APHC010516902025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3311]

Thursday, the nineteenth day of February two thousand and twenty six

Present

The Honourable Ms. Justice B. S. Bhanumathi

<u>Civil Revision Petition No. 2523 of 2025</u>

Between:

Vanka Lakshmidevamma **…Petitioner**

and

Vanka Lakshminarayana Reddy **…Respondent**

Counsel for the petitioner:

1. Nallani Vamsi Krishna

Counsel for the respondent:

1. Padmaja Vaka

The Court made the following:

APHC010517682025

IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI **[3311]**

(Special Original Jurisdiction)

Thursday, the nineteenth day of February two thousand and twenty six

Present

The Honourable Ms. Justice B. S. Bhanumathi

<u>Civil Revision Petition No. 2567 of 2025</u>

Between:

Vanka Lakshmidevamma **...Petitioner**

and

Vanka Lakshminarayana Reddy **...Respondent**

Counsel for the petitioner:

1. Nallani Vamsi Krishna

Counsel for the respondent:

1. Padmaja Vaka

The Court made the following:

COMMON ORDER:

C.R.P. No. 2523 of 2025 is filed under Article 227 of the Constitution of India against the order, dated 08.09.2025, dismissing I.A. No. 668 of 2025 in O.S. No. 165 of 2011 on the file of the Court of the Civil Judge (Junior Division), Kalyandurg, filed by the defendant No.2 under Section 151 C.P.C. to dismiss the suit filed for specific performance of an unregistered instrument (stated to be an agreement of sale), dated 15.05.1984, as not maintainable for inadmissibility of the agreement in evidence due to insufficient stamp duty paid for it.

2. C.R.P. No. 2567 of 2025 is filed under Article 227 of the Constitution of India against the order dated 08.09.2025 dismissing the petition in I.A. No. 623 of 2025 in O.S. No. 93 of 2008 on the file of the Court of the Civil Judge (Junior Division), Kalyandurg, filed by the plaintiff under Order XIII, Rule 3 r/w Section 151 C.P.C. to de-exhibit the unregistered instrument (stated to be an agreement of sale), dated 15.05.1984, marked as Ex. B22 and exclude the same from evidence for non-payment of sufficient stamp duty and penalty required as per Explanation-I to Article 47- A of Schedule I-A of the Indian Stamp Act, 1899 (for short, "the Act, 1899").

3. O.S. No. 93 of 2008 was initially filed for permanent injunction by Smt. Vanka Lakshmidevamma against Vanka Lakshmi Narayana Reddy and later got the plaint amended seeking the reliefs of declaration of title and recovery of possession of the suit schedule property.

4. O.S. No. 165 of 2011 was filed by Vanka Lakshmi Narayana Reddy against Anam Yellamma and Vanka Lakshmidevamma seeking specific performance of the agreement of sale with possession dated 15.05.1984. As the defendant No.1 died pending the suit, her legal representatives Anam Jayaram and Anam Bhasar were added as the defendants Nos. 3 and 4.

5. The plaintiff in O.S. No. 165 of 2011 pleaded that the agreement of sale dated 15.05.1984 was executed by Anam Yellamma / defendant No.1. The plaintiff in O.S. No. 93 of 2008 claims title to the property of Ac. 2.60 cents under a registered gift deed, dated 30.05.1985, said to be executed by Anam Yellamma. Thus, one party claims title under the registered gift deed, dated 30.05.1985, and the other is suit for specific performance based on the agreement of sale with possession, dated 15.05.1984. Both these documents are said to have been executed by Anam Yellamma.

6. Both these suits were clubbed and common evidence is being recorded in O.S. No. 93 of 2008. While so, Vanka Lakshmi Narayana Reddy, the defendant in O.S. No. 93 of 2008, got marked the agreement of sale with possession, dated 15.05.1984, as Ex. B22.

7. Thereafter, the petitions in I.A. No. 623 of 2025 in O.S. No. 93 of 2008 and I.A. No. 668 of 2025 in O.S. No. 165 of 2011 were filed by Vanka Lakshmidevamma, basically contending that the agreement of sale with possession, dated 15.05.1984, requires stamp duty as per the Explanation - I to Article 47-A of Schedule I-A of the Act, 1899.

8. The petitioner, Vanka Lakshmidevamma, contended that at the time of marking of the document, the petition was opposed by filing a memo and in spite of such objection, the document was marked by mistake and oversight. The petitioner further contended that since both the suits are being tried together and there is a petition to implead the legal heirs pending in O.S. No. 165 of 2011 on the death of Anam Yellamma, the matters got adjourned, however, without following due process of law, the other side party got the document marked in evidence despite of the objection. Hence, it is necessary to demark the document in O.S. No. 93 of 2008. For the same reason of insufficiency of stamp duty, Vanka Lakshmidevamma, the defendant in O.S. No. 165 of 2011, contended that the said agreement of sale is inadmissible in evidence and therefore, the suit for specific performance does not lie.

9. Both the petitions were resisted by filing separate counters. It was contended, in I.A. No. 623 of 2025, that a document already marked cannot be demarked on the ground of insufficiency of stamp duty in view of Section 36 of the Act, 1899. I.A. No. 668 of 2025 was resisted on the ground that the holder of the agreement has to file a petition before the Court to send the agreement of sale to the concerned Sub-Registrar, Kalyandurg, to impound the document and collect the stamp duty and that the plaintiff is ready to pay the deficit stamp duty and penalty when the document is tendered in evidence and therefore, the document should not be excluded from evidence and further that the plaintiff is always ready and willing to pay the deficit stamp duty with penalty, if an opportunity is provided. Therefore, the plaintiff in O.S. No. 165 of 2011 contended that the suit cannot be dismissed for want of deficit stamp duty on the said agreement of sale.

10. After hearing both the parties, I.A. No. 623 of 2025 was dismissed on the ground that if a document is marked, it cannot be demarked on the point of insufficiency of stamp duty as held in the case of **Jatti Veera Venkata Satyam Vs. Bosukonda Chinnadevi and others[1],** and that as per Section 49 of the Registration Act, 1908, (for short, "Act, 1908"), the agreement of sale can be received in evidence for the

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1 2023 ALT (Rev) 225 (AP)

purpose of collateral transaction in a suit for specific performance and both the suits are clubbed in the present matter and the agreement was already marked as Ex. B22.

11. Insofar as I.A. No. 668 of 2025 is concerned, this petition was also dismissed holding that as per Section 49 of the Act, 1908, the agreement of sale can be received in evidence with regard to a collateral transaction and the suit agreement of sale was already marked as Ex. B22 in the common trial and that after marking of the document, this petition was filed and it is unsustainable unless final adjudication is made in the cases and moreover, the plaintiff is ready to pay the deficit stamp duty. The trial Court further opined that without adjudication of the suit for specific performance, dismissing the suit is not proper.

12. Aggrieved by both the orders, the revision petitions were filed.

13. The learned counsel for the petitioner submitted that it is erroneous to observe that a document once marked cannot be demarked as per Section 36 of the Act, 1899, in view of the fact that an objection was taken for marking of the document even before its admission in evidence and therefore, the decision relied on by the trial Court in support of the proposition that it cannot be demarked has no relevance. In this regard, he further submitted that in the case relied by the trial Court, there was no objection taken before marking of the document, whereas in the present case, a specific objection was taken in the form of a memo and such marking was also challenged by filing a petition for demarking the document. He further submitted that the agreement of sale with possession is liable to be stamped as per the Explanation-I to Article 47-A of Schedule I-A, but without deciding the objection, it is erroneous to mark the document. He referred to Section

33 of the Act, 1899 to contend that it is the obligation of a Court to get such insufficiently stamped document to be impounded and until then, it cannot be used for any purpose, much less, collateral purpose, which shall be indicated, if it is to be used in evidence but not indicated by the trial Court.

14. It was initially submitted by him that the question whether a document is adequately stamped shall be decided at the time of admission of the document in evidence and not just by considering the date of execution of the document, and therefore, the amount of the stamp duty on the alleged agreement of sale, dated 15.05.1984, coupled with possession, leviable as on the date of its admission in evidence shall be examined. Therefore, he vehemently contended that the agreement of sale, dated 15.05.1984, though the value of the stamp is adequate for an agreement of sale with possession as on 15.05.1984, is insufficiently stamped as per the value required as on the date of its admission in evidence and shall be demarked in view of the objection already taken unless the deficit stamp duty along with penalty shall be collected and consequently, Ex. B.22 shall be demarked and the suit for specific performance based on it shall be dismissed. Later, this argument that the date of admission of a document in evidence determines the value of stamp duty was given up. Finally, he argued that the nature of the document is 'conveyance' and not mere agreement of sale with possession and therefore, it was inadequately stamped and moreover not registered.

15. Objection for marking of a document can be mainly taken on grounds that (i) it is not registered, though required under law to be registered, (ii) does not bear stamp duty required as on the date of its execution; (iii) is not primary or secondary or relevant evidence. The objection (i) is covered by the provision to Section 49 of the Act, 1908. The objection (ii) is based on Section 35 of the Act, 1899. The objection (iii) is based on several sections of the Evidence Act, now the Bharatiya Sakshya Adhiniyam, 2023.

16. It is settled law that it is not the nomenclature used in title of a document, but its contents determine the nature of a document. In **Om Prakash Vs. Laxminarayan**[2], the Supreme Court held that while examining the stamp duty and penalty, the contents of the document alone is the criterion and not the nomenclature of the document or pleadings of the either side. Similar view was taken in **Yellapu Uma Maheswari Vs. Buddha Jagadheeswara Rao**[3].

17. Therefore, it is necessary to examine the contents of Ex. B22 which in vernacular language of Telugu read as below:

> "Rs.50,000-00 లుకు షెడ్యూలు దాఖలా స్థిరాస్థి విక్రయపత్రం.
>
> 1984 వ సంవత్సరం మే నెల 15 వ తేది అనంతపురం జిల్లా కల్యాణదుర్గం తాలూకా ముదిగల్లు మజరావరంపల్లి గ్రామంలో ఉండు బవరంపల్లి జిరాయితి పరకా సంజీవప్ప కుమారుడు వరకా లక్ష్మినారాయణరెడ్డి గారికి,
>
> సదరు బవరంపల్లి గ్రామంలో ఉండు జిరాయితి లేట్ ఆనం సంజన్న భార్య యలమ్మ అయిన నేను సమ్మతిపడి వ్రాయించియిచ్చిన విక్రయపత్రం.
>
> నా జీవనాధారం ఖర్చులుకుగాను నాకు మొత్తం అవసరం కలిగి ఈ దినం నేను నీ నుండి నగదుగా Rs. 50,000-00 అక్షరాలా యాభైవేల రూపాయలును తీసుకొన్నాను. యిందుకుగాను నా హక్కు స్వాధీన అనుభవంలో ఉండు షెడ్యూలు దాఖలా స్థిరాస్థిని ఈ

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2 (2014) 1 SCC 618

3 (2015) 16 SCC 787

దినం నేను నీకు విక్రయించి నీకు స్వాధీనం చేసినాను. యింతటి నుండి ఈ ఆస్థి మీద నీకు, నీ సంతతికి అనుభవ భోగ్య, దాన, విక్రయాది సర్వ హక్కులు ఉండును. నాకు, నా సంతతికి, నా మిగతా వారాసులుకు షెడ్యూలు ఆస్థి మీద ఎలాంటి హక్కులు ఉండేదిలేదు. మునుముందుకు షెడ్యూలు ఆస్థిలో నీవు, నీ వారసులు సర్వహక్కులుతో అనుభవించుటకు ఎలాంటి తకరార్లు కలిగినయడల నేను, నా వారాసులు మా స్వంత ఖర్చులతో నీకు, నీ వారసులకు షెడ్యూలు ఆస్థి మీద సర్వ హక్కులును స్థిరపరచి యివ్వగలము అనియు నీవు కోరిన నీ ఖర్చులతో రిజిస్టరు కూడా చేయించి యివ్వగలను.

అన్ని కోర్టుల యందు ఈ విక్రయపత్రం నీకు, నీ సంతతికి చెల్లుబాటు కావలెను అని నేను సమ్మతిపడి వ్రాయించియిచ్చిన విక్రయపత్రం".

On its translation to English language, it reads as below:

Deed of sale for the scheduled immovable property for Rs. 50,000.00.

On May 15, 1984, in favour of Mr. Varaka Lakshmi Narayana Reddy, son of Varaka Sanjeevappa of Bavarampalli Village, Mudigallu Mandal, Kalyandurg Taluk, Anantapur District,

This deed of sale is voluntarily written and executed by me, Yellamma, wife of the late Anam Sanjanna of the said Bavarampalli Village.

Having a need for funds to meet my livelihood expenses, I have, on this day, received from you a cash sum of Rs. 50,000.00 (in words: Fifty Thousand Rupees). In consideration thereof, I have, on this day, sold and delivered you possession of the schedule immovable property, which was hitherto under my absolute right, possession, and enjoyment. Henceforth, you and your descendants shall possess all rights over this property, including rights of possession, enjoyment, gift, and sale. Neither I, nor my descendants, nor any other heirs of mine shall retain any rights whatsoever over the scheduled property. Furthermore, should any disputes arise in the future regarding your and your heirs' full and unencumbered enjoyment of the scheduled property, I and my heirs undertake to resolve such disputes at our own expense and to validate and confirm all rights over the scheduled property in favour of you and your heirs; additionally, I shall execute and register this deed at your request and at your expense. This deed of sale is executed and delivered by me with my full consent, stipulating that it shall remain valid and binding upon you and your descendants in all courts of law.

18. A perusal of the impugned document marked as Ex. B22 shows that on receipt of the entire amount of consideration, absolute rights in the property were transferred and the possession was also delivered on the same day under the document and it was also recorded that it is a sale deed, however, it is further stated therein that a regular registered sale deed would be executed when the transferee requests.

19. “Sale” and “contract for sale”, normally called as ‘agreement of sale’, as defined under Section 54 of the Transfer of Property Act, 1882, (for short, “T.P. Act”) reads as under:-

> “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
> Sale how made:--Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.
> …

> Contract for sale:-- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.
> It does not, of itself, create any interest in or charge on such property."

20. Ex. B22 is an outright sale deed, but not a mere agreement of sale with possession, as all the ingredients required to make it a sale are present. Merely because it was agreed that a regular registered sale deed would be executed when the transferee requests, the document, by its nature does not cease to be a sale. It is simply that a sale deed was not registered. But, Section 54 of the T. P. Act requires a sale to be made only through a registered instrument. The consequence of non-compliance is not stated in the same Act. Apart from the T. P. Act, Section 17(1)(b) of the Act, 1908, also requires a conveyance of the absolute rights *inter vivos* in immovable property worth rupees hundred and more to be registered. Section 49 of the Act, 1908 directly deals with consequence of non-registration of a document, required to be registered not only under that Act, but also under any other law, i.e., inadmissibility of such document in evidence except for purposes stated therein, while Sections 33, 35, 36 and 61 of the Act, 1899, deal with admissibility of an instrument insufficiently stamped.

21. Section 17(1)(b) and (g) of the Act, 1908 (as applicable to the state of Andhra Pradesh) read as under:

> **"17. Documents of which registration is compulsory.**
>
> (1) 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 XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,
>
> (a) xx xxxx
>
> (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) to (f) xx xxxx
>
> (g) agreement of sale of immovable property of the value of one hundred rupee and upwards; [clause (g) was added by amendment through the A. P. Act 4 of 1999, with effect from 01.04.1999.]"

22. As on the date of its execution, i.e., 15.05.1984, as per Section 54 of the Transfer of Property Act read with Section 17(1)(b) of the Act, 1908, a sale deed is compulsorily registerable document failing which it does not convey any right or interest transferred under the said document.

Section 49 of the Act, 1908 is excerpted hereunder:-

> **"49. Effect of non-registration of documents required to be registered.**—No document required by section 17 (1) or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (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 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

23. Therefore, as of now, as per Section 49 of the Act, 1908, Ex. B22 cannot be received in evidence, except for the purpose of establishing (i) collateral transaction not required to be effected by registered instrument or (ii) an agreement in a suit for specific performance [or (iii) part performance of a contract for the purpose of Section 53A of the T. P. Act before it was omitted by the amendment brought by the Act 48 of 2001 w.e.f. 24.09.2001]. So, it cannot be used for the main purpose of establishing transfer of absolute rights from the transferor to the transferee. But, it can be used as evidence of any collateral transaction not required to be effected by registered instrument.

24. In case of stamp duty required on an instrument / document, unless it is duly paid, the instrument cannot be received in evidence as per Section 35 of the Act, 1899, which is excerpted hereunder:-

> "**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 fifteen rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees, of a sum equal to ten times such duty or portion;
>
> (b) to (e) xx xxxx"

The deficit stamp duty on an instrument required to be paid under Section 35 proviso (a) can be paid by impounding under Section 33 of the Act, 1899 to make the instrument admissible in evidence. But, even then, such instrument, if required to be registered, but not registered, it cannot escape the bar under Section 49 of the Act, 1908.

25. A combined reading of Section 54 of the T. P. Act, Sections 17(1) and 49 of the Act, 1908 and Section 35 of the Act, 1899, it is clear that a document which requires registration and stamp duty, if not registered or duly stamped, the same cannot be received in evidence and; further that even if a document is not registered, under the exception provided in Section 49 of the Act, 1908, such document can be received in evidence for those purposes, but unless such document is duly stamped or deficit stamp duty along with penalty is paid under Section 35 of the Act, 1899, it cannot be received in evidence even for purposes stated as exceptions in Section 49 of the Act, 1908. As such, even if a document which requires registration but not registered, can be received in evidence for certain purposes, even for evidencing those transactions, the document needs to be duly stamped or impounded as aforesaid.

26. As already noted, since the document marked as Ex. B22 is in the nature of sale deed and not registered, it cannot be received in evidence of main transaction of sale to establish title, however, it can be received for purpose(s) allowed under Section 49 proviso of the Act, 1908.

27. In so far as the State of A. P. is concerned, with effect from 01.04.1999, as per Section 17(1)(g) of the Act, 1908, an agreement of sale of immovable property of the value of one hundred rupee and upwards requires registration. Therefore, an unregistered agreement of sale cannot be used as evidence as per Section 49 of the same Act, but its proviso permitted even an unregistered agreement of sale to be received as evidence of a contract of sale in a suit for specific performance, if it is executed on or after 01.04.1999. The instrument marked as Ex. B22 is dated 15.05.1984.

28. An unregistered sale deed, though does not convey right and interest thereunder, can be used as evidence of contract of sale in the suit for specific performance (like O.S. No. 165 of 2011) or as evidence of any collateral transaction not required to be effected by registered instrument in the other suit (like O.S. No. 93 of 2008), however in both suits, subject to compliance of Section 35 of the Act, 1899. In case of using such document as evidence of any collateral transaction, the said transaction for evidence of which it is intended to be used must be specifically mentioned.

29. In the present case, there is a term in the document marked as Ex. B22 that a regular sale deed would be registered as and when the alienee requests. Therefore, this document can be received in evidence in the suit for specific performance, subject to payment of necessary stamp duty.

30. If the above said document is regarded as an agreement, the provisions relating to the Act, 1899 relating to the agreement of sale shall be examined. The stamp duty payable on an instrument is governed by Act, 1899 and the details of the stamp duty payable are given in the Schedule - I of it. Insofar as its application to the State of Andhra Pradesh, the Schedule I-A was introduced through the Stamp Duty on Certain Instruments under the Andhra Pradesh (Amendment) Act, 1922 [Act No. III of 1922], which came into force on 25.04.1922. The Schedule I-A was substituted by another Schedule I-A by amendment through the Indian Stamp (Andhra Pradesh Extension and Amendment) Act, 1959 [Act No. XIX of 1959] which came into force on 01.04.1959.

31. In the Schedule I - A substituted in 1956, an agreement of sale of immovable property, irrespective of its value and whether it is coupled with delivery of possession of the property or not, was covered by Article 5(c) relating to ‘agreement or memorandum of agreement, not otherwise provided for'. By amendment made by the Act No. X of 1967, Article 5(c) was made as Article 6. Whereas, 'sale' was covered by Article 20 relating to 'conveyance' till it was excluded by amending Article 20 and introducing Article 47 - A by the A.P. Act 17 of 1986. Under the same amendments, an important change brought to agreement of sale of immovable property is to bring such agreement followed by or evidencing delivery of possession of the property under the Explanation to Article 47 - A, while the rest continued to be governed by Article 6. Later, by the Act 22 of 1989 (w.e.f. 01.04.1990), Article 6 was amended to bring slab rates of stamp duty depending on the value of the property. By the Act No. 21 of 1995, by amending Article 6, construction agreement was included by adding Clause B and the other types of cases were added as Clause C and amending Article 47 - A, Clause (d) relating to sale of units in multi-storied building was added and the Explanation was amended as Explanation-I and Explanation-II.

The amount of stamp duty payable on an agreement of sale has been amended from time to time, shown in tabular form, as follows:

Article	Description of instrument	Year of amendment	Stamp duty payable
5	Agreement or Memorandum of agreement- (a) … (b)… (c) not otherwise provided for	w.e.f. 05.03.1959	Rs.1.50
6	Agreement or Memorandum of agreement, not otherwise provided for-	A.P. Act X of 1967 w.e.f. 20.10.1967	Rs.2.30
		A.P. Act XX of 1974 w.e.f. 01.06.1974	Rs.5.00
47-A	'Sale' as defined in Section 54 of the Transfer of Property Act, 1882	Inserted by A.P. Act 17 of 1986 w.e.f. 17.07.1986	

	(a) in respect of property situated in any Municipal Corporation-- (i) … (ii) …		…
	(b) in respect of property situated in any Selection Grade or Special Grade Municipality— (i) … (ii) …		…
	(c) where the property is situated in any area other than those mentioned in clauses (a) and (b)- (i) … (ii) …		…
	Explanation:- An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "sale" under this article and the instrument of sale in pursuance of such agreement subsequently executed shall be chargeable with a duty of rupees five.		
6	Agreement or Memorandum of agreement, not otherwise provided for, where the value of the property	Act 22 of 1989 w.e.f. 01.04.1990	
	(a) does not exceed Rs.5,000		Ten rupees
	(b) exceeds Rs.5,000/- but does not exceed Rs.20,000/-		Twenty rupees
	(c) exceeds Rs.20,000/- but does not exceed Rs.50,000/-		Fifty rupees
	(d) exceeds Rs.50,000/- and		One hundred rupees
	(e) where such agreement or memorandum of an agreement does not relate to monitory transactions or transactions not susceptible to valuation in terms of money		Fifty rupees
6	Agreement or Memorandum of agreement, not otherwise provided for:		
	(A) where the value: (i) does not exceed Rs.5,000		Ten rupees
	(ii) exceeds Rs.5,000/- but does not exceed Rs.20,000/-		Twenty rupees
	(iii) exceeds Rs.20,000/- but does not exceed Rs.50,000/-		Fifty rupees
	(iv) exceeds Rs.50,000/- rupees		One hundred rupees

	(B) If relating to construction of a house or building including a multi-unit house or building or unit of apartment / flat / portion of a multi-storied building or for development / sale of any other immovable property	Act 21 of 1995 w.e.f. 01.04.1995	Five rupees for every Rs.100/- or part thereof on the market value or the estimated cost of the proposed construction / development of such property, whichever is higher.
	(C) In any other case		one hundred rupees
47-A	**Clause (d) was inserted** (d) If relating to a multi-unit house or unit of apartment / flat / portion of a multi-storied building or part of such structure to which the provisions of A.P. Apartments (Promotional Construction and Ownership) Act, 1987, apply: (i) to (iv) **… … … …**	Act 21 of 1995 w.e.f. 01.04.1995	**… … … …**
	(Explanation was amended as Explanation-I and Explanation-II) **Explanation-I** An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a sale under this Article: Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in clause B of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed. **Explanation-II** …		

Thus, since 16.08.1986, agreement of sale of immovable property without possession is governed by Article 6 chargeable with small amount of stamp duty, whereas agreement of sale with possession is governed by the Explanation to Article 47 - A, chargeable with duty equal to sale, subject to adjustment when deed of sale follows such agreement.

32. For the present, it is suffice to examine the stamp duty payable on an agreement of sale with possession as on 15.05.1984, as it was argued that the stamp duty on Ex. B22 shall be paid under the proviso to Article 47 - A of the Schedule I - A. Till the year 1986, there was no difference between agreement of sale of immovable property with or without possession and both kinds of them were governed by Article 6 and the rate of stamp duty was Rs.5/-. Later, difference was brought between agreement of sale without possession or with possession in the year 1986 and subsequently, from 01.04.1990, system of slab rates of stamp duty with maximum rate of Rs.100/- under Article 6 was introduced even for agreement of sale without possession.

33. The document marked as Ex. B22 was executed on the stamp paper worth Rs.10/-. Thus, there is no deficiency in the stamp duty on Ex. B22, if it is regarded as an agreement of sale with possession in a suit for specific performance.

34. Though initially, when the application was filed to demark the document, arguments were advanced that Ex. B22 is leviable to stamp duty under Article 47 - A requiring high amount of stamp duty, the said argument was dropped on noticing that as on 15.05.1984, Article 47 - A was not in force, however, as a new dimension of argument was taken up that Ex. B22 is ‘conveyance’ under Section 2 of the Act, 1899 and subject to stamp duty like ‘sale’ and therefore, stamp duty of Rs.10/- paid on it is insufficient and therefore, it cannot be used as evidence of any collateral transaction permitted by proviso to Section 49 of the Act, 1908, unless deficit stamp duty with penalty is paid as required under Section 35 of the Act, 1899.

35. Insofar as the suit for specific performance in O.S. No. 165 of 2011 is concerned, though this document is used as an agreement of sale, it is essentially a sale as has been noted above. It was not argued whether the document is to be stamped like a deed of sale / conveyance even for the purpose of using it as an agreement of sale. If the answer is 'yes', unless the deficit stamp duty and penalty are paid, it cannot be used in that suit and if 'no', there is no scope to question consideration of the document in evidence of the contract.

36. The learned counsel for the revision petitioner relied on a decision of the Supreme Court in **Bidyut Sarkar & Another Vs. Kanchilal Pal (Dead) through L.Rs. & Another**[4] to contend that the suit for specific performance is liable to be dismissed, if the instrument of the agreement of sale which is the basis of the suit is inadmissible in evidence. In that case, the agreement of sale was insufficiently stamped, but no steps had been taken to satisfy Section 35 of the Act, 1899 by paying the necessary stamp duty and penalty. The trial Court dismissed the suit on the ground of inadmissibility of the document in evidence for insufficient stamp duty. The Supreme Court upheld the decision of the trial Court. This decision cannot be applied to the case on hand as there is still opportunity of making the document admissible, if found deficit in stamp duty.

37. Insofar as the suit in O.S. No. 93 of 2008 involving the question of title is concerned, Ex. B22 cannot be used to evidence transfer of the

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4 2024 Supreme (SC) 795

right of ownership in the property as it is the main purpose under the deed, but it can be certainly used as evidence of any transaction permitted under the proviso to Section 49 of the Act, 1908, subject to compliance of Section 35 of the Act, 1899. As per the contents of Ex. B22, the property was delivered, but one of the reliefs claimed in this suit is recovery of possession of the property. Ex. B22 may not be required for the purpose of showing possession (collateral transaction which does not require registration), as the suit itself is filed for delivery of possession. Whenever any document is received in evidence for proof of collateral transaction, it is to be specified. Unlike Section 36 of the Act, 1899, there is no analogous provision in the Act, 1908. It is settled law that merely because a document is marked, objection as to its invalidity for consideration in evidence is not lost and can be raised even at the stage of appeal. Non-registration of Ex. B22 rendered it unfit to use as a sale deed. As a plaintiff in the suit in O.S. No. 93 of 2008, the party can use it for any collateral purpose by specifically indicating it, subject to payment of deficit stamp duty with penalty.

38. It is still to be examined whether the deficit stamp duty and penalty are payable on Ex. B22 like ‘sale’ or ‘agreement of sale’ even for purpose of using it for collateral purpose, as stated above. As such, Ex. B22 need not be demarked at this juncture, since the defect can be still cured, provided the party is prepared to make good the deficiency in the stamp duty with penalty as decided by the trial Court after hearing both the parties as indicated above. The trial Court ought to have decided the admissibility of the document owing to its duty, particularly under Sections 33 and 35 of the Act, 1899. At this juncture, the decision of the common High Court of Andhra Pradesh in **Sheikh**

Qutubuddin & Another Vs. Goli Vishwanatham & Others[5], at paragraph No.19 relied on by the learned counsel for the revision petitioner is relevant. It reads as below:

> "19. In the instant case, one of the objections raised by the petitioners was that the document dated 14.01.2003 is insufficiently stamped and, therefore, is not admissible in evidence. There is no discussion on the objections raised and merits of such objections. No reasons are assigned. Duty is cast upon the trial Court to consider the said objection and pass a judicial order before proceeding further in the matter. More particularly, when the trial Court noticed that an objection was raised, it could not have postponed the issue of deciding the validity of a document and ought to have decided then and there the correctness of the objections before proceeding further."

39. The distinction between marking of a document and admission of a document in evidence has been considered by this Court in **Vayyeti Srinivasa Rao Vs. Gaineedi Jagajyothi**[6] in which, decision of this Court in **B.V. Ramana Reddy & others Vs. Ceylon and India General Mission Church Hindupur & others**[7] was considered to the effect that when a document, though it is insufficiently stamped without hearing the objections raised from other side is marked, it is mere marking a document without admitting in evidence.

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5 2014 (2) ALD 329

6 2023 (3) ALD 273

7 2015 (2) ALD 183

In the case of **Vayyeti Srinivasa Rao** (supra), a suit for specific performance was filed based on an unregistered agreement of sale, dated 14.10.2009. The agreement was marked subject to proof and relevancy in the absence of the counsel on record, but in the presence of his colleague. After marking of the document, the counsel for the party objected before the Court on the ground that the document is a conveyance deed but not an agreement of sale and therefore, it is inadmissible in evidence for want of sufficient stamp duty. The trial Judge, after an elaborated discussion of law on the subject, held that the document marked is liable for stamp duty and penalty and directed the party to pay accordingly, failing which to eschew the document marked. Aggrieved by the order, this revision petition was filed before the High Court. It was argued that the document marked cannot be unmarked in view of Section 36 of the Stamp Act. After considering the legal proposition that when an objection is taken on the ground of insufficient stamp duty or deficit stamp duty, a Court shall hear and decide the objection before admitting the document in evidence, the High Court upheld the order of the trial Court.

40. In **B.V. Ramana Reddy & others** (supra), a suit is filed for declaration of title and for perpetual injunction. Although an objection was raised, a compromise deed, dated 08.08.1998, was marked as Ex.A1, with a statement that the document was marked subject to objection which shall be seen during the final hearing of the suit. The party objecting marking of the document filed a petition under Section 36 of the Stamp Act read with Section 151 C.P.C. challenging marking of the document. The application was dismissed as infructuous because the document had been marked and the objections would be considered during arguments. Aggrieved by the order, the revision petition was filed before the High Court. Besides referring to the other decisions, the High Court relied on the decision of the Supreme Court in **Javer Chand and others Vs. Pukhraj Surana**[8] in support of the legal proposition that when a question as to admissibility of the document is raised on the ground that it was not properly stamped, it shall be decided then and there, when the document is tendered in evidence and that when once Court has rightly or wrongly decided to admit the document in evidence, so far as the parties are concerned, the matter is closed. Reversing the order of trial Court, the High Court directed hearing on the objections as to admissibility of the document and it is only after admission of the same; the document shall be admitted in evidence with an endorsement to that effect and giving exhibit number. To buttress the direction, the High Court referred to the decision of this Court in **Vemireddy Kota Reddy Vs. Vemireddy Prabhakar Reddy**[9] wherein it was observed that once the documents are filed along with an affidavit in the form of chief examination (as per Order XIII, Rule 1 C.P.C.), the Courts shall give a specific date for the purpose of marking of the document in the presence of their counsel and the respective parties on which date the admissibility of the document have to be judicially determined before marking the document and there shall be a specific endorsement of the Judge concerned to the effect that "admitted in evidence" as exhibit.

41. In **Athapuram Raghuramaiah and another Vs. Dyava Ramaiah**[10], this Court while considering the question regarding the

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[8] AIR 1961 SC 1655

[9] 2024 (2) ALD 627

[10] 2012 (6) ALT 271

deficiency of stamp duty of a document, held at paragraphs Nos.10 and 13 as follows:

> "10. There cannot be any controversy with regard to the principle laid down by the apex Court in **Shyamal Kumar Roy Vs. Sushil Kumar Agarwal** [Neutral Citation: 2006 INSC 759] and this Court in **Akkireddy Nagayamma and Another Vs. Adhikari Appalanaidu** [2011 (2) ALD 71] to the effect that Section 36 of the Act would operate after a document is admitted in evidence. But, the question that falls for consideration in this case is whether Exs.B1 to B3 were admitted in evidence so as to attract the provisions of Section 36 of the Act.
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> 13. Similar question was considered by this Court in **Ganta Veeramallu and Others Vs. Tallappallu Komaraiah** [AnWR 1964 AP 468] and **Vemi Reddy Kota Reddy Vs. Vemi Reddy Prabhakar Reddy** [2004 (3) ALD 187], wherein it was held that the words "admitted in evidence" as appearing in Section 36 of the Indian Stamp Act mean "admitted after judicial consideration of the circumstances relating to its admissibility". There shall be judicial determination of the question whether it can be admitted in evidence or not for want of stamp on the day when the document was shown to the witnesses and marked. Merely because a document was marked or shown to the witness would not mean that the objection raised by the opposite party was rejected by a judicial determination."

42. It is also relevant to refer the decision of the Supreme Court in **G. M. Shahul Hameed Vs. Jayanthi R. Hegde**[11], wherein the question fell for consideration is: whether upon admission of an instrument in evidence and its marking as an exhibit by a Court (despite the instrument being chargeable to duty but is insufficiently stamped), such a process can be recalled by Court in exercise of inherent powers saved by Section 151 C.P.C. for ends of justice or to prevent abuse of process of Court. The Court held at paragraphs Nos. 21 & 22 as follows:

> "21. We may not turn a blind eye to the fact that the revenue would stand the risk of suffering huge loss if the courts fail to discharge the duty placed on it per provisions like Section 33 of the 1957 Act. Such provision has been inserted in the statute with a definite purpose. The legislature has reposed responsibility on the courts and trusted them to ensure that requisite stamp duty, along with penalty, is duly paid if an unstamped or insufficiently stamped instrument is placed before it for admission in support of the case of a party. It is incumbent upon the courts to uphold the sanctity of the legal framework governing stamp duty, as the same are crucial for the authenticity and enforceability of instruments. Allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the state. The courts ought to ensure that compliance with all substantive and

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11 AIR 2024 SC 3339

procedural requirements of a statute akin to the 1957 Act are adhered to by the interested parties. This duty of the court is paramount, and any deviation would set a detrimental precedent, eroding the integrity of the legal system. Thus, the court must vigilantly prevent any circumvention of these legal obligations, ensuring due compliance and strict adherence for upholding the Rule of law.

22. Having regard to the aforesaid discussion, we answer the substantial question in the affirmative. Finding no error in the order of the Trial Court dated 19th October, 2010, we set aside the impugned order of the High Court dated 26th September, 2011, meaning thereby that the order of the Trial Court is restored. Since proceedings of the civil suit remained stalled because of pendency of this appeal, we expect the Trial Court to proceed expeditiously and in accordance with law."

43. For any of the reasons stated already, since common evidence is being recorded in both the suits, the document need not be demarked for the time being. Its consideration in evidence is separate and different in both the suits.

44. Insofar as the petition in I.A. No. 668 of 2025 in O.S. No. 165 of 2011 filed under Section 151 C.P.C. is concerned, though petition was filed under Section 151 C.P.C., it has the effect of seeking remedy under Order VII, Rule 11 C.P.C. for rejection of the suit as not maintainable for want of substratum of the case basing on the document marked as Ex. B22 on the ground that it is unregistered and not duly stamped. In view of the foregoing discussion, the suit cannot be dismissed at this juncture and therefore, I.A. No. 668 of 2025 is unsustainable.

45. The learned counsel for the respondent submitted that since the document was marked, by virtue of Section 36 of the Act, 1899, the order admitting the document in evidence cannot be reviewed or revised and referred to a decision of the Supreme Court in **Javer Chand and others** (supra). The learned counsel for the petitioner submitted that this decision has no application to the case on hand in which objection for marking of the document was raised at the earliest time, since in that case it was held that the document had not been inadvertently admitted and further the trial had been all along proceeded on the footing that it was an exhibit in the case and therefore Section 36 had been applied. He further submitted that the trial Court erred in observing that the document cannot be demarked in view of Section 36 of the Act, 1899, basing on case law cited in the order, but the decision or the provision has no application to the present case, because an objection was raised even before marking the document in the present case, whereas no such objection was raised in the cited case. To this extent, the contention is acceptable.

46. At this juncture, it is pertinent to refer the decision of the Supreme Court in **Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanapalle and another**[12] referred by the learned counsel for the respondent, wherein at paragraph No. 13, it was held as follows:

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12 AIR 2001 SC 1321

"13. In the present case, an argument is raised that the instrument is not actually an agreement of sale as envisaged in the Schedule to the Stamp Act (subject to amendment made by the State of Andhra Pradesh) but it is only a deed of compromise entered into by two disputing persons. We refrain from expressing any opinion on the said plea as it is open to the parties to raise their contentions regarding the nature of the document before the trial court. In the present case the trial court should have asked the appellant, if it finds that the instrument is insufficiently stamped, as to whether he would remit the deficient portion of the stamp duty together with a penalty amounting to ten times the deficiency. If the appellant agrees to remit the said amount the court has to proceed with the trial after admitting the document in evidence. In the meanwhile, the court has to forward a copy of the document to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty as provided in Section 40(1)(b) of the Act. Only if the appellant is unwilling to remit the amount the court is to forward the original of the document itself to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty. The penalty of ten times indicated therein is the upper limit and the collector shall take into account all factors concerned in deciding as to what should be the proper amount of penalty to be imposed."

47. He further referred to a decision of this High Court in **Nunna Ravi Kumar Vs. Gurubilli Adinarayana**[13] wherein at paragraph No.12, it was held as follows:

> "12. Even otherwise, in the case on hand, though the petitioner / defendant initially contended that the requisite stamp duty is not paid with respect to the agreement of sale (Ex.A1), pending adjudication of the application (I.A. No. 839 of 2022), learned counsel for the petitioner / defendant admitted that he has no objection if at all the respondent / plaintiff pays the deficit stamp duty with respect to the agreement of sale. As such, the respondent / plaintiff has paid the remaining stamp duty and has filed I.A. No. 795 of 2023 requesting the trial Court to receive the challan pertaining to payment of remaining stamp duty. In these circumstances, the petitioner / defendant cannot now raise any ground against his earlier admission. Once the required stamp duty has been duly paid, the petitioner / defendant has no legal right to challenge the same. It appears that the petitioner / defendant is only trying to drag on the proceedings."

48. Insofar as the petition in I.A. No. 623 of 2025 in O.S. No. 93 of 2008 is concerned, since there is no need to demark the document / Ex. B22 for the present, as the aspects of collateral purpose and the amount of deficit stamp duty and penalty are to be decided on hearing

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13 C.R.P. No. 1274 of 2024, dt.31.10.2025

both the parties as aforesaid, there is no need to allow I.A. No. 623 of 2025 as it is prayed.

49. In view of the foregoing discussion, the trial Court shall hear both the parties and decide as observed by this Court. Thus, the revision petitions are liable to be dismissed subject to this direction in the peculiar circumstances in this matter.

50. In the result, both the revision petitions are dismissed with the above direction.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B.S BHANUMATHI, J

19-02-2026
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