

**Civil Revision**

Present: **The Hon'ble Justice Jyotirmay Bhattacharya**

*C.O. No.3516 of 2008*

**Judgment On: 07-04-2010.**

**Dilip Halder**  
**-Vs-**  
**Gobinda Majhi**

**POINTS:**

UNREGISTERED AGREEMENT-No objection by plaintiff to admissibility of document on the ground of the insufficiency of the stamp duty -Parties intended to create a tenancy in perpetuity-Agreement whether required registration-Unregistered agreement whether can be used for collateral purpose- Transfer of Property Act, 1882 S.107-Registration Act, 1908 Ss17, 49.

**FACTS:**

The admissibility of an unregistered agreement of tenancy in perpetuity into evidence was challenged by the plaintiff before the learned Trial Judge. The learned Trial Judge refused to admit the said document into evidence by accepting the contention of the plaintiff. The defendant is aggrieved by the said order. Hence, he has filed this application under Article 227 of the Constitution of India before this Court.

**HELD:**

The plaintiff did not object to the admissibility of the said document on the ground of the insufficiency of the stamp duty on which such agreement was entered into between the parties. As such, the learned Trial Judge ought not to have entered into the question regarding admissibility of such document for want of its registration at this stage.

Para-9

No doubt by using the expression to the effect that the tenancy will be continued for all time to come, in the said agreement, the parties to the said agreement intended to create a tenancy in perpetuity. Of course, the parties agreed that the rent of the said tenancy will be paid by the tenant every month at the rate of Rs.30 per month within the next following month. But such provision regarding mode of payment of rent cannot destroy the intention of the parties for creation of a tenancy in perpetuity.

Para-11

This is a tenancy in perpetuity and the document of such tenancy is required to be registered under Section 107 of the said Act read with Section 17 of the Registration Act and thus, the said document, as such, is not admissible for want of registration. But at the same time, the admission of the said document into evidence for collateral purpose cannot be denied in view of the Section 49 of the Registration Act.

Para-12

**CASE CITED:**

1) Bipin Shantilal Panchal –Vs- State of Gujarat & Anr. (2001)3 SCC 1

For the Petitioner	:	Mr. Sandip Das.
For the Opposite Party	:	Mr. Suprobhat Bhattacharya, Mr. Sujit Chatterjee.

**THE COURT:**

1) The admissibility of an unregistered agreement of tenancy in perpetuity into evidence was challenged by the plaintiff before the learned Trial Judge. The learned Trial Judge refused to admit the said document into evidence by accepting the contention of the plaintiff.

2) The defendant is aggrieved by the said order. Hence, he has filed this application under Article 227 of the Constitution of India before this Court.

3) Heard Mr. Das, learned Advocate for the petitioner and Mr. Bhattacharya, learned Advocate appearing for the opposite party. Considered the materials on record including the impugned order.

4) Let me now consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case.

5) The defendant wanted to prove the tenancy agreement dated 15<sup>th</sup> December, 1997 by evidence. By the said agreement a tenancy was created in favour of the petitioner in perpetuity by the plaintiff/opposite party herein. Under the said agreement the defendant is required to pay monthly rent of Rs.30 per month. It was also provided in the said agreement that the defendant is required to pay the rent for each month within the next following month.

6) According to the plaintiff, such an agreement is compulsorily registrable as a tenancy in perpetuity was created by such agreement which is compulsorily registrable under Section 107 of the Transfer of Property Act. The plaintiff, thus, contended that since the said agreement was not registered as per the provision of the Registration Act, the said document is inadmissible in evidence. Thus, the plaintiff objected to the admission of the said document into evidence and such objection was ultimately sustained by the learned Trial Judge. The said order is under challenge in this application.

7) Even without entering into this controversy regarding the requirement of such document to be registered compulsorily under Section 17 of the Registration Act at this stage, this Court holds that the admissibility of such a document cannot be denied as per Section 49 of the Registration Act under which any unregistered document which requires registration compulsorily, can be admitted into evidence for collateral purpose.

8) That apart, the Hon'ble Supreme Court in the case of Bipin Shantilal Panchal –Vs- State of Gujarat & Anr. reported in (2001)3 SCC 1 held that the practice of passing detailed order, allowing or rejecting the objection regarding the admissibility of any document into evidence and then giving time to the aggrieved party to enable him to move the Higher Court against such interlocutory order by suspending the trial of the suit is not proper. The Hon'ble Supreme Court held that instead of considering such objection at this stage, the document should be marked as exhibit after objection and such objection regarding its admissibility should be considered at the time of hearing of the suit. The Hon'ble Supreme Court further held that this procedure should be followed in each case excepting where the objection relating to deficiency in stamp duty of a document is raised.

9) Here is the case where the plaintiff did not object to the admissibility of the said document on the ground of the insufficiency of the stamp duty on which such agreement was entered into between the parties. As such, the learned Trial Judge ought not to have entered into the question regarding admissibility of such document for want of its registration at this stage.

10) Be that as it may, since the learned Trial Judge has considered the said objection, this Court is required to consider the propriety of the order of the learned Trial Judge which is impugned in this application.

11) No doubt by using the expression to the effect that the tenancy will be continued for all time to come, in the said agreement, the parties to the said agreement intended to create a tenancy in perpetuity. Of course, the parties agreed that the rent of the said tenancy will be paid by the tenant every month at the rate of Rs.30 per month within the next following month. But such provision regarding mode of payment of rent cannot destroy the intention of the parties for creation of a tenancy in perpetuity.

12) Accordingly, this Court holds that this is a tenancy in perpetuity and the document of such tenancy is required to be registered under Section 107 of the said Act read with Section 17 of the Registration Act and thus, the said document, as such, is not admissible for want of registration. But at the same time, the admission of the said document into evidence for collateral purpose cannot be denied in view of the Section 49 of the Registration Act.

13) Accordingly, the impugned order is set aside. The learned Trial Judge is, thus, directed to admit the said document into evidence and mark the same as exhibit in the suit.

14) The revisional application is, thus, allowed with the above observation.

15) Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

**( Jyotirmay Bhattacharya. J )**