
(2010) 08 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 10441 of 2008, 1428, 18297, 19021 and 36252-53 of 2009

Shri. K. Dinesh and Others

APPELLANT

Vs

Shri. Kumaraswamy and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 KAR CK 0016

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Y.K. Narayana Sharma, in Writ Petition No. 1428 of 2009, M.G. Ramakrishnaiah, in W.P. 19021 of 2009, Ujwala R., for Kumar and Kumar in W.P. 10441 of 2008, N. Sonne Gowda, in W.P. 18297 of 2009 and L. Veerabhadraiah Associates in W.P. 36252-53/09, for the Appellant; T.N. Raghupathy and 5 in Writ Petition No. 1428 of 2009, R. Nataraj in W.P. 19021 of 2009, R. Shivachandra Naik, for D. Ramesh, in W.P. 10441 of 2008, Ujwala R., for Kumar and Kumar, R. Omkumar, Additional Government in W.P. 10441 of 2008 and 1428 and 18297 of 2009 and Prabhakar L. Shetty in W.P. 36252-53/09, for the Respondent

Judgement

Anand Byrareddy, J.—These petitions are heard together as common questions of law arise for consideration.

2. The brief facts in each case are stated hereunder: WP 1428/2009: The Petitioner is the Plaintiff in a pending civil suit in OS 464/2000, on the file of the Court of the Civil Judge. (Senior Division), Mysore. The suit is for partition and separate possession of a house, which is the suit property. It is claimed to be a Hindu joint-family property of the parties. The Defendants, Respondents 4 and 5 herein, claimed that the suit property has been agreed to be sold under an agreement of sale dated 21-11-1999, executed in their favour by Respondent No. 1 herein. It was also claimed that an advance amount had been received towards the total sale consideration of Rs. 8.50 lakh and that the said Respondents 4 and 5 had been put in possession of the suit property, under the agreement of sale. Incidentally, Respondents 4 and 5 are said to have instituted

a separate suit for specific performance of the above said agreement, in suit bearing No. OS 531/2000, before the same court. The said suits are being tried together.

The Plaintiff in OS 531/2000, was examined as PW-1 and the agreement of sale, above referred was marked as Ex. P-1. The Petitioner himself has been examined as a witness and has been confronted with the document in respect of the signatures of Respondent No. 1 therein.

The Petitioner had filed an application invoking, Sections 33 and 34 of the Karnataka Stamp Act, 1957, (Hereinafter referred to as the "KS Act", for brevity), to contend that the said agreement of sale attracted stamp duty prescribed under Article 5(1)(e) of the Schedule to the KS Act. As the document was not sufficiently stamped, the Petitioner requested the trial court to impound the document and to collect duty and penalty from Respondents 4 and 5. The application was heard at length and rejected by the trial court, on the ground that no objection had been raised at the time the document was produced and marked in evidence and therefore it was not possible to enquire into the question of adequacy of stamp duty paid on the said document, for purposes of addressing its admissibility in evidence. That order is sought to be questioned in the above petition.

WP 19021/2009: The Petitioners are the Defendants in a pending civil suit. The suit is for specific performance of an agreement of sale, brought by the Respondent herein, in OS 999/2006 in the Court of the City Civil Judge, Bangalore. The Petitioners had contended that the agreement was a fabricated document. On the other hand, they contended that the suit property was the subject matter of a joint development agreement entered into by the Petitioners with a property developer who had been put in possession of the property, two years prior to the agreement of sale. At the trial, during the course of the cross-examination of the Plaintiff, Respondent herein, was said to have been confronted with the said joint development agreement, the Counsel for the Plaintiff had raised an objection as to the admissibility of the document on the ground the same was not duly stamped. The same was marked as an exhibit, subject to the said objection. Thereafter, on an application by the Respondent requesting the Court to impound the document and to collect duty and penalty on the same, from the Petitioners, and the application having been allowed, the present petition is filed challenging the same.

WP 10441/08-The Petitioner is the second Defendant, in a pending civil suit, in OS 235/2002, before the Court of the Civil Judge (Senior Division), Holenarsipur. The suit is for specific performance of an agreement of sale, of the suit property. At the trial the said agreement of sale was produced and marked as an exhibit by the Plaintiff. At the relevant point of time, there was no objection to the document being marked.

However, an application having been filed at a later point of time, calling upon

the trial court to impound the document, on the ground that the Defendants had taken a specific plea in their written statement that the agreement of sale in question, was not duly stamped and was liable to be impounded and that notwithstanding the fact that there was no objection raised at the time the document was admitted and marked as an exhibit, the trial court has rejected the application on the ground that the document once having been admitted, the question of admissibility could not be reopened. This is questioned herein.

WP 18297/2009: The Petitioner is the Plaintiff before the trial court in a pending suit for specific performance of an agreement of sale, in suit bearing No. OS 769/2006, before the Court of the Civil Judge (Senior Division), Devanahalli. At the trial, the agreement of sale was produced, admitted and marked as an exhibit, without any objection. However, at a later point of time, when the case was set down for the cross-examination of other witnesses, the Respondent had made an application invoking Sections 33, 34 and 58 of the KS Act, to contend that notwithstanding the fact that the agreement of sale in question having been admitted in evidence, the document was still liable to be impounded by the Court. The said application having been allowed, alter contest, the present petition is filed.

WP. 36252-36253/2009: The Petitioner is the Plaintiff in a suit for specific performance of an agreement of sale dated 10-4-2002. executed by the Respondent. The suit was contested. The suit was set down for framing of issues-when the Respondent filed an application u/s 34 of the KS Act, with a prayer that the document be impounded for want of duty and to impose penalty. The Petitioner in turn filed an application under Sections 33 and 37 of the said Act. seeking that the document in question be sent to the Deputy Commissioner, the competent authority, for determination of the duty payable. The two applications were heard together and disposed of, whereby the trial court has directed the Petitioner to pay duty and penalty and has rejected the prayer of the Petitioner. It is that order which is under challenge.

3. Heard the learned Counsel appearing for the parties, namely, Shri Y.K. Narayana Sharma, Shri M.G. Ramakrishnaiah, Smt. Ujwala, Shri N. Sonne Gowda, Shri Veerabhadraiah.

The learned Government Advocate, was directed to take notice in these cases, and was also heard.

4. The points that arise for consideration are:

a) When a document which is chargeable with duty, under the Karnataka Stamp Act, 1957, but not duly stamped, has been admitted in evidence by a court, without any objection being raised, is the court obliged to act upon it for all purposes thereafter, without the requirement of payment of duty and penalty? As for instance, can the court direct the execution of a sale deed in specific performance of an agreement of sale, when the agreement is not duly stamped?

(b) Whether a document not duly stamped can be admitted in evidence on the plea that it is sought to be produced and marked for a collateral purpose?

(c) Whether a plea in the Written Statement of the Defendant, as to a document not being duly stamped, was sufficient to preclude the trial court from admitting the document in evidence, though no objection was taken when the document was actually admitted and marked in evidence?

(d) Whether a document which is not duly stamped is presented along with the plaint, or when at a stage before the document is sought to be tendered and marked in evidence, could the court proceed to impound the document? What is the procedure to be followed ?

The above questions arise in the back-drop of the facts of the above cases. As seen in the first of the cases, a document having been admitted in evidence without there being any objection raised, and the subsequent application calling upon the trial court to address the question regarding payment of duty and penalty, being rejected- it becomes necessary to examine whether any such power stands terminated on the admission of the document, for all purposes in adjudication of the suit.

5. In the second of the above petitions, the Petitioner who seeks to contend that the document in question, namely, a joint development agreement, was sought to be produced for a collateral purpose and was not a document between the parties to the suit, though it related to the suit property, requires this Court to examine whether the law makes any distinction as to the purpose for which a document is produced, if that document was not duly stamped.

6. In the third of the above petitions, the Petitioner had raised a plea that the agreement in question was not duly stamped in the written statement, but did not object when the document was actually produced and marked. Therefore, the question arises whether the Court is bound to consider the objection even at a later point of time after the document is admitted in evidence.

7. In the fourth of the above petitions, the document having been marked without any objection, but on an application by the Defendant at a later point of time, the document having been impounded, the question whether the court was justified in allowing the application on the ground that it was only the question of admissibility that may not be re-opened and that the Court to act upon the same would require duty and penalty to be paid is a larger question, which requires consideration.

8. In the fifth of the above petitions, the trial court calling upon the Plaintiff to pay duty and penalty on the document which was not duly stamped, even at the stage of framing of issues, when the document was not sought to be marked in evidence whether is in accordance with law, would arise for consideration.

9. Before proceeding to address the case law that is relied upon by the counsel for the parties, to support their respective contentions, it is useful to refer to the

language of the relevant Sections under the KS Act as the several decisions cited at the bar deal with Sections found in corresponding statutes relating to stamp duty which may or may not be in pari materia.

Section 33: Examination and impounding of instruments-(1) Every person having by law or consent of parties authority to receive evidence, and every person in-charge of a public office, except an officer of Police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of Karnataka when such instrument was executed or first executed:

Provided that,-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the *Code of Criminal Procedure, 1898;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, the Government may determine,-

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in charge of public offices.

34. Instruments not duly stamped inadmissible in evidence, etc. -No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that,-

(a) any such instrument not being an instrument chargeable (with a duty not exceeding fifteen naye paise) only, or a mortgage of crop (Article (35)(a) of the Schedule) chargeable under Clauses (a) and (b) of Section 3 with a duty of twenty-five naye paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up

such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure. 1898;

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the (Deputy Commissioner, or where it bears the certificate of the (Deputy Commissioner) as provided by Section 32 or any other provision of this Act (and such certificate has not been revised in exercise of the powers conferred by the provisions of Chapter VI).

35. Admission of Instrument where not to be questioned.- Where an instrument has been admitted in evidence such admission shall not, except as provided in Section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

38. (Deputy Commissioner)" power to refund penalty paid under Sub-section (1) of Section 37. -1) When a copy of an instrument is sent to the (Deputy Commissioner) under Sub-Section 1 of Section 37, he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the (Deputy Commissioner) may refund the whole penalty so paid."

41. Endorsement of Instruments on which duty has been paid u/s 34, 39 or 40.-

(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid u/s 34, Section 39 or Section 40, the person admitting such instrument in evidence or the (Deputy Commissioner), as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

Provided that.-

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty u/s 34,

shall be so delivered before the expiration of one month from the date of such impounding, or if the (Deputy Commissioner) has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall effect order XIII, Rule 9 of the First Schedule to the Code of Civil Procedure, 1908.

Further the stamp duty attracted, in all the above petitions, is in respect of agreements covered under Article 5(e) of the Schedule to the KS Act, which reads as follows:

Description of Instrument

Proper Stamp Duty

(e) if relating to sale of immovable property wherein part performance of the contract

(i) Possession of the property is delivered or is agreed to be delivered without executing the conveyance

Same duty as a conveyance (No. 20) on the market value of the property.

(ii) possession of the property is not delivered,

(a) where the value of the property -

(i) does not exceed rupees 5000

Ten rupees

(ii) exceeds rupees 5000 but does not exceed rupees 20,000

Twenty rupees

(iii) exceeds rupees 20,000 but does

One hundred rupees

not exceed rupees 50,000 (iv) exceeds rupees 50,000

Two hundred rupees Fifty rupees

(b) where such agreement or memorandum of an agreement does not relate to monetary transactions or transactions not susceptible to valuation in terms of money.

The several decisions cited by the counsel for the parties are briefly referred to in order to keep in view the law as laid down therein, on several aspects touching upon the very issues, that have been considered by the apex court and the various High Courts.

In *Javer Chand and Ors., v. Pukhraj Surana*, AIR 1961 SC 7655, the substantial question for determination was whether, two hundis sued upon were admissible in evidence. The trial court had held that they were. In appeal the High court however, found that though the hundis were marked as exhibits, the High Court took the view that at the time when the hundis were executed, they were subject to the Marwar Stamp Act of 1914 which was in force. Under the provisions of that Act, the court could realize the duty and penalty attracted and admit the document in evidence. It was however, noticed by the High Court that, when the suit was filed a new Stamp Act had come into force, amending the Act of 1914. The new law was similar to the Indian Stamp Act, whereby the documents could not be admitted in evidence, even on payment of duty and penalty and hence held that the documents were inadmissible in evidence. The High court also held that Section 36 of the Stamp Act could not be pressed into service, as the admission of the documents was a "mistake" committed by the trial court and therefore required to be corrected.

The apex court with reference to Section 36 of the Stamp Act (Corresponding to Section 35 of the KS Act) held that the High court was in error. Section 36 was as follows:

Where an instrument has been admitted in evidence, such admission shall not except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

The four judge bench of the Supreme court held thus:

The section is categorical in its terms that when a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognized by the section is the class of cases contemplated by Section 61 which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised only 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, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far reaching effects. Parties to a litigation, when such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. 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. The record in this case discloses the fact that the hundis were marked as Exs. P1 and P2 and bore the endorsement "admitted in evidence" under signature of the court. It is not therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has

proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

The apex court accordingly reversed the decision of the High Court.

In *Hindustan Steel Ltd. Vs. Messrs Dilip Construction Company*, the apex addressed the question whether there was a bar against an appellate court questioning the correctness of the lower court having admitted an unstamped document in evidence.

The parties having referred a dispute to arbitration under the Arbitration Act, 1940, an arbitration award published by the umpire, as the arbitrators had differed, and was filed into the Court of the District Judge. The Appellant had filed an application to have the award set aside. One of the grounds raised in that application was that the award was unstamped and therefore was liable to be set-aside as being invalid. The Respondents in turn applied to the Court that the award be impounded and validated by levy of duty and penalty. The award was impounded by the Court. The Respondents were called upon to pay the duty and penalty. That order was challenged by way of revision petition to the High Court. The said petition was rejected and the Appellants were before the apex court.

It was contended that as the instrument was not stamped as required under the Indian Stamp Act, it may be admitted in evidence on payment of duty and penalty, but cannot be acted upon for, "the instrument has no existence in the eye of law". It was thus contended that the District Court was without jurisdiction in proceeding to entertain the application.

On a combined reading of Sections 34, 35, 36, 38, 39, 40 and 42 of the said Act, the apex court held that the award, which is an "instrument" within the meaning of the Stamp Act was required to be stamped. Being unstamped, the award could not be received in evidence by the Court, nor could it be acted upon. But the court was competent to impound it and to send it to the Collector with a certificate in writing stating that the amount of duty and penalty levied thereon. On the instrument so received the Collector may adjudge whether it is duly stamped and he may require penalty to be paid thereon, if in his view it has not been duly stamped. If the duty and penalty are paid, the Collector will certify by endorsement on the instrument that the proper duty and penalty have been paid.

It was held that,

An instrument which is not duly stamped cannot be received in evidence by any person who has authority to receive evidence, and it cannot be acted upon by

that person or by any public officer. Section 35 provides that the admissibility of an instrument once admitted in evidence shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

6. Relying upon the difference in the phraseology between Sections 35 and 36 it was urged that an instrument which is not duly stamped may be admitted in evidence on payment of duty and penalty, but it cannot be acted upon because Section 35 operates as a bar to the admission in evidence of the instrument not duly stamped as well as to its being acted upon, and the Legislature has by Section 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument. The argument ignores the true import of Section 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector u/s 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped.

7. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments: It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clear. Section 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or being acted upon; Section 40 provides the procedure for instruments being impounded, Sub-section (1) of Section 42 provides for certifying that an instrument is duly stamped, and Sub-section (2) of Section 42 enacts the consequences resulting from such certification.

8. Our attention was invited to the statement of law by M.C. Desai, J. in *Mst. Bittan Bibi and Anr. v. Kuntu Lal and Anr.*:

A. Court is prohibited from admitting an instrument in evidence and a Court and a public officer both are prohibited from acting upon it. Thus a Court is prohibited from both admitting it in evidence and acting upon it. It follows that the acting upon is not included in the admission and that a document can be admitted in evidence but not be acted upon. Of course it cannot be acted upon without its being admitted, but it can be admitted and yet be not acted upon. If every document, upon admission, became automatically liable to be acted upon, the provision in Section 35 that an instrument chargeable with duty but not duly

stamped, shall not be acted upon by the Court, would be rendered redundant by the provision that it shall not be admitted in evidence for any purpose. To act upon an instrument is to give effect to it or to enforce it.

In our judgment, the learned Judge attributed to Section 36 a meaning which the legislature did not intend. Attention of the Learned Judge was apparently not invited to Section 42(2) of the Act expressly renders an instrument, when certified by endorsement that proper duty and penalty have been levied in respect thereof, capable of being acted upon as if it had been duly stamped.

In *Ram Rattan (Dead) by Lrs. Vs. Bajrang Lal and Others*, the unsuccessful Plaintiff who was the Appellant, had filed a suit for a declaration that he was entitled to a right of worship, by turn, in a particular temple, in terms of a will. The suit was resisted by the Defendants on various grounds - but the only point that survived for consideration before the apex court was whether the document relied upon should be construed as a Will or a gift, and if the latter, whether it is admissible in evidence on the ground that it was not duly stamped and registered as required by law?

It was found that during the course of the trial, when the Plaintiff had produced the document in evidence, an objection was raised by the Defendant - that the document was inadmissible in evidence as it was not duly stamped and for want of registration. The trial court did not decide the objection, but made a note that the document was being admitted, subject to objection. At the stage of final arguments, the court rejected the contention as regards admissibility, by recourse to Section 36 of the Stamp Act; As regards want of registration, it was held that the document was not compulsorily registerable. The subject matter of the suit, it was held, was-(turn of worship)- movable property. On appeal the judgment of the trial court was reversed- it was, inter alia, held that the document in question was a gift deed relating to immovable property and therefore was invalid for want of registration. That finding was affirmed by the High Court in a second appeal.

The apex court held that duty and penalty had to be paid when the document was tendered in evidence and when an objection was in fact raised. In so far as the question whether the right to worship by turn is immovable property - on a close examination of the question, with reference to several authorities, it was held, that a hereditary office of Shebaitship is heritable and partible. By virtue of office he is an administrator of the property attached to the temple of which he is She bait. Both the elements of office and property, of duties and personal interest are blended together in the conception of Shebaitship. And when a question concerns the rights of Hindus it must be taken to include whatever the Hindu law classifies as immovable property although it may not be so in the ordinary acceptance of the word. Hence it was concluded that the document in question not being registered, was held to have been rightly excluded from the evidence, and consequently the dismissal of the suit.

In *Peteti Subbarao v. Anumala Narendra*, (2002) 10 SCC 427 the facts were, a document was produced by the Appellant in a suit which was pending before the trial court. As the document was not duly stamped, the trial court held that it was exigible to stamp duty, as a sale- under the Explanation to Article 47-A of Schedule I-A of the Indian Stamp Act as amended by the State of Andhra Pradesh. The trial court directed its registry to issue a demand for the duty and penalty payable on the document, to the Plaintiff. And further directed that in the event that the Plaintiff should fail to make payment within the time fixed, the suit would stand dismissed. Thereupon the registry was required to send the document to the Collector for realization of the duty and penalty. The said order having been challenged before the High Court, the revision petition was dismissed and the Appellant was before the apex court.

The apex court held that the trial court was in error in holding that the suit would stand dismissed if there was failure to pay the duty and penalty payable. The document could be admitted in evidence only if duty and penalty were paid. In a case where the party is not willing or he cannot afford to pay the said sum the court is required to adopt the procedure of impounding the document and forward it to the Collector for taking further steps as contemplated under the Act. In that case, however, the apex court directed that the trial court should await the receipt of the certificate of the order passed by the Collector for proceeding further in the suit. In other words the suit could be revived only on receipt of such certificate.

In *Shyamal Kumar Roy Vs. Sushil Kumar Agarwal*, the interpretation of Section 36 of the Indian

Stamp Act, 1899, as amended in the State of West Bengal, fell for consideration. The parties had entered into an agreement to develop the suit property. A dispute having erupted, the Respondent had filed a suit for declaration and injunctory reliefs. And having failed to sustain an order of temporary injunction granted by the trial court, had then filed a suit for specific performance. The Respondent had, in that suit, exhibited a Development Agreement, without any objection by the Appellant, who was the Defendant before the trial court. After completion of the evidence and at the stage of final arguments, the Appellant had filed applications to have the admission of the agreement in evidence, recalled and to have the document sent to the Collector to have it impounded. Those applications were rejected by the trial court, the High Court had affirmed that order and the Appellant was before the apex court.

It was canvassed that the object of the West Bengal Act was to collect revenue for the State and therefore the courts below had incorrectly opined that Section 36 of the Indian Stamp Act was a bar to the applications. The apex court after considering the language and scope of the relevant provisions and the case law cited, held, that though there is no dispute that the agreement in question was not duly stamped and was also not registered. The effect of non-registration was held not to be a matter of concern. It was opined that there is no doubt that in

terms of Section 33 of the Indian Stamp Act, as amended by the West Bengal Act, a duty is cast on the concerned authorities, including the courts to impound a document where the instrument produced before it is insufficiently stamped. When a deficiency in stamp duty is brought to the notice of the Collector or it otherwise comes to his notice, he may call for the instrument for the purpose of satisfying himself as to the adequacy placed thereon and proceed to deal with the instrument in terms of Section 38 thereof.

14. Section 36, however, provides for a "stand alone" clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf viz., the provisions contained in Section 6 providing for reference and revision. In a case where Section 33 of the Act, as amended by West Bengal Act would be applicable, the proviso appended to Sub-section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument.

The apex court with reference to the judgment in *Javer Chand*'s case held,

16. The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefore. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.

In so far as the object of collection of revenue being defeated it was expressed thus by the apex court,

23. It may be true that the object of Indian Stamp Act is to collect revenue and the amendments carried out by the State of West Bengal provides for more stringent steps in that behalf. It may also be true that by reason of Sub-section (4) of Section 33 of the West Bengal Act, a duty has been cast upon the court to apply its mind when an instrument having insufficient stamp duty is brought to its notice, but, only thereby Section 36 of the Indian Stamp Act cannot be made inapplicable. Section 36, as indicated hereinbefore, applies on its own force.

24. Appellant filed an application u/s 38 of the Indian Stamp Act. The said provisions were clearly not applicable as thereby procedure has been laid down as to what steps are required to be taken upon impounding a document. It furthermore appears that even the question in regard to the applicability of Sub-section (4) of Section 33 of the Act had not been raised.

In *Avinash Kumar Chauhan v. Vijay Krishna Mishra*, AIR 2009 SC 1489, Sections 33 and 35 of the Indian Stamp Act, 1899 came in for interpretation. The factual

background was, the Respondent who was said to be a member of a Scheduled Tribe sought to transfer a house and appurtenant land, for a sum of Rs. 2.70 lakh. The amount was paid to the Respondent. Prior permission of the Collector was required for the transaction to be completed. The Collector had refused permission. The Appellant filed a suit for recovery of the price paid and produced the agreement entered into with the Respondent, in evidence. The document was directed to be impounded by the trial Court and the Appellant was directed to pay duty and penalty. That order was affirmed by the High Court.

It was contended before the apex court that having regard to the fact that the said unregistered deed of sale was sought to be put in evidence not for the purpose of enforcement of the contract but only for the purpose of recovery of the amount of consideration, which indisputably had been paid to the Respondent and such a purpose, it was urged, being a collateral one, the provisions of Sections 33 and 35 of the Act shall not be attracted. Reliance was sought to be placed on the proviso to Section 49 of the Indian Registration Act, 1908, as also the decision in *Bondar Singh and Others Vs. Nihal Singh and Others*, Negating the contentions the apex court held,

16. It is not in dispute that the possession of the property had been delivered in favour of the Appellant. He has, thus, been exercising some right in or over the land in question. We are not concerned with the enforcement of the said agreement. Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Indian Registration Act, 1908.

17. We have noticed here to be fore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto.

18. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act.

19. The contention of learned Counsel for the Appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In *Bandar Singh (Supra)* this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined:

The main question, as we have already noted, is the question of continuous possession of the Plaintiffs over the suit lands. The sale deed dated 9.5.1931 by Fakir Chand, father of the Defendants in favour of Tola Singh, the predecessor-in-interest of the Plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the Plaintiffs. 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....

In this case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible (See Pandey Oraon v. Ramchander Sahu, 1992 Supp 92 SCC 77 and Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others,

20. The Registration Act. 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof which reads as under:

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

No document required by Section 17 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 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter 11 of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument

21. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.

22. The view we have taken finds support from the decision of the Privy Council in AIR 1946 51 (Privy Council) where it was held:

That the words "for any purpose" in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms.

The said decision has been followed in a large number of decisions by the said court. In Bhaskarabhotla Padmanabhaiah and Others Vs. B. Lakshminarayana

and Others, it has been held:

9. In this case, the learned subordinate Judge has observed that what the Plaintiff was trying to prove was not the division in status but to show that the property was divided under the partition deed. In any case, the fact that the document is inadmissible due to want of being stamped is clear. For, in AIR 1946 51 (Privy Council) their Lordships of the Privy Council held that the words "for any purpose" in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms.

It was furthermore held:

10. In the result, I agree with the learned Munsif-Magistrate that the document is "an instrument of partition" u/s 2(15) of the Indian Stamp Act and it is not admissible in evidence because it is not stamped. But, I further held that if the document becomes duly stamped, then it would be admissible in evidence to prove the division in status but not the terms of the partition.

In Sanjeeva Reddi Vs. Johanputra Reddi, it has been held:

9. While considering the scope of Section 35 of the Indian Stamp Act we cannot bring in the effect of non-registration of a document u/s 49 of the Indian Registration Act. Section 17 of the Indian Registration Act deals with documents, the registration of which is compulsory and Section 49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 or by any provision of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition u/s 49 to receive such a document which requires registration to be used for a collateral purpose i.e., for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the proviso to Section 35. In other words if an unstamped instrument is admitted for a collateral purpose, it would amount to receiving such a document in evidence for a purpose which Section 35 prohibits. There is nothing in the case of B. Rangaiah v. B. Rangaswamy, (1970) 2 Andh WR 181 which supports the contention of the Petitioner. That was a case as pointed out by Kuppuswami. J., where there were two instruments though contained in one document, one a settlement in favour of the 4th Defendant therein and the other a Will. It was therefore held that part of the instrument which constitutes a Will did not require any stamp and will be admissible in evidence for proving the bequest contained therein. It was for that reason that the learned Judge said that Section 35 of the Stamp Act has no application to a

case where one of the separate instruments relating to one such matters would not at all be chargeable under the Act as in the case before him.

In *T. Bhaskar Rao Vs. T. Gabriel and Others*, it has been held:

5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, hut not stamped, can he received in evidence.

It was further held:

7. It is now well settled that there is no prohibition u/s 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stump Act, if not stamped, as a document cannot he received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid u/s 35 of the Stamp Act.

(See also *Firm Chuni Lal tukki Mal v. Firm Mukat Lal Ram Chanda and Ors.*, (AIR 1965 All 164) and *Chandra Sekhar Misra Vs. Gobinda Chandra Das*,

In *Maung Po Chein v. C.R.V.V.V. Chettiyar Firm*, AIR 1935 Rang 282, the facts were as follows:

In a suit based on a promissory note, when the trial Court held that the Promissory note was inadmissible in evidence as the document was insufficiently stamped, the Plaintiff sought for an amendment of the plaint by adding a claim in the alternative based on the original contract of loan. On the findings of the trial court that the suit based on the promissory note was not maintainable and secondly that an amendment of the plaint ought not to be allowed, an appeal was filed. The appellate court held that the amendment ought to be allowed. It also opined that in any event, the suit on the promissory note was maintainable because the Defendant having admitted the execution of the note, the document did not require to be proved u/s 58 of the Evidence Act.

The division while interpreting the scope of Section 35 of the Indian Stamp Act, held that the section does not merely say that an instrument which is not duly stamped shall not be admitted in evidence but it also lays down that the instrument shall not be acted upon for any purpose, and the passing of a decree upon such an instrument is "acting upon" it. Consequently, it was held that when a suit is brought upon an instrument which is not duly stamped, the admission of

the contents of the instrument made by the Defendant does not avail the Plaintiff and a decree cannot be based on such an instrument. However, on an examination of the plaint the court found that the Plaintiff could independently sustain his case without relying on the promissory note or seeking an amendment and had allowed the appeal.

In *N.S. Lakshmaiah Setty v. R. Govindappa and Anr.*, 1964 (2) Mys. L J 145, this Court has considered the scope of Section 58 of the Mysore Stamp Act, in a circumstance where a document had, in fact and in law, been admitted in evidence. It was at a later point of time that the executing court, which was concerned with an assignment of a decree in favour of the Petitioner, had directed payment of duty and penalty.

This Court has held that the document was actually tendered in evidence. The duty or power of the court was to levy duty and penalty u/s 34. Where the Court fails to take action u/s 34 and admits a document in evidence, Section 35 comes into operation subject only to the exception provided in Section 58. The result is that so far as the parties themselves are concerned, the action of the Court admitting the document in evidence is final and cannot be called in question at any subsequent stage of the suit or in any appeal or revision arising there from, and that so far as the interests of revenue are concerned, they are sought to be protected u/s 58 under which the power to determine and declare the proper duty and penalty payable in respect of the instrument is vested in the Court of appeal or references and not in the original Court. That once Section 35 comes into operation, the original court loses the power not merely to review the document in evidence but also to levy any stamp duty or penalty in respect of the instrument.

This Court while approving the view expressed by the Andhra Pradesh High Court, *Sree Rama Varaprasada Rice Mill and Another Vs. Takurdas Topandas and Others*, *SRV Rice Mill v. Takurdas Topandas* that the power of the court of appeal or reference u/s 61 of the Indian Stamp Act corresponding to Section 58 of the Mysore Act, does not take away the finality of the order of the trial court so far as the admissibility of the document in evidence is concerned. Though u/s 58 this Court had the power, while hearing an appeal or reference arising out of the main proceeding before the trial court in which the questioned document is produced in evidence, acting suo motu, or upon a prayer by the Collector to reopen the decision and call upon the party producing the document to make good the stamp duty and the penalty, the particular case before this Court had not been preferred before this Court either in appeal or under a reference from the main proceeding, hence this Court declined to act u/s 58.

In *K. Amarnath Vs. Smt. Puttamma*, this court has spelt out the procedure that would be required to be followed by the courts as contemplated under the provisions of the CPC and as contemplated under the provisions of the KS Act as follows:

11. A combined reading of Sections 33, 34, 35, 37 and 41 of the Karnataka Stamp Act requires the following procedure to be adopted by a Court while considering the question of admissibility of a document with reference to the Stamp Act; (a) When a document comes up before the Court, it has to examine and determine whether it is properly stamped. When the other side objects to it, the Court should consider such objection and hear both sides; (b) After hearing, if the court comes to the conclusion that the document has been duly stamped, it shall proceed to admit the document into evidence; (c) on the other hand, if the court comes to the conclusion that the document is not stamped or insufficiently stamped, it shall pass an order holding that the document is not duly stamped and determine the stamp duty/deficit stamp duty and penalty to be paid and fix a date to enable the party who produces the document to pay the stamp duty/deficit stamp duty plus penalty; (d) if the party pays the duty and penalty the court shall certify that proper amount of duty and penalty has been levied and record the name and address of the person paying the said duty and penalty and then admit the document in evidence as provided u/s 41(2); and the Court shall send an authenticated copy of the instrument to the District Registrar together with a Certificate and the amount collected as duty and penalty, as provided u/s 37(1); (e) if the party does not pay the duty and penalty, the court will have to pass an order impounding the document and send the instrument in original, to the District Registrar for being dealt in accordance with law as per Section 37(2) of the Karnataka Stamp Act.

This Court has also pointed out the difference between Section 34 of the KS Act and Section 49 of the Registration Act, thus:

13. The difference between Section 34 of the Karnataka Stamp Act and Section 49 of the Registration Act should also be borne in mind. Section 34 says "no instrument chargeable with duty shall be admitted in evidence for any purpose, or shall be acted upon, registered or authenticated by.....unless such instrument is duly stamped". Subject to the provision enabling the court to collect the deficit Stamp Duty, the bar u/s 34 is absolute and an instrument which is not duly stamped cannot be admitted at all in evidence for any purpose. On the other hand, Section 49 of the Registration Act which deals with the effect of non-registration of documents provides that if a document which is required to be registered under law is not registered, then such document shall not affect any immovable property comprised therein, nor can it confer any power to adopt nor can it be received as evidence of any transaction affecting such property or conferring such power. But the proviso to Section 49 provides that an unregistered instrument may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purpose of Section 53A of Transfer of Property Act or as evidence of any collateral transaction not required to be effected by registered instrument. For example, if a sale deed is executed on a white paper and is not stamped, it can neither be admitted in evidence nor be used for any purpose. But if a sale deed is executed on requisite stamp paper but is not registered and the executant

refuses to admit registration, then the purchaser has a right to file a suit for specific performance, and rely on the sale deed, even though it was not registered, as evidence of the contract sale. Thus, though both Section 34 of the Stamp Act (corresponding to Section 35 of the Indian Stamp Act) and Section 49 of the Registration Act, both bar the document being received as evidence, the bar is absolute under Stamp Act (unless deficit duty and penalty is paid) and the bar is not absolute under Registration Act.

In *K.B. Jayaram and Anr. v. Navineethamma, and Ors.*, AIR 2003 KAR. L.J. 241, this Court while dealing with a case where the trial court had directed the Plaintiff to pay duty and penalty on an agreement of sale, which was not duly stamped, even at the stage of considering an interlocutory application for temporary injunction, held that there was no irregularity as such an order was in consonance with the provisions of the KS Act.

In *Krishna Vs. Sanjeev*, the Plaintiff had filed his affidavit, by way of examination-in-chief and the affidavit would itself a document having been assigned a exhibit number, the trial court had accepted the affidavit as oral evidence and it was recorded in the order sheet that documents Ex. P-1 to P-4 are marked and thereafter the case was posted for cross-examination. At this, the Defendant had made an application to recall the order marking a particular document, as it was inadmissible in evidence since it was not duly stamped. The trial court on consideration of the application found that if the witness had deposed in the witness box and if that document was to be marked, the Defendant would have had an opportunity to raise an objection as to its admissibility, which was lost on account of the procedure that was followed and therefore the recalled the order. It is that order which was questioned before this Court. This Court after addressing the several provisions and the procedure that is contemplated laid down as follows:

15. Therefore, the proper procedure to be followed by the Courts after the amendment of the CPC would be as under:

- a) When the case is posted for evidence, the examination-in-chief of a witness shall be on affidavit unless ordered otherwise;
- b) When the affidavit is sought to be filed on the date the case is posted for evidence, the court should insist that the witness whose affidavit is sought to be filed enters the witness box, takes oath and thereafter he/she shall hand over the affidavit containing his/her examination-in-chief to the Court. In other words, the Court should not receive the affidavit containing the examination-in-chief of a witness by his/her counsel, thus preventing the possibility of the witness disowning such affidavit;
- (c) After the affidavit is received through the witness, the Court shall call upon the witness whether he/she has any documentary evidence to tender and if the witness tenders any documentary evidence, the same shall be received by the Court subject to objection raised by the opposite party;

d) If objections are raised, the court should judicially determine the question whether it can be admitted in evidence or not, then and there if the objection relates to insufficiency of stamp duty. If the objection is on any other ground, the court shall follow the procedure as laid down in the case of K. Anjaneya Setty v. K.H. Ranganath Setty.

e) If the court decides to admit the document, then it shall follow the procedure prescribed under Order XIII Rule 4(1) CPC and mark the document.

In S. Suresh v. N. Pothe Gowda, this Court in an unreported decision in WP 18505/2007 dated 12.4.2010 was considering the question whether a document produced along with the plaint or an application, but not tendered in evidence, for marking could be impounded by the trial court, apart from other questions.

In answering the same, this Court had examined the several stages in production of documents before the court, and the marking of the same while admitting the document in evidence and has concluded that the question of impounding a document u/s 33 or 34 of the KS Act arises only when it is sought to be admitted in evidence and not otherwise.

10. With above in view, the points that arise for consideration are answered as follows:

(a) When a document which is chargeable with duty, under the Karnataka Stamp Act, 1957, but not duly stamped, has been admitted in evidence by a court, without any objection being raised, is the court obliged to act upon it for all purposes thereafter, without the requirement of payment of duty and penalty? As for instance, can the court direct the execution of a sale deed in specific performance of an agreement of sale, when the agreement is not duly stamped?

Once a document has been admitted in evidence, under signature of the court, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order, except as provided in Section 58 of the KS Act. (See: Section 35 of KS Act, Javer Chand 's case, supra)

Section 35 of the KS Act does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account, there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. This is plain from the terms of Section 41(2) of the KS Act, which lays down that every instrument endorsed by the Deputy Commissioner u/s 41(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped.

A court is prohibited from admitting an instrument in evidence and a court and a public officer are prohibited from acting upon it. Thus, a court is prohibited from both admitting it in evidence and acting upon it. It follows that the acting upon is not included in the admission and that a document can be admitted in evidence but not be acted upon. If every document, upon admission, became

automatically liable to be acted upon, the provision in Section 34 that an instrument chargeable with duty but not duly stamped, shall not be acted upon by the court, would be rendered redundant. To act upon an instrument is to give effect to it or to enforce it. (See: Hindustan Steel Ltd. Case, supra and Bittan Bibi" s case - ILR 1952 All 984 quoted with approval therein)

Order XIII Rule 8 of the Code of Civil Procedure, 1908 fortifies this position.

Order XIII Rule 8: Court may order any document to be impounded. - Notwithstanding anything contained in Rule 5 or Rule 7 of this Order or in Order VII, the court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

It is thus clear that any document, produced in Court, may for sufficient reason, be impounded and dealt with as above. It may be before or even after a document is admitted in evidence. Therefore, on the above reasoning, though the admissibility of the document in question in WP 1428/2009, cannot be raised as rightly held by the court below - however, the Court is precluded from acting upon it for any other purpose, unless duty and penalty are paid.

(b) Whether a document not duly stamped can be admitted in evidence on the plea that it is sought to be produced and marked for a collateral purpose ?

This point has arisen for consideration having regard to the circumstance pertaining to the case in WP 19021/2009. The Defendants therein had sought to produce and rely upon a joint development agreement, (which was claimed as being prior in point of time than the suit agreement) under which the suit property was the subject matter. It was however, contended that since the said agreement was not sought to be enforced but was only being produced in evidence for a collateral purpose of establishing that the suit property was the subject matter of the same - Whether the document not being duly stamped would attract the rigour of the provisions of the KS Act is to be considered.

The very argument had been canvassed in Avinash Kumar Chauhan "s case, supra, and therefore, the question stands answered.

In other words, the document was admittedly not duly stamped. Therefore the rigour of Section 34 of the KS Act is attracted. The document cannot be admitted for any purpose. Not even for a collateral purpose.

The difference between Section 34 of the KS Act and Section 49 of the Registration Act should be noted. The bar u/s 34 is absolute and an instrument which is not duly stamped cannot be admitted in evidence for any purpose. On the other hand, Section 49 of the Registration Act which deals with the effect of non-registration of documents provides that if a document which is required to be registered under law is not registered, then such document shall not affect any immovable property comprised therein, nor can it confer any power to adopt

nor can it be received as evidence of any transaction affecting such property or conferring such power. But the proviso to Section 49 provides that an unregistered instrument may be received as evidence of a contract in a suit for specific performance or as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purpose of Section 53A of the Transfer of Property Act or as evidence of any collateral transaction not required to be effected by a registered instrument.

For example, if a sale deed is executed on a white paper and is not stamped, it can neither be admitted in evidence nor be used for any purpose. But if a sale deed is executed on requisite stamp paper but is not registered and the executants refuses to admit registration, then the purchaser has a right to file a suit for specific performance, and rely on the sale deed, even though it was not registered, as evidence of the contract for sale. Thus, though both, Section 34 of the KS Act and Section 49 of the Registration Act, bar the document being received as evidence, the bar is absolute under the Stamp Act -unless deficit duty and penalty are paid, and the bar is not absolute under the Registration Act. (See: K. Amarnath 's case, supra).

Hence, it is not open for the Petitioner in WP 19021/2009 to contend that the document, which was not duly stamped, could be marked in evidence for a collateral purpose.

b) Whether a plea in the Written Statement of the Defendant, as to a document not being duly stamped, was sufficient to preclude the trial court from admitting the document in evidence, though no objection was taken when the document was actually admitted and marked in evidence?

The document in question having already been admitted in evidence, though there was a specific objection raised in the written statement, but not at the time that the document was actually marked, the Trial Court cannot consider the question of admissibility. But whether the document can be acted upon by the Court is dealt with in answering point a) above which would have to be applied to the case in WP 10441/2008.

(d) Whether a document which is not duly stamped is presented along with the plaint, or when at a stage before the document is sought to be tendered and marked in evidence, could the court proceed to impound the document ? What is the procedure to be followed ?

This question need not detain this Court for long. It is to be noticed that the Code of Civil Procedure, 1908 and the Karnataka Civil Rules of Practice, do provide for the stage of suit at which documents shall be produced and the manner of production of the same. As also the procedure to be followed in admitting the same in evidence. While Order XIII Rule 8 specifically provides for impounding a document or documents produced before it, for sufficient reason, on such terms as the Court may direct.

It cannot be said that it is only such documents as are produced and sought to be admitted in evidence that can be impounded, if not duly stamped or for such other reason. In other words, the court can impound a document, in the very first instance that it is produced before the Court. In terms of Section 33 of the KS Act, the moment it comes to the attention of the court, that a document produced in a suit is not duly stamped with duty chargeable, the Court shall impound the same.

Except that a Magistrate or Judge of a Criminal Court is not required to examine or impound any such document, if he does not think fit so to do, excluding proceedings under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (Now See: Chapter IX and X of Cr. P.C. 1973)

In so far as a Judge of a High Court is concerned, the duty of examining and impounding any instrument under the Section may be delegated to an officer to be appointed in this behalf. Such impounded document or documents may be marked and admitted in evidence on payment of the requisite duty and penalty that would be attracted, if the party seeking to produce and rely upon the same chooses to do so. This is in terms of Section 37 (1) of the KS Act. In every other case, the court shall send the document to the Deputy Commissioner, as provided u/s 37(2). The said authority would then deal with the same in so far as recovery of duty and penalty and prosecution for violation of the provisions of the Act, as provided thereunder.

A view expressed by this Court in an unreported decision in S. Suresh's case *supra*, does not accord with the ratio of the decision of the apex court in Peteti Subbarao's Case, *supra* nor does it accord with the provisions of the Stamp Act which would be rendered unworkable. As for instance, in a suit where it may be possible for the Court to pass a judgment on admissions, under Order XII Rule 6, even without having to settle the issues or to record evidence, and if the Court finds that a document produced along with the plaint is not duly stamped - the mandate under the KS Act, that the Court shall not act upon such a document would have to be ignored.

To contemplate yet another situation, if in a given case, an unstamped document is impounded and if the party who seeks to rely upon it either abandons the proceedings or is not in a position to pay the duty and penalty, the Court would have to take recourse to Section. 37(2) of the KS Act.

11. Hence, in so far as the case in WP 36252-53/2009 is concerned, there is no infirmity in the trial court having impounded the document and calling upon the Plaintiff to pay duty and penalty. It is for the Plaintiff to pay such duty and penalty if the document is to be admitted in evidence and is to be acted upon by the trial court. It is only if the Plaintiff chooses not to pay the duty and penalty or seeks to abandon the suit itself, that the court is required to send the document to the Deputy Commissioner u/s 37(2) for further action. During the pendency of the suit, the Court would only act under Order XIII Rule 8 Code of Civil Procedure.

In the result, the petitions stand disposed of in terms as above.