

**DISTRICT AND SESSIONS COURT,  
AURANGABAD.**

**WORKSHOP ON**

**CIVIL**

**"Section 52 and 53-A of the Transfer of Property Act r/w Sec. 17 and 49  
of the Registration Act, the effect of unregistered documents and  
impounding of documents."**

**CRIMINAL**

**"Recording of evidence and proving contents of electronic media with  
relevant to provisions of Information Technology Act, Evidence Act and  
Criminal Manual."**

**Held on 18<sup>th</sup> October, 2015**

## INDEX

<b>CIVIL</b>		
<b>"Section 52 and 53-A of the Transfer of Property Act r/w Sec. 17 and 49 of the Registration Act, the effect of unregistered documents and impounding of documents."</b>		
<b>Sr. No.</b>	<b>Subtopics</b>	<b>Page</b>
1	Effect of conveyance lis pendite.	1 to 26
2	Section 53 A : It's use as a shield or sword.	
3	Admissibility of unregistered document.	
4	Effect of non registration of - i) Rent agreement. ii) Leave and licence agreement for residential purpose. iii) Leave and licence agreement for commercial purpose.	
5	Decree of Court : Is registration compulsory?	
6	Documents insufficiently stamped : Is an inherent defect?	
<b>CRIMINAL</b>		
<b>"Recording of evidence and proving contents of electronic media with relevant to provisions of Information Technology Act, Evidence Act and Criminal Manual."</b>		
<b>Sr. No.</b>	<b>Subtopics</b>	<b>Page</b>
1	Electronic evidence & its Admissibility.	27 to 49
2	Standard of proof about the authenticity and accuracy of electronic evidence.	
3	Electronic Records-Provisions under The Information Technology Act, 2000.	
4	Presumption as to electronic records.	
5	Rules under Criminal Manual for production, use and recording of tape recorded evidence.	

...1...

**"Section 52 and 53-A of the Transfer of Property Act r/w Sec. 17 and 49 of the Registration Act, the effect of unregistered documents and impounding of documents."**

**Effect of Conveyance Lis Pendite**

1. The doctrine of lis pendite is enacted in section 52 of the Transfer of Property Act. This section is based on equity and good conscience. It is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, following elements must be present :-

- (i) There must be a suit or proceeding pending in a Court of competent jurisdiction.
- (ii) The suit or proceeding must not be collusive.
- (iii) The litigation must be one in which right to immovable property is directly and specifically in question.
- (iv) There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
- (v) Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

...2...

2. As per Maharashtra Amendment if a notice of the pendency of suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

3. In *Hardev Singh V/s Gurmail Sing (dead) by L.Rs [(2007) 2 SCC 404]* it is held that "*Section 52 merely prohibits a transfer. It does not state that the same would result in an illegality. Only the purchaser during the pendency of a suit would be bound by the result of the litigation. The transaction, therefore, was not rendered void and/or of no effect.*"

4. "lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a decree in the pending suit. Rule 102 of Order 21 of C.P.C. takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment-debtor, he cannot seek benefit of Rule 98 or 100 of Order 21.

5. In *Amit Kumar Shah and others V/s Farida Khatoon and others [AIR 2005 SC 2209]* it is held that *transferee pendente lite can be added as a proper party if his interest in the subject matter of suit*

...3...

*is substantial and not just peripheral. It is further held that a transferee pendente lite to the extent he has acquired interest from defendant is vitally interested in litigation, when transfer is of the entire interest of defendant, the later having no more interest in the property may not properly defend the suit, he may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 rule 10 an alienee pendente lite may be joined as party. The court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.*

6. In ***M/s. Kachhi Properties V/s Ganpatrao Shankarao Kadam and others [2010 (5) ALL MR 366]*** it is held that plaintiff need not at all worry about transfers pendente lite and so, occasions for invoking powers under Order 39, Rules 1 and 2 would arise only in rare cases where the plaintiff can demonstrate that rule of lis pendens is inadequate to protect plaintiff's interest.

7. In ***Pralhad Jagannath Jawale and other V/s Sitabai Chander Nikam and others [2011(4) Mh.L.J.137]*** it is held that the applicability of Section 52 of T. P. Act will not take away power of court to grant temporary injunction. Where there is an apprehension established that defendant may create third party rights and all three ingredients are satisfied, if temporary injunction is not granted it may

...4...

*result into multiplicity of proceedings in as much as the alienee pendente lite may apply for impleadement, which will result in delay.*

8. The effect of the order of prohibitory injunction restraining the alienation during the pendency of the suit is that any transaction or alienation made in violation of the said order is rendered illegal and it is no transaction at all. This has to be distinguished from the effect of Section 52 of the Act of 1882, which does not attach any illegality to a transaction, which has taken place pendente lite. Thus, the order of prohibitory injunction grants protection which is not available under Section 52 in the event of a transfer pending a suit. Moreover, the party who breaches the order of temporary injunction may have to face the drastic consequences provided in Rules 2A and 11 of Order XXXIX of C.P.C. The consequences are in the nature of an order of detention or striking out the defence.

9. Thus true scope of section 52 is that it does not prevent the vesting of title in a transferee in a sale pendente lite but only makes it subject to the rights of other parties as decided in the suit.

...5...

### **Section 53-A: It's use as a Shield or Sword**

1. Section 53A gives statutory recognition to what had hitherto been regarded as the Doctrine of Part Performance, and applied by the Indian Courts to cases where the transfer was not effected by a registered instrument. The general ground upon which the doctrine is based is *prevention of fraud*. It is clear that where one party has executed his part of the agreement in the confidence that the other party would do the same, it is obvious that if that latter should refuse, it would be a fraud upon the former to allow this refusal to work to his prejudice. When a transferee has, in the faith that the transfer would be completed according to law, taken possession, it would be inequitable to allow the transferor to treat the transferee as a trespasser.

2. At the same time, care is taken in framing Sec. 53-A that the law of registration is not evaded, and that the introduction of the doctrine does not lend to perjuries and frauds which it is the object of the doctrine to prevent.

3. The doctrine of part performance cannot also be applied to void agreements. No amount of part performance can validate a void agreement.

...6...

4. The defence of part performance, as embodied in S. 53A, requires the following four conditions to be fulfilled :

(i) There should be a contract to transfer, for consideration, any immovable property by a writing signed by the transferor or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty.

It will be noticed that a person who has entered into an oral contract cannot, under this section, invoke the doctrine of part performance. The agreement must be in writing, and signed by the person (or his agent) whom it is sought to bind. Thus, where the transferee under the contract seeks protection under S. 53A, the contract must be in writing.

For this purpose, an incomplete deed of transfer, though not attested, is regarded as a contract in writing. But such a deed must have been signed by the transferor or his agent.

(ii) The transferee should, in part performance of the contract, have taken possession of the property or any part thereof, or, if already in possession, should have continued in possession in part performance of the contract, and should have done some act in furtherance of the contract.



...7...

(iii) The transferee should have performed, or should be willing to perform, his part of the contract.

(iv) The rights of any other subsequent transferee for consideration without notice should not be affected.

5. S. 53A is based on the following three maxims of equity :

- i) He who seeks equity must do equity.
- ii) Equity treats that as done which ought to have been done.
- iii) Equity looks to the intent rather than to the form.

6. There was and is considerable debate whether, Section 53-A can be used as shield or sword. In case of *Dharmaji Alias Baban Bajirao vs Jagannath Shankar Jadhav AIR 1994 Bom 25* His lordship has observed that often it is said that the right cannot be used as a sword and can be used only as a shield. If this right as a shield is available to him as a defendant, I do not see any justification for a view that it would be denied to him even if by force of circumstances he as a law abiding citizen is compelled to approach the Court as a plaintiff to use that shield. The transferee is entitled to resist any attempt on the part of the transferor to disturb transferee's lawful possession under the contract of sale and his position --either as a plaintiff or as a defendant-- should make no difference. Contrary interpretation viz., the transferee can use the shield only as a defendant and not as a plaintiff, would defeat the very spirit of S. 53A for it will be possible for an over powering transferor to forcibly dispossess the transferee

...8...

even against the covenants in the contract and compel him to go to the Court as a plaintiff. As far as letter of law is concerned, there is nothing which militates against the above object oriented interpretation.

7. In case of *Bhima Savalaram Shinde v. Bhaguji Annaji Unde, 1978 Mh L J 442*, wherein it has been held that the plaintiff could file a suit to protect his possession under Section 53A and restrain the defendants who were strangers from disturbing his lawful possession.

8. Controversy whether sec 53A can be used as sword as shield is set to rest In *AIR 2004 Bom 378, Sadashiv Chander Bhamgare Vs. Eknath Pandharinath Nangude*, in which a Full Bench of Bombay High Court has held that when it is said that proposed transferee in possession can use S.53A as a shield, but not as a sword, it means that he can use S.53A either as a plaintiff or as a defendant to protect his possession, but he cannot use S.53A either for getting title or for getting possession if he is not actually in possession. In other words, when the transferee-in-possession comes to the court as a plaintiff seeking a decree of perpetual injunction against the transferor, he is using S.53A as a *shield* to protect his possession. While deciding the above case a full bench of Bombay high court reiterated the views of Honble supreme court echoed in case of *Biswabani V santosh kumar AIR 1980 SC 226*

...9...

9. Section 53-A of the Transfer of Property Act, 1882 does not confer any title on any person. It provides that a transferee who is in possession of the property under a writing can protect his possession and can create an estoppel against the vendor to enforce his right, title or interest in the suit property. Section 53A of the Act, affords protection to a transferee on certain conditions, one of which that ' the transferee has performed or is willing to perform his part of contract. It is well established that the right conferred by Section 53A is a right available to the defendant only to protect his possession and on the basis of that section, the defendant cannot claim any title and it merely operates as a bar.

To conclude it is observed that as per Sec 53 A is to be used as shield and legal consequences of using this provision as shield is:

- (a) limitation does not bring infirmity to the right of a transferee without title to hold possession, but it cripples the right of vendor with title to recover possession;
- (b) possession is one of the incidence of transfer of interest of a transferor. As a consequence, transferee holds possession irrespective of transfer of interest as a whole of the transferor as envisaged by Section 8 of the Act;

...10...

(c) as statutory limitation cannot be carved out in Section 53-A of the Act, protection available to transferee thereon runs indefinitely;

(d) shield becomes more effective than sword and equity then prevails over law.

### **Admissibility of unregistered document**

1. The Honorable Apex Court in case of **Suraj Lamp and Industries Pvt. Ltd. versus State of Haryana and Another**, reported in **AIR 2012 SC 206** stated the object of registration in following words:-  
*“The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer.”*

2. Rule 3 of Order XIII of the Code of Civil Procedure provides that court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible. Thus, law requires the document should not only be relevant but also admissible in evidence. Section 17 of the Indian Registration Act requires compulsory registration of documents which purports or operates to create, declare, assign, limit or extinguish whether in present or in future “any

...11...

right, title or interest” whether vested or contingent of the value of Rs.100/- and upwards to or in immovable property. Section 1A of Section 17 inserted by Act 48 of 2001 provides for compulsory registration of documents executed on or after the Amendment Act containing contracts to transfer immovable property for consideration for the purpose of Section 53A of Transfer of Property Act, 1882.

3. Section 49 of Registration Act deals with effect of non registration of document required to be registered. This Section bars reception in evidence of a document of transfer which is required to be registered compulsorily U/sec.17 of the Act, or under Transfer of Property Act, but, not registered. It does not lay down any prohibition in respect of transfers required to be registered under other enactments.

4. Proviso to Section 49 declares that (1) an unregistered document can be used as evidence of a collateral transaction not required to be registered. (2) To empower the Courts to admit unregistered document as evidence of a contract in a suit for specific performance. Thus, a compulsorily registrable document though unregistered and inadmissible in evidence of a transaction affecting immovable property, may be admitted as an evidence of collateral facts or for any collateral purpose, i.e. for any purpose other than that of creating, declaring, assigning, limiting or extinguishing right to immovable

...12...

property.

5. In *Himendra Rasiklal Ghia V/s Subodh Modi*, [2008(6) *Mh.L.J.* 886] it is held that *in case of unregistered document requiring registration, no evidence of the term can be given. Merely because such document has been marked as 'an Exhibit', an objection to its admissibility is not excluded. The objection to the admissibility of such evidence can always be taken at any stage of the suit.* In *Anthony vs. K.C. Ittoop and Sons and others*, [AIR 2000 SC 3523] Hon'ble Supreme Court has considered collateral effects of unregistered lease deed. It was held that such a lease deed had caused two consequences, (1) that no lease exceeding one year was created (2) instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that the lease is not exceeding one year stood created by conduct of parties remains unrebutted.

6. In case of *Bajaj Auto Limited Vs. Behari Lal Kohli* [(1989) 3 *SCR*, 730] it was held that if a document purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

7. In case of *Naina Thakkar vs. Annapurna Builders*, [(2013) 14 *SCC* 354] It is held that an arbitration agreement does not require

...13...

registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of the Registration Act read with Section 16 (1) (a) of the Act, an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration.

8. The term “collateral purpose” is often used along with the expression “collateral transaction”. While explaining the meaning of the expression “collateral transaction, the Hon'ble Bombay High Court in *Ramlaxmi Vs. Bank of Baroda*, reported in, *AIR 1953 Bombay 50*, held that such an expression “is used not in the sense of an ancillary transaction to a principal transaction or a subsidiary transaction to a main transaction. The root meaning of the word “collateral” is running together or running on parallel lines. The transaction as recorded would be a particular or specific transaction. But, it would be possible to read in that transaction what may be called the purpose of the transaction and what may be called a collateral purpose, the fulfillment of that collateral purpose would bring in to existence a collateral transaction, a transaction which may be said to be a part and parcel of the transaction but none the less a transaction which runs together with or on parallel lines with the same.” The meaning of collateral purpose may vary depending on the nature of the agreement or document. For

...14...

instance, in case of lease deed, the term “collateral purpose” would mean proving the nature and character of possession and the purpose of leasing out. Similarly, an unregistered sale deed would be admissible in evidence for collateral purpose to limited extent of showing possession of a party to suit. However, the simple device of calling it a “collateral purpose”, a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect of which it would have had it registered.

9. **Unregistered and unstamped document :-** if a document which requires registration is unregistered and is also unstamped when chargeable with stamp duty, it cannot be admitted in evidence even for collateral purpose. For example, proving signature.

**Effect of non registration of -**

**i) Rent agreement.**

**ii) Leave and licence agreement for residential purpose.**

**iii) Leave and licence agreement for commercial purpose.**

1. In earlier Rent Acts rent agreement in writing was not required. But Section 55 (1) of the Maharashtra Rent Control Act, 1999 provides that any agreement for Leave and License or letting of any premises entered into between the landlord and the tenant or the licensee, should be in writing and should be registered under the Registration Act, 1908.



...15...

2. Section 55 (2) imposes the responsibility of getting such agreement registered on the landlord. It further provides that in the absence of a written registered agreement, contention of the tenant about the terms and conditions on which the premises have been given either on leave and license or even let out shall prevail.

3. However, Section 24 (3), Explanation (b) of Maharashtra Rent Control Act, 1999 provides that an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

4. Thus, as per section 55(2) Effect of non-registration of tenancy or leave and licence agreement are two fold.

Firstly under sub-section 3, the landlord who fails to register the agreement is liable to be imprisoned which may be three months or with fine not exceeding Rs.5000/- or with both. In old act, there was no such penal provision. It has been introduced and provided under the said new Act.

Secondly effect of non-registration of such an agreement is in favour of the tenant. In absence of registered agreement, the contention of the tenant about the terms and conditions subject to which premises has been given by landlord on leave and licence or let out by him will prevail unless the landlord is able to prove otherwise. Therefore in case if there is no registered agreement, then it is open to the tenant to contend whether the premises has been let to him or he is a licensee. So the burden of proof of the terms and conditions of the grant of the premises is on the landlord.

...16...

5. In case of *Shri Chandrashekhar Madhav Vaidya V/s Mrs. Afiffa Altaf Sayed and others [Writ Petition No. 6587 of 2009]* and in *Shri Amit B. Dalal V/s Shri Rajesh K. Doctor [Writ Petition No. 6587 of 2009]* it is held by Hon'ble Bombay High Court that Section 49 of Registration Act will not be applicable to document which required to be register under section 55 of Maharashtra Rent Control Act. Therefore, a document which requires registration under section 55 does not become an invalid document.

It is further held that the presumption under clause (b) of explanation to section 24 of the said Act is applicable only when an application for eviction is filed relating to the premises given on licence for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an agreement in writing of leave and licence in respect of the premises given for residential use, when an application under section 24 is made, the clause (b) will apply to such agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement.

6. In case of *Parinita Chaudhary V/s Mohd. Husain A. Furniturewala [2009(4) AIR Bom. R. 404]* it is held that agreement of licence in writing shall be conclusive evidence of the fact stated therein

### **Decree of Court: Is Registration Compulsory?**

1. *In the case of **Rani Hemanta Kumari devi vs. Midnapur Jamindari Co. Ltd**, the Hon'ble Privy Council has held that the consent decree did not require registration even if it compromised immovable property other than that which was the subject matter of the suit and that the consequences provided by section 49 of the Indian Registration Act would not follow. It was in the light of decision of the Privy Council that, by virtue of section 10 of the Transfer of Property (Amendment) supplementary Act, 1929 clause (vi) of section 17(2) of Registration Act was amended and re-enacted in the present form.*
  
2. Section 17 (2) (vi) of the Registration Act provides that, “any decree or order of a court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings.”
  
3. In the case of **Bhoop Singh Vs. Ram Singh Major ,AIR 1996, SC196**, held that while interpreting exception u/s 17(2)(vi) of the Registration Act,1908 observed that, '*a compromise decree, creating right, title or interest in immovable property valuing more than Rs. 100/- in favour of any party to the suit for the first time, must be registered*'.

...18...

4. In the case of *K Raghunandan & Ors Vs Ali Hussain [(2008) 13 SCC 102]* it is held that, “It must be pointed out that a decree or order of a court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject-matter of the suit. A decree or order of a court is normally binding on those who are parties to it unless it is shown by resort to Section 44 of the Evidence Act that the same is one without jurisdiction or is vitiated by fraud or collusion or that it is avoidable on any ground known to law.

But otherwise that decree is operative and going by the plain language of Section 17 of the Registration Act, particularly, in the context of sub-clause (vi) of sub-section (2) in the background of the legislative history, it cannot be said that a decree based on admission requires registration. On the facts of that case, it is seen that their Lordships proceeded on the basis that it was the decree on admission that created the title for the first time. It is obvious that it was treated as a case coming under Section 17(1)(a) of the Act, though the scope of Section 17(2)(vi) of the Act was discussed in detail. But on the facts of this case, as we have indicated and as found by the courts, it is not a case of a decree creating for the first time a right, title or interest in the present plaintiff and his brother. The present is a case where they were putting forward in the suit a right based on an earlier

...19...

*transaction of relinquishment or family arrangement by which they had acquired interest in the property scheduled to that plaint. Clearly, Section 17(1)(a) is not attracted..."*

5. In the case of ***Phool Patti and Anr. Vs. Ram Singh (Dead) through Lrs. and Anr.***, observing the inconsistency between the decision in *Bhoop Singh's case (supra)* and *K. Raghunandan's case (supra)* in so far as the interpretation to the exception in clause (vi) of Section 17(2) of the Registration Act is concerned refer the matter to larger Bench. The appeal was then placed before a Bench of three learned judges of the Supreme Court and by an order dated 24th July, 2014 it was held, that there was no inconsistency between the judgments delivered in the cases of (i) [\*Bhoop Singh v. Ram Singh Major & Ors.\*](#) and (ii) [\*Raghunandan & Ors v. Ali Hussain Sabir & Ors.\*](#) .

6. In the case of ***Sumintabai Ramkrushna Jadhav V/s Rakhamabai Ramkrushna Jadhav and others*** ,AIR 1981 Bombay 52, the Honorable Bombay High Court held that where there was no dispute between the parties to the compromise, the exemption under Section 17 (2) (vi) from registration is not available and in absence of registration, the compromise decree can not be relied upon as a document of title.

**Summary of the case laws above mentioned:**

7. The legal position in respect of registration of decree can be summarized as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law of registration, would not require registration, In a converse situation.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100/- or upwards in favour of any party to the suit, the decree would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of the Sec. 17, the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, benefit from the terms of compromise cannot be deprived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the “subject matter of the suit or proceedings” Cl. (vi) of sub-section (2) of Sect. 17 would not operate, because of the amendment of this clause by Act 21 of 1929, according to which the original clause would have been attracted, even if it were to encompass property not litigated.

(6) If even though a part of the compromise related to the property which was beyond the subject matter of the suit, had been incorporated in the compromise decree and although not being a part of the operative portion thereof did not require registration.

(7) If the decree or order referred to the property other than that which was the subject-matter of the suit or proceeding, it would require registration.

8. Thus, in view of the provisions of section 17, sub-section 2 clause (vi) of the Registration Act 1908 and the above decisions of Hon'ble Apex court, a decree or order of court need not be registered on the basis that it comes within the purview of Section 17(1)(b) or 17(1)(c) of the Act as an instrument purporting to or operating to create, declare, assign, limit or extinguish any right, title or interest in immovable property. It may further be seen that a compromise decree also does not require registration in terms of clauses (b) and (c) of sub-section (1) of Section 17 of the Registration Act unless that decree takes in immovable property valued above Rs.100/-, that is not a subject matter of the suit or the proceeding giving rise to the compromise decree.

### **Documents insufficiently stamped: Is an inherent defect?**

1. Section 33 of The Maharashtra Stamp Act, 1958 casts duty on the person having authority to receive evidence by law or by consent of parties to impound the document whether valid or not if he finds it is not duly stamped. The person having authority to receive evidence would be civil judge, members and officers of judicial and quasi-judicial tribunals and arbitrators.
2. Magistrate or judge of a criminal court has discretion to exercise the power of impounding except when the proceeding is under Chapter IX which deals with maintenance proceedings and Part D of Chapter X of Cr.P.C. which deals with dispute as to immovable properties and are more or less matters of civil nature.
3. Section 34 speaks of a document not duly stamped shall not be admitted in evidence and acted upon unless deficit stamp duty and penalty from the date of execution of document is paid. But there are four exceptions to this general rule which are – I) Not duly stamped instrument may be produced in evidence in any criminal proceeding except proceeding under Chapter IX or Part D of Chapter X of Cr.P.C., (ii) if it has been executed by or on behalf of the Government, (iii) where it is certified by the Collector as duly stamped, and (iv) a copy of any instrument or an oral admission of the contents of any instrument may be admitted, if stamp duty or a deficient portion of the stamp duty and penalty is paid.



...23...

4. Section 35 provides that once an instrument which is not duly stamped is 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.

5. In *Santosh Anant Raut V/s Pukharaj Rathod [2010(4) Mh.L.J.22]* it is held that, *When a document is sought to be tendered in evidence is found to be not sufficiently stamped, it is the duty of the court to impound it in accordance with Section 33 the Bombay Stamp Act. No power is conferred on the court to determine the stamp duty chargeable in respect of any instrument. Said power is vested in the Collector. Jurisdiction of the Civil Court is confined to recording a finding on the question whether an instrument is duly stamped. Civil Court can't determine the stamp duty payable on a particular instrument. After impounding the document the court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with sub-section (3) of Section 32-A of The said Act. Only after adjudication is made by the Collector the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty Civil Court can exercise power under proviso (a) to Section 34 of the Said Act. Thereafter the document can be admitted in evidence if the same is proved and if it is otherwise admissible in*

...24...

*evidence. There is nothing wrong if a party relying upon a document applies for impounding his own document to enable the court to exercise power under proviso (a) to Section 34.*

6. In **Zaver Chand V/s Pukhraj Surana, [AIR 1961 SC 1655]** it is held *'that the objection regarding admissibility of instrument not duly stamped has to be decided there and then when the document is tendered in evidence and before it is marked as an Exhibit in the case. Once the Court rightly or wrongly decides to admit the document in evidence, the matter is closed so far as the parties are concerned.'*

7. Thus insufficiently stamped document is not an inherent defect as once it is admitted in evidence or acted upon no objection in this regard may be raised later on.

8. In **Marine Container Services (I) V/s Rajesh Dhirajlal Vora, [(2002) 104 BOMLR 273]** it is held that *at the stage of considering the application for interim relief Court can not be stopped from considering the document insufficiently stamped.*

9. **Peacebird Premises Co-Op. Society Ltd. Bombay V/s Collector of Stamps of Mumbai and others [2008(1) Mah.L.J.865]** *Conveyance defined under section 2(g) of Bombay Stamp Act means and includes consent decree which fulfils all the requisites of conferring right, title and interest in favour of the vendees and stamp duty under Entry 25 of Schedule I is payable on such consent decree.*

10. *In Jaysingh V/s Sambhaji [ 2013 (3) Mh.L.J. 433], it is held that, in a suit for specific performance of agreements to a conveyance attracting stamp duty, determining factor has to be the document itself claimed in the suit. Where the vendor agreed to hand over possession of land in question in the agreement to sell as and when called upon by vendee prior to sale deed being executed, the agreement was required to be stamped on the basis that it was a conveyance.*”

11. *The Hon'ble Bombay High Court in Gayabai Hemlal Jadhav V/s Hiranman s/o Rama Chavan and another [2011(4) Mh.L.J. 798] has held that, Photocopy of the document is not an “instrument” within the meaning of section 2 (14) of Indian Stamp Act, 1899 or section 2 (1) of the Bombay Stamp Act, 1958- The provisions of impounding any instrument chargeable with duty cannot be made applicable in respect of copy of the document.*”

12. *In Jupudi Kesava Rao V/s Pulavarthi Venkata Subbarao [ AIR 1971 SC 1070] it is held that "The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of the section which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for, allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would have the effect of the document being "acted upon" by the person having by law or authority to receive*

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*evidence. Proviso (a) is applicable only when the original instrument is actually before the court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly, secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by section 63 of the Indian Evidence Act would not fulfill the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act. If Section 35 only deals with original instruments and not copies, section 36 cannot be so interpreted so as to allow secondary evidence of an instrument to have its benefit.”*