

**A CRITICAL STUDY OF PROVISO TO SECTION 49 REGISTRATION ACT  
REGARDING ADMISSIBILITY OF UNREGISTERED DOCUMENTS IN  
EVIDENCE WHICH ARE OTHERWISE IN ADMISSIBLE IN EVIDENCE**

*By*

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An honest endeavour is made on a painstaking effort of analyzing innumerable judgments to explain the scope of the proviso to Section 49 Registration Act which deals admissibility of unregistered documents based on the conspectus of several authorities of the Supreme Court and other High Courts relating to the suits for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument.

As a prefatory caveat, Section 49 of the Registration Act lays down the effect of non-registration of documents required to be registered. For proper and better appreciation, Section 49 is extracted as hereunder

“No documents required by Section 17 or by any provisions of Transfer of Property Act 1882 to be registered shall

(a) Affect any immovable property comprised there in, 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

***Be this section as it may***

However the proviso provides two exceptions, with respect to admissibility unregistered documents in suits covered by specific performance and with respect to evidence of any collateral transaction.

Dealing with the two exceptions, there is no difficulty so far as first exception is concerned. The entire controversy looms large only with respect to second proviso touching on evidence as a collateral transaction.

***Exceptions***

*Suits relating to Specific Performance*

This is a simple litmus test and there no any sort of difficulty and dose not lead to any interpretation and the documents is admissible in evidence

**2004 (4) ALD**

Which lays down

A mere pusual of the proviso in Section 49 which ordains

Shows that an exception is carved from the rigor of Section 49 which ordains that the documents which required to be registered under Section 17 of the Registration Act shall not be received as a evidence of any transaction effecting such property or conferring such power unless it has been registered.

The exception applies to three categories namely (1) the documents may be received as evidence of a contract in a suit for specific performance (2) as evidence of part performance of a contract for the purpose of Section 53-A T.P. Act, 1882 and (3) as evidence of any collateral transaction not required to be effected by registered instrument. In respect of these three

categories of transactions, notwithstanding the fact that the documents which is required to be registered has not been registered and therefore shall not be received as evidence, can be received as evidence.

To a similar effect is the decision, 2009 (6) ALD 497

“Section 49 of the Act deals with effect of non registration of documents required to be registered Section 49(c) proviso specifies that” no document required by Section 17 or by any provisions of T.P. Act, 1882 to be registered shall be received as evidence of any transaction affecting such property or conferring such power unless it as been registered. Further the proviso specifies provided that an unregistered documents affecting immobile property and required by this Act or T.P. Act, 1882 to be registered may be received as evidence of a contract in suit for specific performance under Chapter 2 of Specific Relief Act, 1877, or as evidence of part performance of contract for the purpose of Section 53-A T.P. Act, 1882 or as evidence of any collateral transaction not required to be effected by registered instrument.”

### Exception 2

Now let us take up the next limb of controversy with respect to evidence of any collateral transaction, which requires a depth of study leading to the connotation of the expression “collateral purpose”

The Supreme Court in *K.B. Saba and Sons (P) Ltd. v. Development Consultant Ltd.*, (2008) SCC 564 after reviewing exhaustively the law on the subject has culled the following five principles.

- (1) A document required to be registered if un-registered is not admissible in to evidence under Section 49 of the Registration Act

- (2) Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

- (3) A collateral transaction must be independent of or divisible from the transaction to effect which the law required registration

- (4) A collateral transaction must be a transaction not itself required to be effected by a registered document, that is a transaction creating *etc.*, any right, title or interest in immobile property of the value of rupees 100 or up words.

- (5) If a document is in admissible in evidence for want of registration none of its terms can be admissible in evidence that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

In *Bounder Singh and others v. Nihal Singh and others*, AIR 2003 SC 1905, Supreme Court has held “under law a sale deed is required to be properly stamped and registered before it convey title to the vendee. However legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence can be looked into for collateral purpose. In the present case the collateral purpose to be seen is the nature of possession, of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land is not illegal or unauthorised.

In the back drop of this legal scenario, what a collateral purpose is not free from doubt. Even at the risk of repetition, a collateral transaction is one which is independent of or divisible from the transaction to affect which the law requires registration. As a corollary, it must be

document which does not create any right title or interest in movable property of the value of rupees one and up words.

### Conclusions

In 2012 (2) ALD (NOC 19) = 2011 (2) ALT 373, a learned Single Judge of A.P. High Court placing reliance on the decision of the Supreme Court 2009 (1) ALD 109 (SC) held that an unregistered sale deed is admissible in evidence to show the character of possession.

In AIR 1969 AP 242 a five Judge Bench held that though an unregistered partition deed cannot be looked into for terms of partition it can be looked into for establishing severance in status. Thus for establishing the collateral purpose of proving the factum of earlier partition and the consequential nature of possession of the parties to the documents an unregistered partition deed can be let in evidence. Similarly it was held in 2015 (2) ALD 623 “An unregistered partition deed is admissible in evidence and can be marked in evidence in a suit for partition for collateral purpose of establishing possession over the suit property, subject to prohibition it cannot be looked into for establishing shares of respective parties effected by earlier partition.”

An unregistered sale deed is admissible evidence for the limited purpose of proving possession

The study of mine would be in complete if some other illustrations touching on the collateral transactions are not enumerated culled out from authorities (2012 (6) ALD 163 at 173).

### Some illustrations

- (1) If a lesser sues is lessee for rent on an unregistered lease which has expired at the date of the suit he cannot succeed for two reasons namely that the lease which is registerable is unregistered and that the period of lease has expired

on the date of filing of suit. However such a lease deed can be relied upon by the plaintiff in a suit for possession filed after the expiry of lease to prove nature of defendant's possession.

- (2) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt provided the mortgage deed contains a personal covenant by the mortgagor to pay
- (3) In an unregistered agreement dealing with the right share in certain lands and also to a share in a cash allowance the party is entitled to sue on the document respect movable property
- (4) An unregistered deed of gift requiring registration under Section 17 of the Registration Act, is admissible in evidence not prove the gift but to explain by reference to it the character of the possession of the person who held the land and who claimed it not by virtue of deed of gift but by setting up the plea of adverse possession.
- (5) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession
- (6) An unregistered document effecting immovable property can be admitted in evidence of any collateral transaction not required to be registered by a registered document (please see 2015 (2) ALD 625)

The above instances are only illustrative and it cannot be considered as be all and end all of the matter

The Bench and the Bar is well acquainted with these well settled propositions. However, for the limited purpose of enlightenment a painstaking effort is made delved into the

problem in depth an came up with the suggestions to propagate the law to the extent my ability in view of frequent occurrence in day-to-day judicial administration.

## INJUNCTION SUITS – DETERMINATION OF TITLE IS MANDATORY

By

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The Age old concept of *sine quinine* for the issue of *ad interim* injunction, be it prohibitory or mandatory requires the existence of *prima facie* case, balance of convenience, irreparable loss is now extended to for determination of title also especially in respect of mandatory injunction.

In 2000 (Supreme Court Civil Reporter) 99. The Hon'ble Supreme Court held as follows :

“Court shall not exercise the power of granting a decree of permanent injunction in mandatory form without deciding the question of title and leaving the same open”.

To a similar effect the other decisions of the High Court of A.P., 1985 (1) APLJSN 30

Suit for injunction without a declaratory relief. Question of *prima facie* title of the plaintiff should be gone into. Failure of the plaintiff having *prima facie* title to prove effective physical possession, interim injunction cannot be granted.

2016 (1) ALD 461 at 473 Para 29

Though it is a suit for injunction title has to be gone into to decide *prima facie* case and balance of convenience.

2005 (1) ALD 268 at 274 para 14

Normally the Court while dealing with the suit for perpetual injunction on the question of possession of the plaintiff as on

date of filing of the suit will be taken as primary factor for consideration, it is also well settled preposition of Law, that in a suit for injunction the question of the title has to be gone into, what is the effect of consideration and decision regarding the finding relating to the title in a suit for injunction is a different subject. But the law established and remained unsettled is the question of title can be gone injunction suits.

AIR 2005 SC 1444

When the question of plaintiffs possession is to be decided in the sui, pending suit, it is not proper to grant any mandatory injunction.

This important aspect is ignorantly ignored at times by the Subordinate Judiciary leading to erroneous judgments and orders which exercise is palpably perverse and without jurisdiction. It is said perversity can pertain to the understanding of Law or the appreciation of pleadings or evidence.

Hence it may be reiterated with due respect the Subordinate Judiciary is to follow the mandate of the land mark verdict of the Supreme Court and also on the conspectus of several other authorities as suggested supra to avoid multiplicity of proceedings at several level and consider the question of title also for consideration of *prima facie* case particularly while issuing mandatory injunction in order to establish quality of Justice.