 91 of the Indian Evidence Act prohibits oral evidence only regarding the

terms of the contract or other evidence relating to the terms of the contract. Section 91 of the Indian Evidence Act does not prohibit the parties to

lead oral evidence in respect of the nature of the contract as well as the oral agreement entered into between the parties simultaneously along with

the document. It is well settled that if there is ambiguity in the language employed and the recitals there on, the intention of the parties may be

ascertained by adducing extrinsic evidence. In Bhaskar Waman Joshi (deceased) and Others Vs. Shrinarayan Rambilas Agarwal (deceased) and

Others, considering the construction of document, the Supreme Court has observed that ""The question in each case is one of determination of the

real character of the transaction to be ascertained from the provisions of the deed viewed in the light of the surrounding circumstances. If the words

are plain and unambiguous they must, in the light of the evidence of surrounding circumstances, be given their true legal effect. If If there is

ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may be, by law,

be permitted to be adduced to show in what manner the language of the deed was related to existing facts

22. Thus, the construction of the document and the intention of the parties could be determined only when the parties adduce evidence. Only upon

such adducing of evidence and in the light of the evidence adduced and the surrounding circumstances and the conduct of the parties, the Court

could determine the nature of the transaction.

23. Whether the advancing of loan and execution of Ex.A.14 are contemporaneous or not is a mixed question of law and fact. Likewise, whether

Ex.A.14 is merely a security creating equitable mortgage for the loans advanced or whether it contains terms of bargain is also a mixed question of

law and fact. Merely by hearing the arguments advanced onbehalf of the parties,

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the question of facts cannot be determined. When the parties are

yet to go on trial and adduce evidence, the learned V Additional Judge erred in concluding that Ex.A.14 is an equitable mortgage forming integral

part of the borrowal which needs to be registered. Such conclusion is not a matter of mere arguments. It is to be determined when the parties

adduce oral and documentary evidence.

24. In Ex.A.14, parties have incorporated a clause that if the interest is in arrears, they undertake to pay the interest arrears correctly by fifth of

next month. In Ex.A.14, in the relevant clauses , it is stated :

This is the fist charge we are creating over the said property and there is no other Charge, Lien, Encumbrance, Court Proceedings, Maintenance

Charge etc., except the one we have created against your over the said property. We will not further encumber the property without written

permission. Whatever superstructure that comes over the property also comes under this understanding. We assure you that we will not do any act

which will deteriorate in the value of the property.

These recitals seem to have weighed substantially in the mind of the trial court, in forming an opinion that Ex.A.14 creates a charge/ interest over

the immovable property which needs to be registered. The appreciation of these recitals is a matter of evidence when the parties adduce evidence.

It is to be noted that any equitable mortgage is charge over the mortgaged property. What the parties really intend by the above recitals is to be

determined only after the conclusion of the trial. The finding of the learned Judge referring to the above recitals that Ex.A.14 has created a charge

and needs to be registered cannot be countenanced. The document Ex.A.14 having been admitted in evidence ought not to have been deleted.

25. Contending that this is a case where the deposit of Title-Deeds had been made by the letter explaining why Title-Deeds are deposited and in

such case, the document requires registration, the learned counsel for the Respondent has submitted that parties have reduced the bargain into

writing and Ex.A.14 is compulsorily registrable.

26. In support of his contention, the learned counsel for the Respondents relied upon :

Kedar Nath Saha and Others Vs. Sir Hari Sankar Paul and Another,

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AIR 1939 167 (Privy Council)

Deb Dutta Seal Vs. Ramanlal Phumra and Others,

Kakaraparthy Bhavanarayana Vs. Official Reciever, Krishna and Others,

AIR 1971(1) AWR 31- Indian Bank, Hyderabad v. Anomula Seshagiri Rao and Sons Company

1971 SCR 209 - Veeramachineni Gangadhra Rao v. Andhra Bank Limited. Ors.

- and also -

2001(1) CTC 112 - A.C.Lakshmipathy and Anr. v. A.M. Chakarapani Reddiar

By a careful reading of the above decisions, the principles regarding the documents, evidence, mortgage by deposit of Title-Deeds, whether

registration is essential or not, the following positions emerge Deb Dutta Seal Vs. Ramanlal Phumra and Others, :

(a)The facts and circumstances attendant on the deposit of Title-Deeds and the execution of the memorandum must be considered as a whole;

(b)If the transaction of deposit of Title-Deeds with intent to create a security be completed before the parties have a memorandum, registration of

the document is not required unless as in AIR 1939 167 (Privy Council) the parties proceed to create a mortgage over again in writing.

(c)The form and text of the memorandum although of paramount importance are not conclusive.

(d)If the memorandum does not contain all the terms necessary to give it efficacy as a contract of mortgage no registration is necessary.

(e)If the evidence shows that the memorandum was executed with the intention that it should be the repository of the bargain between the parties

then the document alone can be looked into. In the absence of registration, the bargain cannot be proved.

(f)The deposit of title deeds contemporaneously with the execution of the memorandum containing the terms of mortgage gives a strong indication

of the document being considered as the bargain between the parties.

27. All the above decisions arise while hearing appeals or the second appeals, where such arguments have been raised and conclusions arrived at

after the parties have adduced evidence and trial concluded. In this case, the parties are yet to go on trial. When that being so, at this initial stage,

Ex.A.14 cannot be considered in the light of the above principles to conclude

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whether it requires registration or not.

28. Under Order 13 Rule 6 CPC, it is the Court''s duty to exclude all the irrelevant or inadmissible documents. Even if the documents had already

been admitted on proper objection, the Court may exclude irrelevant or inadmissible evidence.

29. Contending that the order holding that the document is inadmissible for want of stamp duty and registration is not revisable u/s 115 C.P.C., the

learned counsel for the Respondents/ Defendants relied upon the decision in Mehboob Alam and Another Vs. Smt. Nasira Begum and Others, in

which, the Rajasthan High Court has held that :

the order of the trial Court holding that the document in question was compulsorily registrable and that the same could not be received in evidence

for want of registration, even if it may be erroneous, does not relate to the jurisdiction of that court, and therefore, the provisions of Section 115,

C.P.C. are not attracted to such an order. The question of construction of a document is a part of the proceedings of the Court and in case a

mistake is committed by it in construing the document, the order passed by the trial Court in such matters may at best suffer from an error of law

but the same has no concern with the jurisdiction of that court. The trial Court had jurisdiction to entertain the suit and to decide all questions raised

therein. There is no error or irregularity in the exercise of jurisdiction nor there is a question of failure to exercise jurisdiction in the present case. If

any error has crept in the decision of the trial Court on the aforesaid question, the same can be corrected in the appeal that may be filed against the

decree, which will ultimately be passed in the suit. 1970 R LW 320 (FB)Foll"".

The above case arose where the document was found to be compulsorily registrable. The case in hand stands on different footing where the nature

of document itself is in dispute. The finding regarding the nature of document cannot be said to be incidental to the proceedings.

30. The admissibility on the ground whether Ex.A.14 requires registration or not is to be determined only at the time of conclusion of the trial, when

the parties adduce elaborate oral and documentary evidence regarding the intention of the parties. The learned Judge was not right in finding that

Ex.A-14 contains the terms of bargain which needs registration. The impugned order suffers from material irregularity and is to be set aside. It is

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ordered that Ex.A-14 is to be marked as exhibit, subject to the objection by the Defendants. The objection raised by the Defendants is to be

determined at the time of disposal of the case.

31. For the reasons stated above, the order (dated 19.2.2001), made in I.A.Nos. 16843 and 16486/2000 in O.S.No. 9054/1996 on the file of

the V Additional City Civil Court, Chennai is set aside and these revisions are allowed. Consequently, CMP No. 14230/2001 is dismissed as

unnecessary. In the circumstances of the case, there is no order as to costs.

32. The learned V Additional Judge, City Civil Court, Chennai is directed to admit Ex.A.14, mark the same ''as Ex.A.14'', subject to objection

and dispose of the suit O.S.No. 9054/1996 expeditiously in accordance with law. The intention of the parties regarding creating equitable

mortgage and the objection raised regarding Ex.A.14 is to be determined at the time of disposal of the suit.

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