(DB) and *R. Suresh Babu v. G. Rajalingam and others*, 2017 (1) ALT 668.

It is the general proposition of law in view of the provisions of Section 49 provides that any document which is required to be registered, if not registered, shall not effect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act. It is also true that in accordance with the provisions of Section 107 of the Transfer of Property Act, 1882, a lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument, as per Section 123 of the Transfer of Property Act, 1882 a gift of immoveable property the transfer must be effected by a registered instrument signed by or on behalf of the donor; and attested by at least two witnesses, as per Section 17 of Registration Act any instrument of immovable property more than Rs.100/- which create interest in immovable property shall be registered.

WHETHER AND WHEN EX PARTE AD INTERIM INJUNCTION CAN BE GRANTED

By

–POLLA SAMBASIVA RAO, Advocate
Narsipatnam

It is well settled, grant of injunction, *ex parte* or otherwise, is the discretion of the Court, but that discretion is guided by the well regulated principles, covered by Order 39 CPC in which temporary injunction may be granted

Where in any suit it is proved by affidavit or otherwise :-

(a) where any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or

(b) that the defendants threatens or intends to remove or dispose of the property with a view to defrauding his creditors.

(c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

The Court may by order grant a temporary injunction to restraining such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or

disposition of the property or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until disposal of the suit or until further orders.

In the backdrop of this legal scenario as a preparatory caveat, it is profitable and desirable to focus and the provision Order 39(3) C.P.C., which lays down that the Courts in all cases, except where it appears, that the object of granting injunction would be defeated by delay notice to the other side in dispensed with and an *ex parte* injunction may be granted against the defendant or defendants. The Court has a discretion to issue an *ex parte* injunction subject to consideration of existence of *prima facie* case in favour of the petitioner, with reared to the apprehension of danger to the property or if such relief is not granted, it leads to irreparable injury or in otherwords, it would defeat the very purpose, for which the suit is filed.

The grant to an *ex parte* injunction is a discretionary remedy and in exercise of such judicial discretion in granting or refusing to grant, the Court will consider the following ingredients.

(1) Whether the petitioner has made out a *prima facie* case?

(2) Whether the petitioner would suffer irreparable loss if the proposed injunction is not granted?

In the recent decision reported in 2015 (1) ALD 465, adverting the provisions of Order 39(1) CPC the Honourable Court has laid down as follows:

Paragraph 6 at Page 6

"The above referred provision enables the Court to grant temporary injunction even without issuing notice to the respondents. The above provision has been made with an intention to preserves the property as it is when any property is in dispute is in danger of being wasted, damaged or alienated by any party to the suit or where the defendant threatens or intends to remove or dispossess of his property with a view to defrauding his creditors or where the defendant threatens or dispossess to plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in suit, the Court may grant temporary injunction. Ofcourse, the plaintiff has to establish *prima facie* case. It becomes the duty of the Court, to examine whether there is any urgency in the matter, or not. The Court should go through the averments made by the party in the supporting affidavit and also the pleadings and documents filed in support of the case the Court must grant temporary injunction and see the plaintiff is required, in meanwhile. The urgency of the passing orders under Order 39(1) CPC should be kept in mind. Even where the Court is not inclined to grant temporary injunction or decides to issue urgent notice in that case also the Court should give urgent notice and post the matter to a shortest date"

Reasons for the issue of *ad-interim* injunction, while granting *ex parte* injunction, the Court shall record its reasons for its opinion, the object of injunction would be defeated by delay.

Reasons have to be given for passing *ex parte* injunction order, else it is void (1980 (2) ALT 472, 1985 (2) ALT 339 = 1985 (3) APLJ 205 (DB) and 2003 (2) CCC 285 (AP))

Be this as it may, when once an *ex parte* injunction is granted the Court should make its honest endeavor to dispose of the application within thirty days and such order of *ex parte* injunction should not continued for an indefinite period. It continuation should be restricted to a given date. It should be implemented.

The diligent search made indicates this provision of time limit has not been almost

complied with and after a prolonged fight the matter appears to be disposed of.

A vacate-injunction order must be disposed of expeditiously (please see 1980 (2) ALT 472)

It is suggested, these provisions are to be complied with in order to set at rest the controversy and let me conclude by an appeal to the Bench and Bar, it is time the enlightened sections of the Bar and Bench ponder over the matter and everyone concerned with law cannot be oblivious with these well settled principles of law.

PROCEDURE TO BE FOLLOWED WHEN THE COURT HELD AFFIDAVIT OF CHIEF EXAMINATION FILED UNDER ORDER 18 RULE 4(1) OF CPC CONTAINS INADMISSIBLE AND IRRELEVANT MATTER

By

–MANDAVA VENKATESWARA RAO,
Advocate, "Panchavati"
Avanigadda-521121,
Krishna District, A.P.

1. Evidence Act does not apply to "affidavits". Section 1 of Evidence Act positively mentions; It applies to all judicial proceedings. *But not to "affidavits" presented to any Court of officer etc.*

2. Section 3 of Evidence Act defines the word "Evidence". It also does not include "affidavit" in the definition of "Evidence".

3. The Court on merits held that the document is inadmissible in evidence. As per *Section 91 of the Evidence Act*, no evidence shall be given in proof the inadmissible document.

4. Prior to the substitution of Order 18 Rule 4 of C.P.C., by amendment Act 22 of 2002 which came into force on 1.7.2002, Order 18 Rule 4 reads *"Witnesses to be examined in open Court*. The evidence of witnesses shall be taken orally in open Court in the presence and under the personal direction and Superintendence of the Judge".

So then, when an objection is raised with regard to proof and admissibility of document, the Court could decide the matter then and there itself and proceed with further recording of evidence after the objection is decided either way in accordance with that decision.

5. But, the new Order 18 Rule 4(1) reads "In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. *Provided* that where documents are filed and the parties rely upon the documents, the *proof and admissibility* of such documents which are filed alongwith affidavit shall be *subject to the orders of the Court.*

Under the present provision the examination-in-chief of a witness shall be on affidavit and copy thereof shall be supplied to the opposite party.

As per the proviso under Rule 4(1) of Order 18 when objection is raised by opposite party with regard to proof and admissibility of document the Court has to pass orders on those aspects.

6. Our High Court in a decision reported in *AIR 2005 AP 253 (F.B) Para 24 at P.260)* held that "An affidavit is merely an affidavit