Karnataka High Court K. Anjaneya Setty vs K.H. Rangiah Setty on 3 July, 2002 Equivalent citations: AIR 2002 Kant 387, ILR 2002 KAR 3613, 2002 (4) KarLJ 551 Author: N Kumar Bench: N Kumar ORDER N. Kumar, J. 1. The revision is filed against the order dated 15-12-1998 passed by the Trial Judge on the admissibility of document dated 24-6-1982 which is styled as "Asthivihagada Vadambadike Kararu" which was sought to be marked by the defendant in his evidence. The point that arise for consideration in this revision is, whether the impugned order holding that the document dated 24-6-1982 cannot be received in evidence before the Court of law for want of stamp duty and registration is proper. 2. The plaintiff-respondent filed a suit O.S. No. 1045 of 1994 for the relief of declaration that the plaintiff is having half share in the suit schedule property and for partition and separate possession of his share by metes and bounds and for other consequential reliefs. His case was that under a registered partition deed dated 6-2-1968 all the properties of the joint family were divided between the plaintiff, the defendant and their father. In the said partition "A" Schedule properties fell to the share of the father, "B" Schedule properties fell to the share of the defendant and "C" Schedule properties fell to the share of the plaintiff. There was a specific recital in the partition deed that on the demise of the father, the plaintiff and defendant should divide the "A" Schedule properties belonging to the father equally. Father died in the year 1983. Thereafter, defendant refused to effect partition of "A" Schedule properties and therefore he was constrained to file the suit. In the defence set up the registered partition deed between the parties was admitted. After the death of the father, it was alleged that there was a settlement under a deed dated 24-6-1982 under which the plaintiff and defendant have agreed to give rent to the father and the mother and in pursuance of the family settlement the properties were divided between the plaintiff and defendant and accordingly the suit schedule property has fallen to the share of the defendant. It is also pleaded that the defendant had filed O.S. No. 43 of 1986 against the plaintiff for the relief of permanent injunction and in the said suit document dated 24-6-1982 was marked after overruling the objections of the plaintiff and the said suit came to be decreed after trial. It is after the decreeing of the suit, the present suit is filed praying for partition and separate possession of half share in the father's share of the property. 3. Plaintiff has adduced evidence and closed his side. The defendant while deposing he wanted to produce the deed dated 24-6-1982. The plaintiff objected to the marking of the said document on the ground that it is a partition deed. It is not duly stamped and that it requires registration and therefore it cannot be marked. The learned Trial Judge after hearing the learned Counsels for both the parties, after going through the document has come to the conclusion that the document in question is not properly stamped and registered as required under the statute and therefore it cannot be received in evidence. Thus, he has upheld the objection raised by the plaintiff in marking of the said document. It is this order which is challenge in this revision. 4. Sri Padubidri Raghavendra Rao, learned Counsel for the petitioner, assailing the said order submitted firstly that the document which is now sought to be produced in evidence was produced in the earlier suit between the parties and the plaintiff herein objected to the

said document on the ground of the same being insufficiently stamped and not registered and after considering the rival contentions the said objection was overruled and the said document was marked and therefore that finding operates as res judicata in the present suit and the Court below ought not to have refused to mark the said document. Secondly, he contended what is sought to be produced in the present proceedings is the certified copy of the said document marked in the earlier proceedings and therefore no exception could be taken to the marking of the said document. Lastly he contended even if the said document requires registration and stamp duty as is clear from Section 49 of the Registration Act, the same could be marked for collateral purposes. Therefore, he submits the impugned order passed by the Trial Court is liable to be set aside. 5. Sri A.V. Gangadharappa, learned Counsel for the respondent, per contra contends firstly that the impugned order refusing to mark the document do not amount to case, decided as required under Section 115 of the CPC and therefore against such an order no revision lies. Secondly, he contends the document in question is a partition deed. Admittedly it is not written on a proper stamp paper nor is it registered and therefore when the original of the same itself was inadmissible in evidence question of marking a certified copy of the same in these proceedings would not arise and therefore, the Trial Court was right in refusing to receive the said document in evidence. 6. Learned Counsel for the petitioner in support of his contention has relied on the following judgments.– (1) Raghunath Bhandary v. Seetharama Punja, 1972(1) Mys. LJ. 487: (2) Michael Mascarenhas and Ors. v. John Mascarenhas, 1996(3) Kar. L.J. 114; (3) Gundu Prahlad Patil and Ors. v. Balu Shahu Vajantri and Anr., 1996(3) Kar. L.J. 574;

(4) Biharilal Agarwalla and Anr. v. Tamizul Hague, AIR 1988 Gau. 1.

7. Learned Counsel for the respondent has relied on the following judgments.–

(1) Baldevdas Shivlal and Anr. v. Filmistan Distributors (India) Private Limited and Ors., ;

(2) M.C. Madhura v. Bharatiya Vidya Bhavan and Ors., 1980(2)Kar. L.J. 305;

(3) Smt. Parvatamma v. Anjanappa and Ors., 2000(3) KCCR 2356

8. In view of the aforesaid rival contentions, the points that arise for my consideration in this revision are as under.–

(a) Whether an order refusing to receive the document tendered in evidence amounts to “a case decided” and against such an order whether a revision lies under Section 115 of the CPC?

(b) If it is held that a revision lies whether the order refusing to receive the document in evidence could be sustained?

9. The main objection of the learned Counsel for the respondent is that an order refusing to admit a document in evidence would not amount to case decided under Section 115 of the Civil Procedure Code and therefore it is not open to this Court to entertain this revision and consider the order passed by the Trial Court on its merits. Therefore, everything revolves round the question whether such an order amounts to case decided.

10. The Hon'ble Supreme Court in the case of Major S.S. Khanna v. Brig. F.J. Dillon, dealing with the expression "case" has held as under.– "The expression"case" is a word of comprehensive import; it includes civil proceedings other than suits, and is not restricted by anything contained in the section to the entirety of the proceeding in a Civil Court. To interpret the expression "case" as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence to which the jurisdiction to issue writs, and the supervisory jurisdiction are not subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice. The expression "case" includes a suit, but in ascertaining the limits of the jurisdiction of the High Court, there would be no warrant for equating it with a suit alone".

11. Again the said expression came up for consideration in the case of Baldevdas Shivlal, supra, and the Supreme Court has held as under.– "(B) The expression"case" is not limited in its import to the entirety of the matter in dispute in an action. The expression 'case' is a word of comprehensive import; it includes a civil proceedings and is not restricted by anything contained in Section 115 of the Code to the entirety of the proceeding in a Civil Court. To interpret the expression 'case' as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant where it is most needed and may result in the perpetration of gross injustice. But every order of the Court in the course of a suit does not amount to a case decided. A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a 'case decided' within the meaning of Section 115. By overruling an objection to a question put to a witness and allowing the question to be put, no case is decided".

12. Following these two judgments this Court in the case of Michael Mascarenhas, supra, has held as under.– "9. . . . the decisive factor to find out the revisability of an order is whether by such order any right or obligation of the parties in controversy gets decided. The right or obligation need not necessarily have a nexus to the main lis and in the progression of the

suit towards its final adjudication and the final resolution of the controversy between the parties. Very many rights and obligations do crop-up and they have foundations both in substantive law as well as in procedural law and if they get decided by such interlocutory orders, they are certainly revisable".

13. Again this Court in the case of Gundu Pralhad Patil, supra, has held as under.– "8. . . if a substantial right of a party in the course of a proceeding is prejudiced or jeopardised or seriously affected, that regardless of the fact that it is at an interlocutory stage, it would still be permissible for the party to ask for the exercise of revisional powers under Section 115, as is the case here".

14. A Division Bench of this Court in the case of Vijaya Bank Employees Housing Co-operative Society Limited, Bangalore v. C. Srinivasa Raju and Anr., , dealing with the scope of revision under Section 115 of the CPC has held as under.– "14. Thus it is clear that an interlocutory order in a suit or proceeding can be held to be a 'case decided' if by such an order there is an adjudication for the purpose of the suit or proceeding some right or obligation of the parties thereto in controversy but not every order passed in the course of a suit or proceeding irrespective of the fact whether it decides some right or obligation of the parties in controversy. In the course of a suit or proceeding, several orders are passed by the Court 'trying a suit or proceeding. Every such order cannot be held to decide some right or obligation of the parties. However, there are several orders passed during the course of a suit or proceeding affecting the rights and obligations of the parties to the suit or proceeding. Such rights may be substantive rights or procedural rights. . .".

15. Therefore, it is clear from the aforesaid decisions the "case decided" referred to in Section 115 of the Civil Procedure Code does not mean the entire case or suit. If the entire case or suit is decided on merits in one way or the other a statutory appeal is provided under Section 96 of the Civil Procedure Code to challenge the said judgment and decree. Section 104 read with Order 43 provides for appeals against orders passed on interlocutory applications, enumerated in the said provision. The explanation to Section 115 of the CPC, which was introduced by way of amendment by Act 104 of 1976, makes it clear that the expression "any case which has been decided" includes any order made, or any order deciding any issue, in the course of a suit or other proceeding, setting at rest the controversy regarding the interpretation to the phrase "case decided". Therefore, Section 115 of the Civil Procedure Code which confers a supervisory role on this Court has to be exercised at an interlocutory stage prior to judgment and decree and against orders which are not covered under Order 43 of the CPC and would have the effect of deciding the case between the parties. Therefore, it necessarily follows it has to be against an interlocutory order passed in a suit. From the stage of institution of the suit till its final

disposal by way of a judgment and decree there are various stages in a suit where the Court is called upon to decide several important rights of the parties. The said rights may be substantial or procedural. If in deciding such rights interlocutory orders are passed if those orders tend to decide the rights of the parties conclusively and finally then the correctness or the legality of the order as set out in Section 115 has to be gone into by this Court in its jurisdiction under Section 115 of the CPC. In passing such orders if the Trial Court has not violated any of the conditions stipulated in Section 115 then it can be legitimately said against such orders no revision lies. Therefore, the words "case decided" cannot be limited in its import to the entirety of the matter in an action. Any interpretation contrary to this on the said word imposes an unwarranted restriction on the exercise of the powers of superintendence by this Court. Otherwise Section 115 of the CPC would be otiose and certainly that was not the intention of the legislature in providing remedies as contained in Sections 115, 96 and 104 read with Order 43 of the CPC.

16. Now the question is whether an order passed by the Court below either admitting a document in evidence or refusing to admit a document in evidence amounts a case decided and is revisable under Section 115 of the CPC.

17. This Court in the case of Raghunath Bhandary, supra, repelling the contention that a revision would not lie against an order regarding the admissibility of a document in evidence, the Court held as under.– "The Court below in the present case has decided the question arising under the Stamp Act and when such a question is decided it has to be settled without delay in revision and cannot be kept for adjudication at a later stage".

18. Again in the case of Gunda Pralhad Patil, supra, where the Trial Court had refused to receive an unregistered lease deed on record when the said order was challenged in revision it was contended that as the order of the Trial Court does not amount to case decided revision petition is not maintainable, this Court held as under.– "4. With regard to the aspect of maintainability, though I do concede that the Courts will have to be circumspect with regard to orders that are passed particularly in the course of reception of evidence, it is equally necessary to discriminate between the large number of situations where a revision would not be entertained by the High Court and the few situations in which it would still be permissible. The real test would be as to whether prejudice caused to the affected party is so far reaching and so grave as to result in a total failure of justice or miscarriage of justice. If the answer to this question is in the affirmative, then it is no solution to state, that it would be open to the party to thereafter file an appeal, have the order set aside and then go for a retrial. Not only would this constitute waste of considerable judicial time, but the damage to the affected party would be almost irreparable. It is from

this angle that the facts of the present case will have to be examined and I have no doubt, on a perusal of the document that is before me that the petitioners' learned Advocate is justified in his submission that the petitioners-plaintiffs case does heavily depend on this document. It may be true that since the document is not a registered one, that there would be certain restrictions as regards its evidentiary value and to what extent the Court can look at it and what sort of inferences or conclusions can be drawn. That does not mean that the learned Judge was justified in having refused to admit the document in evidence".

19. Again in the case of Michael Mascarenhas, supra, when the Trial Court refused to mark an affidavit sworn to by P.W. 1 when he was confronted with the same in cross-examination the objection of the plaintiff regarding admissibility was upheld by the Trial Court. In revision when the said order was challenged it was contended that revision petition is not maintainable as the order of the Trial Court does not amount to case decided. In that context, the Court held as under.– "10. ... It is required to be stated that the party has got a right to place evidence which he could to substantiate his case before the Court and of course, subject to the law of evidence and of the Code and it is the duty of the Court to receive such evidence unless there are other justifiable factors in law to decline to receive such evidence. The law of evidence enjoins upon the party to prove the fact which he relies on and in that sense, an obligation is cast upon the party and if he fails to discharge that obligation, adverse consequences will follow and will have to face the repercussions of the same. This right of the party to adduce evidence gets adjudicated in the interlocutory proceedings. When there is a decline by the Court to permit the party to confront the statement made in the affidavit to the maker thereof, the order certainly disposes of the right claimed by the party to place the requisite evidence in this behalf. The question as to whether a particular order adjudicates some rights or obligations of the parties in controversy will depend upon the nature of the right or obligation and it is not possible to lay down a uniform rule. Having regard to the facts and circumstances of this case, it cannot be said that the impugned order did not decide any issue or some right or obligation of the parties in controversy. Here, the right of the party to adduce evidence in substantiation of his case has been shut out and the implication of the denial of such right will naturally prejudice the right of the party to adduce evidence on his behalf to substantiate his claim. It is hardly required to be stated that the admission of a party is the best evidence in the case. By this piece of evidence, the endeavour of the learned Counsel for the defendants was to disprove the fact that the executors of the 'Will' have attested the same. Shutting out such evidence which a party is entitled to place before Court to substantiate his case, definitely decides the right of the party, adversely against him and in this view of the matter, the order passed by the Court below is a case decided and apart from that, on merits the order passed

by the Court below comes within the mischief of Section 115 of the CPC. . .".

20. The learned Counsel appearing for the respondent sought to rely on two judgments of this Court which has taken a contrary view from the aforesaid judgments. In the case of M.C. Madhura, supra, this Court has held as under.– "5. . . . Thus it becomes clear that an order passed, during hearing of the case, rejecting or admitting a document into evidence, would not amount to a case decided. If a party is aggrieved by such an order, he can press into service the ground in an appeal against the decree and not in revision". However, after observing as aforesaid when it was pointed to the learned Judge the law laid down by this Court in the case of Raghunath Bhandary, supra, it was held as under.– "6. ... a decision given by a Court regarding the admissibility of a document under the Stamp Act has to be challenged at that stage itself and therefore is revisable under Section 115 of the Civil Procedure Code. That is, no doubt, true, because a provision has been made in the Stamp Act itself in that regard that an objection must be taken at the earliest stage (vide Section 36). Hence, I am of the considered view that a mere order disallowing an application during cross-examination or an order rejecting a document during hearing or admitting a document into evidence would not amount to a case decided. Hence, it is not revisable under Section 115 of the CPC".

21. In a recent judgment this Court in the case of Smt. Parvatamma, supra, has held that the order impugned overruling the objections raised by the defendant regarding the admissibility of the document cannot be said to be an order amounting to a case decided and therefore a revision petition does not lie against such order.

22. Let me consider a few cases where the application of this rule would cause undue hardship. In a suit for specific performance, the agreement of sale is written on a Rs. 200.00 stamp paper which is the stamp duty prescribed under law. If the defendants were to raise an objection that the said document is not duly stamped and that it requires registration and therefore, it cannot be marked in evidence, if the Court were to uphold the said objection and does not permit the said document to be marked in evidence what would be the position? Admittedly, the stamp duty prescribed under law for an agreement of sale is Rs. 100.00. The agreement of sale does not require registration. In the absence of the said document being marked the plaintiff is bound to fail in the suit.

23. Similarly, in a suit for recovery of money, if the defendant sets up a plea of discharge and produces a receipt in the handwriting of the plaintiff acknowledging the amount and if it is not duly stamped and if such an objection is taken by the plaintiff and if such objection is upheld by the Court, the document will not be marked. It is settled law even if necessary stamp duty is not paid on the said receipt by impounding the said

document the Court can call upon the party to pay duty and penalty on the said document and admit the document in evidence. However, on that ground if the said document is not marked, the entire defence of the defendant fails.

24. Similarly, in a suit for partition and separate possession, if the defendants were to set up a plea that prior to the suit there was an oral partition by which the family properties are all divided and as the said partition was not evidenced by a document, he were to rely on a memorandum which has come into existence subsequently recording the previous oral partition and setting out the properties which are allotted to the sharers in the said partition and if such document is objected to on the ground either it is not duly stamped nor it is registered and if such an objection is upheld then the defendant's defence of earlier partition would fall. Similarly, in a case when Palupatti is prevented from being marked in evidence on the ground that it requires registration, conversely there may be cases where a pronote which is insufficiently stamped though objected to is permitted to be marked in evidence and a document which is not duly stamped though objected to if it is permitted to be marked in evidence and if those orders permitting the said document are not allowed to be challenged in the High Courts, the said orders become final, and it would decide the suit finally one way or the other. These instances are only illustrative and not exhaustive. In fact, Section 35 of the Karnataka Stamp Act clearly sets out that an objection regarding insufficiency of stamp duty is to be raised at the time of marking and if such an objection is raised, the Court shall decide the said objection before receiving the said document in evidence and such an order if not challenged in revision becomes final and such an objection cannot be taken in the higher forums.

25. However, it is also not possible to hold that in all cases of either admitting a document or refusing to admit a document such order would amount to "case decided". Each case and the order passed has to be taken in the context of the facts of the particular case, the nature of the document and the effect of either admission of a document or refusing to admit the said document. Broadly speaking it could be safely said the document sought to be marked if it is a suit document or if it is in the nature of a suit document, or if the document on which the entire defence of the defendant is based or if admission or refusing to admit such document would materially affect the ultimate outcome of the suit or a right of the party is decided finally, the order admitting or refusing to admit such document could be held to amount to "case decided". However, if the document do not fall in any of those categories and are produced as a piece of evidence in support of the main case or defence, mere marking or refusal to mark such document cannot be said to amount to "case decided". Therefore, it cannot be said as a general rule that an order either admitting the document or refusing to admit the document is not revisable as it does not amount to a "case decided".

26. The argument that if such orders are allowed to be challenged in revision and in such petitions if order of stay is granted in respect of further proceedings of the suit, it would drag on the proceedings endlessly and therefore the revision is held to be not maintainable on the premise that such order does not amount to "case decided", is concerned, the very object is defeated if after the final disposal of the suit, the Appellate Court were to find fault with such orders and consequently orders for remand of the matter to the Trial Court, the duration taken for disposal of such matters would be enormous. Moreover when the matters are remanded the original parties may not be alive and the very object would be frustrated. The said complaint can be remedied by not admitting the revision petitions and by ordering notice to the Counsels who are appearing in the Court below and dispose of such revision petitions expeditiously at the admission stage itself. These problems are agitating the legal fraternity for quite some time and merely because we are unable to find a practical solution it cannot be said that the revision petition should not be entertained at all. In fact the Supreme Court taking note of these problems has suggested a solution by prescribing the following procedure in a recent decision in the case of Bipin Shantilal Panchal v. State of Gujarat and Anr., AIR 2001 SC 1158 : (2001)3 SCC 1 has held as under.– "12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the Trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the Appellate or Revisional Court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the Appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the Trial Court. In such a situation the higher Court may have to send the case back to the Trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

27. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the Trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded

from consideration. In our view there is no illegality in adopting such a course. However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.

28. The above procedure, if followed, will have two advantages. First is that the time in the Trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the Trial Court, can determine the correctness of the view taken by the Trial Court regarding that objection, without bothering to remit the case to the Trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses,

29. We, therefore, make the above as a procedure to be followed by the Trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence".

30. Therefore, having regard to the past experience, the difficulties experienced in following the settled practice and in view of the aforesaid Supreme Court judgment setting out the procedure to be followed, the proper course to be adopted in my view would be this. When an objection is raised for marking of a document, the Court should record the objections and thereafter permit the document to be marked subject to objections. Thereafter, the parties may be allowed to cross-examine the witnesses on the basis of the said document. At the end of the trial while hearing the arguments on the main, arguments regarding admissibility of the document also be heard. If the Court upholds the objections it could exclude the said document and the oral evidence led in respect of the said document from consideration. If the said objection is overruled then the Court would decide the case on merits by taking note of the said document and the oral evidence in respect of the said document on record. In appeal the Appellate Court would again go into the aforesaid questions and pronounce its judgment on merits. If ultimately the document is held to be inadmissible and the oral evidence recorded in respect of the said document has to be excluded, it could be said so much time of the Court in recording the evidence was wasted. When compared to the time taken to hear the arguments regarding objection and the orders passed thereon and in case the matter is taken up in revision the time spent therein, in appeal if that objection is taken and if that objection is overruled and the matter has to be remanded, the time so spent in recording evidence would be negligible and such a procedure could advance the cause of justice. It also cannot be forgotten that the parties to the litigation will be totally innocent about

these procedural wrangles and they will never be able to understand why the document is not marked or why the matter is remanded, why without finally deciding the case on merits the case is being tossed from one Court to another. Therefore, though it is settled practice that when any objection is raised regarding marking of a document it has to be heard and decided at that stage itself, a time has come to recast or remould the procedure, as suggested by the Supreme Court which would be a better substitute for the existing one, which would help in acceleration of the trial, except of course regarding objection relating to deficiency of stamp duty.

31. In the instant case defendant wanted to mark the document dated 24-6-1982 which is styled as "Vodambadike Kararu" which is on a Rs. 10.00 stamp paper. The objection was the said document is in the nature of a partition deed, which is not duly stamped nor is it registered as it is a compulsorily registerable document.

32. Per contra, the defendant contended the said document was marked as Ex. D. 1 in O.S. No. 43 of 1986 on the file of the same Court after overruling similar objections raised in the said suit and subsequently the said suit came to be decreed relying on the said document and now the matter is in appeal and therefore it is not open to the plaintiff to object to the marking of the said document as such objection has been considered in the earlier proceedings between the same parties and marked. On consideration of the rival contentions while refusing to admit the said document, the Court below has held as under.– "Therefore, this document cannot be received as evidence for want of registration. Insofar as the stamp duty is concerned that could be received by imposing duty, penalty, in view of the non-registration this document cannot be marked as evidence before the Court". While considering the argument that it had been already marked in the earlier suit, the Court has held as under.– "The defendant wants to mark this document for any collateral purpose i.e., the possession or any other circumstances called for that can be do so in order to establish the possession the defendant might have relied on this document in another suit. The Court for collateral purpose might have received the same. In the instant case when the parties claim right over the document it cannot be possible to receive it as evidence unless it is properly stamped and registered as required under the statute". Therefore, it is clear the said document is held to be inadmissible as it is compulsorily registerable. However, the Court also takes note of the fact that in the earlier proceedings the said document could have been marked for collateral purposes.

33. Though Section 49 of the Registration Act prohibits receiving as evidence the documents requiring registration under Section 17 which are compulsorily registerable the proviso to the said section provides for receiving such documents in the circumstances narrated therein. Therefore, it is clear there is no total prohibition for receiving unregistered documents in

evidence and it is settled law that an unregistered partition deed could be received in evidence to prove any collateral transaction. Therefore, even though an unregistered document is marked that in no way affects the interest of the parties. Mere marking of the document does not take away the right of the opposite party to contend that such a document cannot be relied upon as it is not registered. Similarly, when the law declares for collateral purposes an unregistered document could be looked into it makes clear that such a document could be marked. Under these circumstances, the proper course for the Courts would be to mark such documents, subject to objections, permit the parties to adduce evidence, instead of putting questions to the lawyers at the time of argument to state for what purpose they are relying on the said document. Thereafter consider the respective contentions at the time of final hearing and then decide whether the said document could be looked into for collateral purposes and whether non-registration of the said document has made it inadmissible in evidence. Therefore, the approach of the Court below cannot be sustained.

34. Keeping open all the contentions of both the parties, the impugned order passed by the Trial Court is set aside. The Court below is directed to mark the said document after noting the objections of the plaintiff and to consider such objections on its merits without being influenced either by its earlier order or by this order while considering the merits of the case. In the event the Court comes to the conclusion that the said document is inadmissible, it can exclude the said document and the oral evidence adduced by the parties in respect of the said document and pronounce its judgment on merits. If the Court holds the said document is admissible then consider the entire material on record and pronounce its judgment on merits. Hence, I pass the following order.–

35. Civil Revision Petition is allowed. The impugned order of the Trial Court is set aside, subject to the observations made above.

36. Parties to bear their own costs.