

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No. 27 of 2018**

Sudhanshu Shekhar Shukla S/o Late Ramvinod Shukla, Aged About 52 Years R/o Shyam Talkies Road, Budhpara, Raipur, Tah. And Dist. Raipur Chhattisgarh, Chhattisgarh --- **Petitioner**

Versus

1. Smt. Meenakshi Trivedi W/o Shri Manoharlal Trivedi, Aged About 52 Years R/o H. No. 832, Kargil Chowk, Sunder Nagar, Raipur Chhattisgarh.
2. Manohar Lal Trivedi, S/o Late Babulal Trivedi, Aged About 56 Years R/o Khariyarbada, Budhpara, Raipur, Tahsil & District Raipur Chhattisgarh.
3. Vimal Trivedi, S/o Manoharlal Trivedi, Aged About 28 Years R/o Khariyarbada, Budhpara, Raipur, Tahsil & District Raipur Chhattisgarh.
4. Snehal Trivedi, S/o Shri Manoharlal Trivedi, Aged About 27 Years R/o Khariyarbada, Budhpara, Raipur, Tahsil & District Raipur Chhattisgarh.
5. Smt. Usha Shukla, W/o Late Shri R. V. Shukla, Aged About 75 Years R/o Near Shriram Sangeet Vidyalaya, Budhpara, Raipur District : Raipur, Chhattisgarh
6. Saurabh Shukla, S/o Late Shri R. V. Shukla, Aged About 44 Years R/o Near Shriram Sangeet Vidyalaya, Budhpara, Raipur District : Raipur, Chhattisgarh
7. Smt. Preeti Shukla, W/o Shri Vishwadeep Shukla, Aged About 54 Years R/o Krishna Nagar, Choubey Colony, Danganiya, Near Bamleshwari Mandir, Danganiya, Raipur District : Raipur, Chhattisgarh
8. Smt. Pragati Dubey, W/o Shri Uttam Kumar Dubey, Aged About 48 Years R/o H. No. 832, Kargil Chowk, Sunder Nagar, Raipur District : Raipur, Chhattisgarh
9. Smt. Prerana Tiwari W/o Shri Vineet Tiwari, Aged About 46 Years R/o Sunny Medical Stores, Indrawati Colony Marg, Side Of Gangotri Hotel, Rajatalab, Raipur, District : Raipur, Chhattisgarh
10. Ku. Sona Tiwari, D/o Late Vijaya Tiwari, Aged About 24 Years Grand D/o Late R.V. Shukla D/o Shri Kumareshwari Tiwri, Presently Residing At C/o Ramharshan Tiwari, H. No. 19, Near Water Tank, Side of Community Hall, Mahoba Bazar, Raipur , District : Raipur, Chhattisgarh
11. Smt. Pushpa Sharma, W/o Late Prakash Chand Sharma, R/o Brahmanpara, Near Dr. Bhagwat, Raipur District : Raipur, Chhattisgarh
12. Sonu Sharma, S/o Late Prakash Chand Sharma, R/o Brahmanpara, Near Dr. Bhagwat, Raipur , District : Raipur, Chhattisgarh
13. Raja Sharma, S/o Late Prakash Chand Sharma, R/o Brahmanpara, Near Dr. Bhagwat, Raipur District : Raipur, Chhattisgarh
14. Rajesh Sharma, S/o Late Jagdish Prasad Sharma, R/o Brahmanpara, Near Dr. Bhagwat, Raipur District : Raipur, Chhattisgarh

15. Ravindra Sharma, S/o Late Jagdish Prasad Sharma, R/o Brahmanpara, Near Dr. Bhagwat, Raipur District : Raipur, Chhattisgarh
16. Smt. Kusum Gouraha, W/o Shri Parmanand Gouraha, Advocate, R/o D-47, Vinobha Nagar, Bilaspur District : Bilaspur, Chhattisgarh
17. Smt. Kumud Shukla, W/o Shri Ashok Shukla, Presently Residing At First Floor, 10/1, Solva Cross, Laxmipuram, Hall Suru, Bangalore., District : Bangalore Rural, Karnataka
18. Smt. Kiran Pandey, W/o Shri Rambishal Pandey, R/o In Front Of Shekhar Sharma, Chacheriwale, Near Raipur Convent School, Ashwani Nagar, Raipur District : Raipur, Chhattisgarh
19. Smt. Kalpana Pandey, W/o Late Akhilesh Pandey, R/o Qr. No. 14, Kirodimal Colony, Handi Chowk, Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh
20. Smt. Shashi Mishra, D/o Shri Jagannath Prasad Mishra, And W/o Shri Dinesh Mishra, R/o Bajaj Colony, Raipur District : Raipur, Chhattisgarh
21. Smt. Sudha Sharma, D/o Shri Jagannath Prasad Mishra, R/o C/o N.K. Mishra, Qr. No. D-7, C.S.E.B. Colony, Danganiya, Raipur, District : Raipur, Chhattisgarh

--- Respondents

For Petitioner

: Shri B.P. Sharma, Advocate

For Respondents No.1 to 4

: Shri A.K. Pradad & Shri Rajesh Kumar Tiwari, Advocates

C.A.V. ORDER

(Judgment Reserved on 30.01.2018)

(Judgment Delivered on 12.04.2018)

1. The present petition is against the order dated 30.11.2017, whereby the application filed under Section 35 of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act, 1899') raising objection about the admissibility of a document tendered during the evidence, was dismissed.
2. Brief facts of this case which would be necessary for adjudicating the dispute involved in the present petition are that present respondent No.1 Smt. Meenakshi Trivedi, Respondent No.2 Manohar Lal Trivedi, Respondent No.3 Vimal Trivedi and

Respondent No.4 Snehal Trivedi had filed a suit being Civil Suit No.133-A/2011 before the VI Additional District Judge, Raipur against respondents No.5 to 21 and the petitioner for partition of the house situated within the Municipal limit of Raipur and claimed partition of 1/5th share each and preliminary decree was sought by appointment of a Commissioner. The other relief was claimed that after the partition by the Commissioner final decree be passed and each of the parties be put to their possession of the suit property.

3. The further case of the Respondents No.1 to 4 and the plaintiff is that house bearing No.10/455 admeasuring 2400 sq. feet was owned by Late Shri Parmeshwar Dayal Shukla and the same was purchased in the name of Smt. Bhagwati Bai by sale deed dated 19.2.1950. The Family tree as was given in the plaint is reproduced hereunder:-

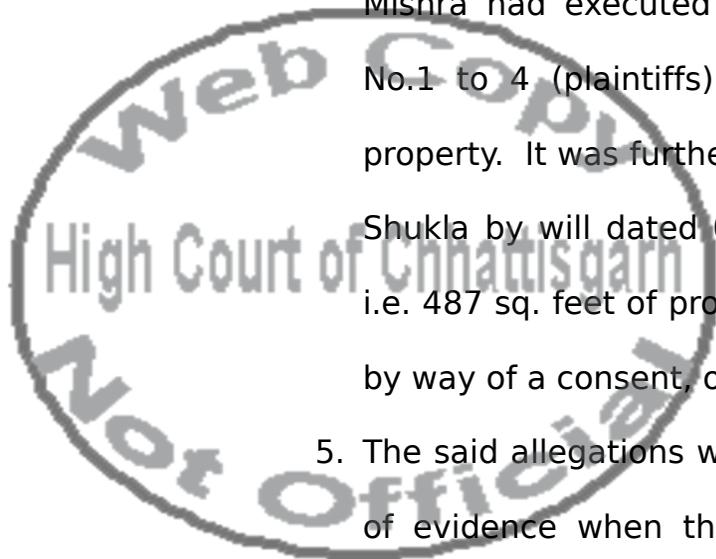
Late Paremashwar Dayal Shukla

| | | | | | | | |
|-------------------|-------------------------------------|--------------------------|----------------------------------|-------------------------|-------------------|-------------------|-------------------------|
| R.B. Shukla (son) | Shri Ram Sanehi Shukla (son) (dead) | R.K. Shukla (son) (dead) | Ramesh Chand Shukla (son) (dead) | R.V.Shukla (son) (dead) | Smt. Ganga Tiwari | Smt. Kamla Tiwari | Late Smt. Mangla Mishra |
|-------------------|-------------------------------------|--------------------------|----------------------------------|-------------------------|-------------------|-------------------|-------------------------|

4. It was further pleaded that the son and daughter of Late Paremashwar Dayal Shukla namely Smt. Ganga Tiwari, Late Smt. Kamla Bai Tiwari and son and daughters of Late Smt. Mangla Bai Mishra namely Narendra Kumar Mishra, Smt. Shashi Mishra and Smt. Sudha Sharma being grand son and daughters by a written

consent letter dated 20.06.1996 had relinquished their right in respect of the said house (bearing No.10/445) i.e., suit property situated at Budhapara, Raipur. Further it was pleaded that no partition was effected till 2005 by Parmeshwar Dayal Shukla, as such, the daughters namely Smt. Ganga Tiwari, Smt. Kamla and Smt. Mangla did not inherit any right over the property and the properties were in possession of the petitioner/defendants namely Shri Sudhanshu Shekhar Shukla and Smt. Usha Shukla & Saurabh Shukla. It was further pleaded that legal heirs of Late Smt. Mangla Mishra had executed a consent letter in favour of Respondents No.1 to 4 (plaintiffs) that they do not want any share in the property. It was further pleaded that one of the sharer Ram Sanehi Shukla by will dated 09.03.1997 has bequeathed his 1/5th Share i.e. 487 sq. feet of property in favour of Manohar Trivedi. Thereby, by way of a consent, other legal heirs have become the owners.

5. The said allegations were rebutted in the reply. During the course of evidence when the consent letter whereby the rights which were relinquished by few of the sharers in favour of the plaintiff was sought to be exhibited in evidence, an objection was raised about the admissibility of that document. Further an application under Section 35 of the Act, 1899 was filed reiterating the pleading of the plaintiff of relinquishment deed dated 20.06.1996 and it was stated that the said relinquishment deed was executed only on Rs.10/- Stamp which is an unregistered document. It was also pleaded that the value of the property for which the relinquishment deed operates is more than Rs. 100/-, therefore, as per the Article 55 Schedule 1 A of the Act, 1899 of the Stamp Act,



the stamp duty would be attracted over the value of the property. It was further pleaded that since the document was insufficiently stamped as such it could not be admitted under Section 35 of the Act, 1899. Further it was also pleaded that the document is also unregistered one, therefore, is inadmissible by virtue of Section 17 (1) of the Indian Registration Act, 1908 (hereinafter referred to as 'the Act, 1908).

6. In reply to this document, respondents No.1 to 4/the plaintiffs stated that the document dated 20.06.1996 is original one and it was not disputed that the document is written on a Rs. 10/- stamp and have stated that the said document is not required to be registered.

7. Learned Court below by impugned order dated 30.11.2017 recorded that if the consent letter/relinquishment deed is exhibited no bar operates to mark it as exhibit and mere marking of the exhibit, the same would not be admissible in the evidence and whether it is registered or not, the admissibility of the same would be decided at the time of final hearing of the case. Consequently, the application filed by the petitioner under Section 35 of the Act, 1899 was rejected.

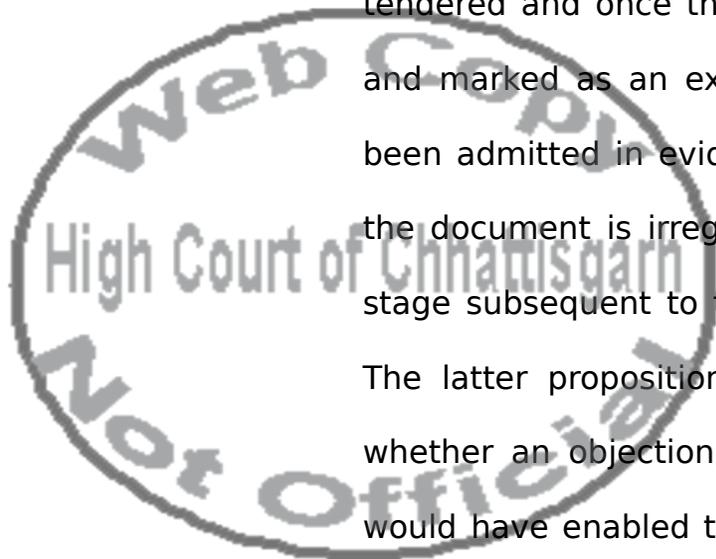
8. Shri B.P. Sharma, learned counsel for the petitioner would submit that the document which is sought to be exhibited decides the right of the parties and few of the claimants/sharers have relinquished their right, which would amount to transfer of right of a property of more than Rs.100/- and therefore, if the document is not properly stamped, it would be inadmissible in evidence. He further submits that the manner in which the document was



proved unless the objection is taken at first instance, the petitioner would be precluded to raise admissibility of the document at the later stage, even in the stage of appeal or revision. He would further submit that the trial Court erroneously held that there is no bar in exhibiting the document and failed to appreciate that the objection has been taken at the very inception of evidence of the plaintiff, therefore, it was bona fide and when such objection has been raised at the first instance, the trial Court was bound to decide those issues at the threshold. He would further submit that under Section 35 of the Act, 1899 unless the stamp duty or penalty due is paid, the Court cannot act upon such instrument. He would also submit that under the circumstances the application filed by the petitioner should have been allowed and the order dated 30.11.2017 is required to be set aside.

9. Per contra, Shri A.K. Prasad, learned counsel for the respondents supported the order and submits that the order is well merited which do not call for any interference. Further it is pleaded that marking of a document as an exhibit would not make it admissible and the same can be decided at the time of final hearing. Accordingly, the petition is liable to be dismissed.
10. Perused the documents filed along-with the petition. The Supreme Court in the matter of *Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others {2010 (8) SCC 423}* has reiterated the law laid down in the case of *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami Vs. V.P. Temple {(2003) 8 SCC 752}* that the objections as to admissibility of documents in evidence may be

classified into two classes :- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the



opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties.

11. The issue, therefore, falls for consideration that whether the document dated 20.06.1996 i.e. the deed of relinquishment is admissible in evidence or not for want of proper stamp duty and registration.

12. The impugned order would show that at the initial stage when the document dated 20.06.1996 was tendered for evidence, the same was objected on the ground that it is not properly stamped and registered. In this case, reading of the document would redirect to examine the relative provisions of the Indian Registration Act, 1908 and the Indian Stamp Act, 1899.

13. Section 17 of the [Registration Act](#), 1908 is reproduced hereunder :-

(I) Documents of which registration is compulsory.

— (I) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the [Registration Act](#), 1866, or the [Registration Act](#), 1871, or the [Registration Act](#), 1877, or this Act came or comes into force, namely:—

(a) Instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

(f) any decree or order or award or a copy thereof passed by a Civil Court on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under [section 35](#) of the Indian Stamp Act, 1899 (2 of 1899), such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; and

(g) agreement of sale of immovable property of the value of one hundred rupee and upwards", Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(II) [Section 49 of the Registration Act, 1908](#)

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-II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

14. Thus, Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents which are required to be registered u/s 17 of the Act. The said proposition is laid down in *Yellapu Uma Maheshwari and others Vs. Buddha Jagadheeswara Rao and others (2015) 16 SCC 787*.

15. Likewise Section 35 of the Stamp Act provides that instruments not duly stamped is inadmissible in evidence and cannot be acted upon. The same is reproduced hereunder:-

Section 35 of the Stamp Act

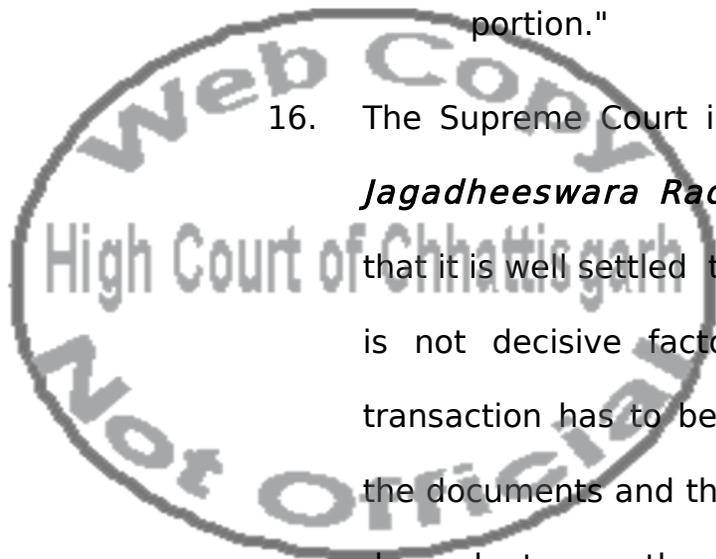
"35. Instruments not duly stamped inadmissible in evidence, etc. -- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by

any such person or by any public officer, unless such instrument is duly stamped :

Provided that--

(a) any such instrument shall 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."

16. The Supreme Court in *Yellapu Uma Maheswari Vs. Buddha Jagadheeswara Rao (2015) 16 SCC 787 (supra)* has held that it is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document. In the case in hand, an application u/s 35 of the Indian Stamp Act 1899 was filed raising objection that *Swikri/Sahmati Patra* is not properly stamped and registered. A perusal of the said document shows that two persons namely Smt. Ganga Bai Tiwari and Kamla Bai Tiwari and sons and daughters of late Mangla Bai Mishra have relinquished their right in respect of the immovable property i.e., House No.10/445 situated at Budhapara in favour of the plaintiffs.. The contents of the document would show that sharers have withdrawn themselves from the property and abandoned their rights thereby they have relinquished their rights from the



property in favour of the plaintiffs. The plaintiffs have placed reliance on the same to claim right over the property i.e., suit property in question.

17. The Supreme Court held in *Sneh Gupta Vs. Devi Sarup* which was reported in *2010 (1) M.P.L.J. (Para 27)* that title to a property must be determined in terms of the statutory provision and if the right has been derived under the provisions of the Hindu Succession Act, 1956 the same cannot be taken away or the party cannot be deprived by a reason of an agreement entered into between the parties and if a party further relinquishes his right in respect of his or her property, the same has to be stamped and must be registered in terms of provisions of Indian Registration Act.

18. Admittedly in this case the document sought to be exhibited is not registered and the objection has been raised that the proper stamp duty has not been paid. The Supreme Court in *Bipin Shantilal Panchal Vs. State of Gujarat 2001 AIR SCW 841 (Three Judges Bench)* laid down that whenever an objection is raised during the evidence regarding the admissibility of the document, the Court can make note of such objection and mark the objected document tentatively as an exhibit in the case but at the same time it was laid down that if the objection relates to the deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. Therefore, in the instant case, admittedly the objection about the admissibility of document has been raised with respect to the payment of stamp duty under



Section 35 of the Indian Stamp Act. Hence, the preposition of *AIR 2001 SCW 841 – Bipin Shantilal Panchal (Supra)* is read together with the law laid down in *Yellapu Uma Maheswari Vs. Buddha Jagadheeswararao (2015) 16 SCC 787 (Supra)* to the effect that the document would be inadmissible in evidence for want of proper stamp duty and registration. The Court has held that in such circumstances the instrument is not admissible in evidence even for collateral purpose until the same is impounded. The Court has further held that the document which has the effect of creating and taking away the rights in respect of an immovable property must be registered otherwise section 49 of the Registration Act imposes a bar on the admissibility of an unregistered document in respect of an immovable property. Therefore, in the instant case, the objection having been raised u/s 35 of the Stamp Act with respect to the admissibility of the document about the payment of stamp duty, not deciding the said objection by the trial Court is against the settled principles as laid down by the Supreme Court. Consequently the order dated 30.11.2017 cannot be allowed to sustain and accordingly, the same is set aside.

19. In the result, the application filed by the petitioner u/s 35 of the Indian Stamp Act is allowed. The trial Court is directed to decide the admissibility of the document sought to be exhibited by the plaintiff in terms of the observation made in this order. If the trial Court finds that the document is insufficiently stamped and is tendered in evidence then the Court is duty bound to impound the same and in order to decide the levy of stamp, the document is

required to be sent to the Collector as per sections 33, 35, 38 & 40 of the Indian Stamp Act, 1899.

20. Consequently, the writ petition is allowed in view of the observations made in the foregoing paragraphs.

Sd/-
GOUTAM BHADURI
JUDGE

Ashu / Rao

