HC-KAR

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.202586 OF 2025 (GM-CPC)

BETWEEN:

CHANDRASHEKARAIH @ SHEKARAIAH
S/O MAHALINGAIAH
AGE: 64 YEARS OCC: AGRICULTURE
R/O JAMBUNATHANAHALLI, TALUK SINDHANUR
DIST. RAICHUR-586128.

…PETITIONER

(BY SRI MAHANTESH PATIL, ADVOCATE)

AND:

1. PANDITARADHYA
   S/O GAJADANDAIAH,
   AGE: 66 YEARS OCC: AGRICULTURE AND BUSINESS,
   R/O MANNUR KOTTUR SWAMY MATHA,
   BRUHANMATHA BANDI MOT,
   BENGALURU ROAD, BELLARY-583101.

2. KOTRASWAMY
   S/O CHANNABASAIAH,
   AGE: 81 YEARS OCC: AGRICULTURE AND RETD EMPLOYEE,
   R/O MANNUR KOTTUR SWAMY MATHA,
   BRUHANMATHA BANDI MOT,
   BENGALURU ROAD, BELLARY-583101.

3. BASAIAH
   S/O MAHALINGAIAH,
   AGE: 62 YEARS OCC: AGRICULTURE

R/O JAMBUNATHANAHALLI, TALUK SINDHANUR
DIST. RAICHUR-586128.

…RESPONDENTS

(BY R1 & R2 SERVED;
V/O DATED 03.06.2026 NOTICE TO R3 D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) SET ASIDE THE ORDER DATED 16-07-2025 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC, SINDHANUR ON I.A.NO.XIII ON O.S. NO.202/2017, VIDE ANNEXURE-H AND CONSEQUENTLY ALLOW THE I.A NO.XIII, IN THE INTEREST OF JUSTICE AND EQUITY; B) PASS SUCH OTHER ORDERS OR DIRECTION AS THIS COURT DEEMS JUST AND PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE AND ALLOW THIS WRIT PETITION, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by defendant No.1 in O.S.No.202/2017 on the file of the Senior Civil Judge, Sindhanur is directed against the impugned order dated 16.07.2025 whereby the application I.A.No.13 filed by the petitioner under

Order XIII Rule 3 of CPC seeking rejection of Ex.P-1 as inadmissible was dismissed by the Trial Court by holding as under:

> *"This application filed by the defendant No.1 U/Order 13 Rule 3 R/w 151 of CPC seeking to reject the Ex.P1 document as inadmissible.*
> *2. In support of this application, the defendant No.1 filed affidavit and stating that the plaintiffs have filed the present suit seeking relief of partition and separate possession and relief of permanent injunction against him and defendant No.2 over the suit schedule property. The plaintiffs got marked the alleged partition deed as Exhibit P-1 in the above case in their absence. The said document allegedly written on white paper which is inadmissible for want of proper stamp duty and registration. Therefore, the document is not to be marked in the above case. This Court due to oversight got marked the said document as Exhibit P-1. At the time of marking of Ex p-11 and defendant no.2 were placed as ex-parte. Later, he and defendant no.2 come on record and filed their written statement. Under the said circumstances, the said document got marked by the plaintiff in our absence. The said document is totally inadmissible one, therefore, it is just and proper to pass an order to de-mark the said document as inadmissible one. Otherwise he and defendant no.2 would be put under great hardship and injury. On an earlier occasion, he and defendant no.2 had filed an application U/s 151 CPC, seeking a distinct relief to de-mark the Ex P-1, the said application to be dismissed vide order dated 24.03.2022 on the technical ground that there is no provision under the law to de-mark an exhibited document. In fact the provision under which the present application is filed, clearly enables this court to de-mark/reject the Exhibit P-1 Document as inadmissible. Under the circumstance, this Court be pleased to reject the Exhibit P-1 Document as inadmissible, as the marking of the said document is in contrary to the relevant laws as it is an inadmissible document. Accordingly he pray for allow the application.*
> *3. The learned counsel for the plaintiffs filed objection to the application.*

4. Heard arguments. On the basis of above application and objection, the following point arises for my consideration is;

1. Whether defendant No.1 has made out sufficient grounds to allow IA No.13 filed under Order 13 Rule 3 R/w 151 of CPC?

2. What order?

My answer to the above points is as follows:

Point No.1: In the Negative

Point No.2: As per the final order for the following;

REASONS

6. POINT NO.1:- The defendant No.1 has contended in the present case that the plaintiffs got marked the alleged partition deed as Exhibit P-1 in the above case in their absence. The said document allegedly written on white paper which is inadmissible for want of proper stamp duty and registration. Therefore, the document is not to be marked in the above case. This Court due to oversight got marked the said document as Exhibit P-1. At the time of marking of Ex p-11 and defendant no.2 were placed as ex-parte. Later, he and defendant no.2 come on record and filed their written statement. Under the said circumstances, the said document got marked by the plaintiff in our absence. The said document is totally inadmissible one, therefore, it is just and proper to pass an order to de-mark the said document as inadmissible one. Otherwise he and defendant no.2 would be put under great hardship and injury.

7. If a party to the lis has any objection for the production by the other party of an insufficiently stamped document and that it should not be admitted in evidence, he must raise the objection before the document is admitted in evidence. Once the document is admitted, no objection can be raised, since the time of raising objection has passed and Section 35 of the Karnataka Stamp Act, 1957 operates. It makes no difference whether the defendant No.1 is placed exparte or was on record at the time of marking the un-registered partition deed 21-06-1988 marked at exhibit P-1.

8. If an objection is raised, the Court has a duty to examine the document for the purpose of finding out whether it is sufficiently stamped or not and if it is insufficiently stamped, to impound the same and refer the document to the Deputy Commissioner for necessary action or in the alternative, if the party is willing to

deposit the difference of stamp duty and the penalty, to determine the same and upon the payment, to proceed further with regard to the admissibility of the document and the follow up proceedings. It is made clear by this court that Section 35 of the Karnataka Stamp Act, 1957 mandates that once the document is admitted in evidence such admissions shall be questioned subsequently. Sec.35 of the Karnataka Stamp Act, 1957 reads as under.

> *35. Admission of instrument where not to be questioned.- Where an instrument has been admitted in evidence such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.*

Section 35 of the Karnataka Stamp Act, 1957 makes it clear that once the document is marked and admitted in evidence its admissibility cannot be questioned in the same proceedings at a subsequent stage. It is equally settled law that once the document is admitted in evidence without objections, the opponent party cannot be permitted to raise objections about its admissibility of the document. When a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. it is made clear that once the document is received in evidence without objections again its admissibility cannot be questioned at a subsequent stage In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in 2011 ILR KAR 2017 = [2011 (3) KLJ 21] = [2011 (2) AIR KAR REPORTER 363] in between Cave Caterers Pvt. Ltd. Vs Sudha Enterprises Bangalore the para No.14 read as under.

Writ Petition No. 114 of 2011 (GM-CPC)
Decided on 07-01-2011

> *14]. Having regard to Section 58 of the Act, in my considered opinion, the Court below has no jurisdiction to impound Ex.D29 after receiving it in evidence without any objection either by the plaintiff or counsel. The observations of this Court, in similar though not identical circumstances, in Lakshmaiah Setty s case (supra), is apposite:*

> *"It is clear therefore that once Section 35 comes into operation, the original Court loses the power not merely to review its decision, express or implied, to receive the document in evidence but also to levy any stamp duty or penalty in respect of the instrument. Xxxxxx xx Sub-section (1) of Section 58 indicates that the Court which either suo motu or on the application of the Collector takes into consideration the order made by the trial Court, is the Court to which appeals lie from or references are made by the first mentioned Court i.e. trial Court"*
>
> *15). In the facts of this case, the trial Court, denuded of jurisdiction to impound the document Ex.D29 after its admission in evidence, the petitioner-plaintiff was disentitled to invoke Section 33 of the Act for the relief of impounding Ex.D29.*

The ratio (underline emphasized by me) laid down by the Hon'ble High Court of Karnataka in the decision reported in 2011 ILR KAR 2017 = [2011 (3) KLJ 21] = [2011 (2) AIR KAR REPORTER 363] in between Cave Caterers Pvt. Ltd. Vs Sudha Enterprises Bangalore is that once the document is received in evidence without objections again its admissibility cannot be questioned at a subsequent stage.

9. Further In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in 2014 AIR KARNATAKA 133 in between Smt. Huchamma Vs. Chandrashekar

> *14]. From the above, is clear that a statutory duty is cast on the Court to examine the instrument which is tendered in evidence before it is received in evidence, irrespective of a party to the proceedings raising any objections regarding its marking on the ground that it is insufficiently stamped. On such examination if it appears to the Court that such instrument is not duly stamped, it shall impound the same. Once the instrument is held to be not duly stamped and ordered to be impounded, then it is inadmissible in or evidence, as there is complete prohibition for*

admitting such insufficiently stamped document in evidence. When an instrument not duly stamped stamped is tendered in evidence the insufficiently opposite party has a right to object to the marking of the same. For this purpose it is not necessary for the opposite party to file any application requesting the Court to impound the document and to collect duty and penalty. A mere oral objections at the time of receiving such an instrument as evidence is sufficient. The Court as observed above, has a duty to examine the document and find out whether it is duly stamped or not. However if by inadvertence the Court does not apply its mind, does not examine the document before receiving it in evidence and the opposite party also does not object to the marking of the document or remains absent at the time of marking of the document and document is marked rightly or wrongly, then the opposite party is precluded from questioning at a subsequent stage of the very same proceedings. A person who does not object to the marking of the document before it is marked. forfeits his right to raise such objections in the later stages of the proceedings.

17]. THE contention of the respondent that the question of legality or otherwise of marking the document cannot be gone into in these proceedings or that the petitioner is estopped from challenging the admissibility of the document in these proceedings is without any substance. Because, objections as to marking of the document can be raised only once and when it is so raised, the Court is duty bound to determine the same. On determination of the same if the party is aggrieved by the order, he cam challenge it. Mere marking of the document before the order is challenged, by itself does not take away the right of the party either to challenge the order or challenge the proceedings in which such an order is passed. Marking of the document pursuant to the

impugned order is subject to the result of the proceedings in which it is challenged.

The ratio (underline emphasized by me) laid down by the Hon'ble High Court of Karnataka reported in 2014 AIR KARNATAKA 133 in between Smt. Huchamma Vs. Chandrashekar is that a party who does not object to the marking of the document before it is marked, looses his right to raise such objections in the later stages of the proceedings

10. In this regard it is beneficial to refer to the Hon'ble four Judges Bench (LARGER BENCH) decision of the Hon'ble Supreme Court reported in AIR 1961 SC 1655 in between Javer Chand Vs Pukhraj Surana the para No.4 of the Judgment reads as under.

Civil appeal No. 3 of 1958,,
decided on 25/04/1961

4]. On these pleadings, a number of issues were joined between the parties but the only relevant issue was issue No. 2 in these terms:-
"Whether the two hundis, the basis of the suit, being unstamped, were inadmissible in evidence?
It appears that the defendant led evidence first, in view of the fact that the onus lay on him. He was examined as DW5, and in his examination-in-chief he stated,
"I did not receive any gold towards these hundis. I asked them to return the hundis, but they did not return them. I had drawn the two hundis marked Ex. P. 1 and Ex. P. 2. They are written in Roopchand's hand. I did not receive any notice to honour these hundis."
His other witnesses, DWs. 1, 2 and 4 were examined and cross-examined with reference to the terms of the hundis and as to who the author of the hundis was. All along during the course of the recording of the evidence on behalf of the parties, these handis have been referred to as Ex. P. 1 and Ex. P. 2. The

conclusion of the learned Trial Judge on issue N. 2 was in these terms:-

"Therefore, in this case the plaintiff having paid the penalty, the two documents in suit having been exhibited and numbered under the signatures of the presiding officer of court and the same having thus been introduced in evidence and also referred to and read in evidence by the defendant's learned counsel, the provisions of Sec. 36 of the Stamp Act, which are mandatory, at once come into play and the disputed documents cannot be rejected and excluded from evidence and they shall accordingly properly from part of evidence on record. Issue No. 2 is thus decided against the defendant."

The suit was accordingly decreed with costs, as stated above. On appeal by the defendant to the High Court, the High Court also found that the hundis were marked as Exs. P.1. and P.2, with the endorsement "Admitted in evidence" and signed by the Judge. The High Court also noticed the fact that when the hundis were executed in December 1946, the Marwar Stamp Act of 1914 was in force and Sections 9 and 11 of the Marwar Stamp Act, 1914 authorised the Court to realize the full stamp duty and penalty in case of unstamped instruments produced in evidence S. 9 further provided that on the payment of proper stamp duty, and the required penalty, if any, the document shall be admissible in evidence. It was also noticed that when the suit was filed in January 1949, stamp duty and penalty were paid in respect of the hundis, action upon the law, namely, the Marwar Stamp Act, 1914. The High Court also pointed out that the documents appear to have been admitted in evidence because the Trial Court lost sight of the fact that in 1947 a new Stamp Art had come into force in the former State of Marwar, amending the Marwar Stamp Act of 1914. The new law was, in terms, similar to the Indian Stamp Act. The High Court further pointed out that after the coming into effect of the Marwar

Stamp Act, 1947 the hundis in this case could not be admitted in evidence in view of the provisions of S. 35, proviso (a) of the Act, even on payment of duty and penalty. With reference to the provisions of S. 36 of the Stamp Act, the High Court held that the plaintiffs could not take advantage of the provisions of that section because, in its opinion, the admission of the two hundis 'was a pure mistake.' Relying upon a previous decision of the Rajasthan High Court reported in Ratan Lal v. Daudas, ILR (1953) Raj 833: the High Court held that as the admission of the documents was. pure mistake, the High Court, on appeal, could go behind the orders of the Trial Court and correct the mistake made by that Court. In our opinion, the High Court misdirected itself, in its view of the provisions of S. 36 of the Stamp Act. S. 36 is in these terms:-

"Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognized by the section is the class of cases contemplated by S. 61 which is not material to the present controversy. S. 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped it has to be decided then and there when the document is tendered in evidence. Once the Court rightly or wrongly, decides to admit the document in evidence so far as the parties are concerned the matter is closed. S. 35 is in the

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> *question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S. 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.*

The ratio [underline emphasized by me I laid down by the Hon'ble Supreme Court reported in AIR 1961 SC 1655 in between Javerchand V/S Pukhrajsurana is that when a document has once been admitted in evidence, such admission and marking cannot be cannot be objected at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped.

11. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in AIR 2007 SC 637 [2007 AIR SCW 234] =[(2006) 11 SCC 331] in between Shyamal Kumar Roy Vs. Sushil Kumar Agarwal the para No.20 to para No.22 read as under.

Civil Appeal No. 4609 of 2006 (arising out of SLP (C) No. 13426 of 2006),, decided on 31/10/2006

> *20. If no objection had been made by Appellant herein in regard to the admissibility of the said document, he, at a later stage, cannot be permitted to turn round and contend that the said document is inadmissible in evidence.*
> *21. Appellant having consented to the document being marked as an exhibit has lost his right to reopen the question.*
> *22.What was necessary was that the document should be marked in presence of the parties and they had an opportunity to*

object to the marking of the document. The question of judicial determination of the matter would arise provided an objection is taken what document is tendered in evidence and before it is marked as an exhibit in the case. Before the learned Trial Judge, reliance was placed on a decision of a learned Single Judge of the Andhra Pradesh High Court in Vemi Reddy Kota Reddy vs. Vemi Reddy Prabhakar Reddy [(2004) 3 ICC 832]. In that case there was nothing on record to show that the document was marked as an exhibit after an objection has been raised. The said case, therefore, has also no application to the facts of the present case.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in AIR 2007 SC 637 [2007 AIR SCW 234] =[(2006) 11 SCC 331] in between Shyamal Kumar Roy Vs. Sushil Kumar Agarwal is that once the document is marked subsequently the party cannot be permitted to raise objections about its admissibility and marking of the document.

12. It makes no difference whether the defendant No.1 is placed exparte or was on record at the time of marking the un-registered partition deed 21-06-1988 marked at exhibit P-1 In view of law laid down by the Hon'ble four Judges Bench (LARGER BENCH) decision of the Hon'ble Supreme Court reported in AIR 1961 SC.1655 in between Javer Chand Vs Pukhraj Surana the present application is not maintainable. Hence point No.1 is negative.

13. POINT No.2:- Foregoing reasons and answering point No.1 as above, I pass the following:

:: ORDER ::

IA NO.13 filed by the defendant No.1 under Order 13 Rule 3 R/w Sec.151 of CPC, 1908 dated 04.07.2025 is hereby dismissed."

2. After having considered the various submissions made by the learned counsel for the petitioner, in the facts and circumstances obtained in the instant case, I am of the considered opinion that impugned order passed by the Trial Court rejecting I.A.No.13 cannot be said to suffer from any illegality or infirmity nor can the same be said to have occasion of failure of justice warranting interference by this Court in the exercise of its jurisdiction under Article 227 of the Constitution of India, as held in **Radhey Shyam and Ors v Chhabi Nath and Ors** reported in ***(2015) 5 SCC 423,*** **K.P. Natarajan and Ors. vs. Muthalammal and Ors** reported in ***AIR 2021 SC 3443*** and **Mohd. Ali v V. Jaya** reported in ***(2022) 10 SCC 477.***

3. Accordingly, I do not find any merit in the present petition and the same deserves to be disposed of without interfering with the impugned order but by leaving open all contentions urged by both sides as regards admissibility, proof, relevance, probative value, etc. of the document at

Ex.-P1 to be adjudicated by the Trial Court at the time of final disposal of the suit and no opinion is expressed on the merits/demerits of the rival contentions.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SWK
LIST NO.: 1 SL NO.: 19
CT:SI