A AVINASH KUMAR CHAUHAN

v.

VIJAY KRISHNA MISHRA

(Civil Appeal No. 7350 of 2008)

DECEMBER 17, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Stamp Act, 1899 – ss. 33 and 35 and Article 23 of Schedule 1A (as substituted by M.P. Act No. 19 of 1989) -- C *Execution of sale deed – Execution whereof statutorily barred – Suit by the vendee for recovery of consideration amount – Reliance on the conveyance deed which was not registered – Document impounded, being not duly stamped – Held: Provision of ss. 33 and 35 are applicable, even if the unregistered document sought to be admitted in evidence is* D *for collateral purpose – The purpose for which reliance is placed on the document is not relevant for applicability of the provisions – s. 35 rules out applicability of s. 49 of Registration Act – On facts, the document rightly impounded – Registration Act, 1908 – s. 49.*

E **Respondent-a member of Scheduled Tribe sold his immovable property to appellant. Appellant paid the consideration amount for the same, and respondent gave the possession of the property to the appellant. However, the permission for such transfer was not granted.** F **Appellant filed a suit for recovery of the consideration amount. He relied on the agreement which was sought to be registered as a sale deed. As the document was not duly stamped, the court impounded the same. The challenge against the order was not entertained by High** G **Court.**

In appeal to this Court, appellant contended that since the unregistered sale deed was sought to be put in evidence only for the purpose of recovery of the consideration amount i.e. for collateral purpose, the

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provisions of ss. 33 and 35 of Stamp Act, shall not be attracted. A

Dismissing the appeal, the Court

HELD:1.1. The Parliament has, in Section 35 of Stamp Act, used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the provision. The land, in the instant case, is situated in a Scheduled Area. Execution of a deed of conveyance in respect of the land situated in the scheduled area is statutorily barred. All transactions can be effected only upon obtaining the permission of the Collector in terms of the provisions of Section 165 (6) of the C.G. Land Revenue Code, 1959. An instrument was executed. By reason of such an instrument not only the entire amount of consideration was paid but possession of the property had also been transferred. [Paras 12, 13 and 14] [953-C-F] B C D

1.2. By reason of the explanation appended to Article 23 of Schedule IA of the Stamp Act as inserted by M.P. Act 19 of 1989 a legal fiction has been created. Although ordinarily an agreement to sell would not be subject to payment of stamp duty which is payable on a sale deed, but having regard to the purpose and object it seeks to achieve the legislature thought it necessary to levy stamp duty on an instrument whereby possession has been transferred. [Para 15] [954-C-D] E F

1.3. The possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in or over the land in question. Although the agreement was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Registration Act, 1908. In the instant case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. [Paras 16 and 19] [954-E-F] G H

A *Pandey Oraon v. Ram Chander Sahu* **1992 Supp (2) SCC 77 and** *Amrendra Pratap Singh v. Tej Bahadur Prajapati and Ors.* **2004 (10) SCC 65, referred to.**

1.4. Section 33 of Stamp Act casts a statutory obligation on all the authorities to impound a document. B **The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not** C **paid. The court, therefore, was empowered to pass an order in terms of Section 35 of Stamp Act. [Paras 17 and 18] [954-F-H]**

1.5. It is not correct to say that the document was admissible for collateral purpose. The Registration Act, D **1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof. Section 35 of Stamp Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, the document would not be admissible for collateral purposes. [Paras 19, 20 and 21] [955-A-G-D-E]**

Ram Rattan v. Parmananad **AIR 1946 PC 51, relied on.**

Bondar Singh v. Nihal Singh **2003 (4) SCC 161, distinguished.**

Bhaskarabhotla Padmanabhaiah and Ors. v. B. Lakshminarayana and Ors. **AIR 1962 A.P. 132;** *Sanjeeva Reddi v. Johanputra Reddi* **AIR 1972 A.P. 373;** *T. Bhaskar Rao v. T. Gabriel and Ors.* **AIR 1981 A.P. 175;** *Firm Chuni Lal Tukki Mal v. Firm Mukat Lal Ram Chanda and Ors.* **AIR 1965 All. 164 and** *Chandra Sekhar Misra v. Gobinda Chandra Das* **AIR 1966 Ori. 18, referred to.**

Case Law Reference:

2003 (4) SCC 161	**Distinguished.**	**Para 19**

1992 Supp (2) SCC 77	**Referred to.**	**Para 19**	A
2004 (10) SCC 65	**Referred to.**	**Para 19**	
AIR 1946 PC 51	**Relied on.**	**Para 22**	
AIR 1962 A.P. 132	**Referred to.**	**Para 22**	
AIR 1972 A.P. 373	**Referred to.**	**Para 22**	
AIR 1981 A.P. 175	**Referred to.**	**Para 22**	B
AIR 1965 All. 164	**Referred to.**	**Para 22**	
AIR 1966 Ors. 18	**Referred to.**	**Para 22**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7350 of 2008. C

From the Judgment and final Order dated 27.02.2007 of the High Court of Chattisgarh in at Bilaspur in W.P. No. 251/ 2007.

A.K. Bajpai, M.F. Khan, Goodwill Indeevar for the Appellant. D

Suhail Dutt, Ram Gupta, Jagit Singh Chhavra and Ravin Rao for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. E

2. Interpretation of Sections 33 and 35 of the Indian Stamp Act 1899 (for short 'the Act') calls for our consideration in this appeal which arises out of a judgment and order dated 27th February, 2007 passed by a learned Single Judge of the High Court of Chattisgarh at Bilaspur dismissing a petition filed by the appellant herein under Article 227 of the Constitution of India against the orders dated 14th November, 2006 and 9th January, 2007 passed in Civil Suit No.1-B/2006 by the Additional District Judge, Gariaband, Raipur. F

3. The undisputed fact of the matter is that the respondent herein, who is said to be a member of the Scheduled Tribe intended to transfer a house and land admeasuring 10150 sq. ft. situated at Village Gariyaband, District Raipur. A sum of Rs.2,70,000/- fixed by way of consideration towards the aforementioned transfer was paid to the respondent by the G H

A appellant. Possession of the said property had also been delivered.

4. Indisputably for the purpose of effecting transfer of the said land, permission of the Collector was required to be obtained in terms of Section 165 (6) of the C.G. Land Revenue
B Code, 1959, which was applied for but rejected.

5. Appellant herein filed a suit for recovery of Rs.2,70,000/-. In support of his case, the agreement dated 4th August, 2003 which was sought to be registered as a sale-deed has been relied upon.

C The same was directed to be impounded by an order dated 9th January, 2007, stating :-

"Under the Section 35(a) of the Stamp Act there is a provision that for any such instrument or bill of exchange or promissory note, subject to all just exceptions, will be
D admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion
E thereof exceeds five rupees, of a sum equal to ten times such duty or portion.

In the matter the agreement of sell produced is valued Rs.2,70,000/- which as per Article 23 of Indian Stamp Act and as per Schedule 5, on the said amount
F stamp duty of 5.6% is leviable and the 7.5% of Rs.2,70,000/- comes to Rs.20,250/-. In the agreement to sell Rs.60/- is mentioned as stamp which means reducing the Rs.20,250 – Rs.60 = Rs.20,190 is less stamp duty paid, 10 times penalty of which will be leviable as per Section
G 35 of the Stamp Act means Rs.201900/- stamp duty will be leviable. In this regard relevant case law is 'Kapur Constructions vs. Lita Nagraj and Ors.,' AIR 2005 Karnataka 032. The plaintiff has paid Rs.20,850/- in the C.C.D. so the rest of the amount of Rs.181050 be deposited within the next date of hearing and the Opposite
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Party shall also file its counter reply by the next date of hearing." A

6. As noticed hereinbefore the High Court by reason of the impugned judgment refused to interfere with the said order.

7. Mr. A.K. Bajpai, learned counsel appearing on behalf of the appellant would submit that having regard to the fact that the said unregistered deed of sale was sought to be put in evidence not for the purpose of enforcement of the contract but only for the purpose of recovery of the amount of consideration, which indisputably has been paid to the respondent and such a purpose, it was urged, being a collateral one, the provisions of Sections 33 and 35 of the Act shall not be attracted. B C

Reliance in this behalf has been placed on the proviso appended to Section 49 of the Indian Registration Act as also on the decision of this Court in *Bondar Singh v. Nihal Singh,* [(2003) 4 SCC 161], D

8. Mr. Suhail Dutt, learned counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

9. The Act was enacted to consolidate and amend the law relating to Stamps. E

"Conveyance" has been defined in Section 2(10) to mean:-

" "conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I ;" F

"Receipt" has been defined in section 2(23) of the Act to mean:-

" "receipt" includes any note, memorandum or writing-

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or G

(b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or H

A (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgement ;

B and whether the same is or is not signed with the name of any person."

"Stamp" has been defined in Section 2(26) to mean :-

" "Stamp" means any mark, seal or endorsement by C any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act."

10. Chapter II of the Act provides for stamp-duties.

Section 3, which is the charging Section reads as under :-

D "3. Instruments chargeable with duty. – Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say-

E (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on F demand or promissory note drawn or made out of India on or after that day and accepted or paid, or resented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange or G promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in 8 [India] and is received H in India.

Provided that no duty shall be chargeable in respect of- A

(1) any instrument executed by, or on behalf of, or in favour of, the Government incases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, B either absolutely or byway of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841, as amended by C subsequent Acts.

(3) any instrument executed ,by, or , on behalf of, or, in favour of, the Developer , or Unit or in connection with the carrying out of purposes of the Special Economic Zone,

Explanation- For the purposes of this clause, the D expressions "Developer", "Special Economic Zone" and "Unit" shall have meanings respectively assigned to them in clause(g), (za) and (zc) of Section 2 of the Special Economic Zones Act, 2005."

The other provisions contained in the said chapter deal E with the mode and manner of payment etc.

Chapter III of the Act provides for adjudication with regard to proper stamps; whereas Chapter IV deals with instruments not duly stamped.

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Section 33 casts a duty upon every person who has authority to receive evidence and every person incharge of a public office before whom the instrument is produced, if it appears to him that the same is not duly stamped, to impound the same. Sub-section (2) of Section 33 of the Act lays down G the procedure for undertaking the process of impounding. Section 35 provides that an instrument shall be inadmissible in evidence if the same is not duly stamped in the following terms :-

"35 – Instruments not duly stamped *inadmissible in* H

A evidence, etc.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such B person or by any public officer, unless such instrument is duly stamped :

Provided that--

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is C chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five D rupees, of a sum equal to ten times such duty or portion ;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, E would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is F effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the G admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;

(e) nothing herein contained shall prevent the H admission of any instrument in any Court when such

instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

11. Section 36 of the Act provides that where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 21 thereof, be called in question at any stage of same suit or proceeding on the ground that the instrument has not been duly stamped. Section 38 provides for the mode and manner in which the instrument impounded is to be dealt with.

12. The Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions.

13. The land in the instant case is situated in a Scheduled Area. Execution of a deed of conveyance in respect of the land situated in the scheduled area is statutorily barred. All transactions can be effected only upon obtaining the permission of the collector in terms of the provisions of Section 165 (6) of the C.G. Land Revenue Code, 1959. We are, however, not concerned with the said provisions.

14. Indisputably an instrument was executed. By reason of such an instrument not only the entire amount of consideration was paid but possession of the property had also been transferred.

Explanation appended to Article 23 of Schedule IA of the Stamp Act as substituted by M.P. Act No. 19 of 1989 reads as under :-

"Explanation.- For the purpose of this Article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution after execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to

A be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that the provisions of section 47A shall apply *mutatis mutandis* to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a B conveyance under that section:

Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale, which is deemed to be a conveyance shall be C adjusted towards the total duty leviable on the conveyance subject to a minimum of Rs.10."

15. The said explanation has been inserted by M.P. Act 19 of 1989 with effect from 15th November, 1989. By reason of the said provision, thus, a legal fiction has been created. D Although ordinarily an agreement to sell would not be subject to payment of stamp duty which is payable on a sale deed, but having regard to the purpose and object it seeks to achieve the legislature thought it necessary to levy stamp duty on an instrument whereby possession has been transferred.

E The validity of the said provision is not in question.

16. It is not in dispute that the possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in or over the land in question. We are not concerned with the enforcement of the said agreement. F Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Indian Registration Act, 1908.

17. We have noticed heretobefore that Section 33 of the Act casts a statutory obligation on all the authorities to impound G a document. The court being an authority to receive a document in evidence is bound to give effect thereto.

18. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. H The court, therefore, was empowered to pass an order in terms

of Section 35 of the Act.

19. The contention of learned counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In *Bondar Singh* (supra) this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined :-

> "The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can 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 purposes. 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 was not illegal or unauthorized..."

In this case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. [See *Pandey Oraon v. Ram Chander Sahu* 1992 Supp (2) SCC 77 and *Amrendra Pratap Singh v. Tej Bahadur Prajapati and Others* (2004) 10 SCC 65]

20. The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof, which reads as under :-

> "49. Effect of non-registration of documents *required to be* registered.-

A No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall--

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

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(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting C immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral D transaction not required to be effected by registered instrument."

21. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose E whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.

22. The view we have taken finds support from the F decision of the Privy Council in *Ram Rattan v. Parmananad,* [AIR 1946 PC 51] wherein it was held :-

"That the words 'for any purpose' in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an G unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms."

The said decision has been followed in a large number of decisions by the said Court. In *Bhaskarabhotla Padmanabhaiah and others v. B. Lakshminarayana and* H

others [AIR 1962 A.P. 132], it has been held :-

> "9. In this case, the learned Subordinate Judge has observed that what the plaintiff was trying to prove was not the division in status but to show that the property was divided under the partition deed. In any case, the fact that the document is inadmissible due to want of being stamped is clear. For, in *Ram Rattan v. Parmanand,* AIR 1946 PC 51, their Lordships of the Privy Council held that the words 'for any purpose' in S. 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms."

It was furthermore held :-

> "10. In the result, I agree with the learned Munsif-Magistrate that the document is 'an instrument of partition' under Sec. 2(15) of the Indian Stamp Act and it is not admissible in evidence because it is not stamped. But, I further held that if the document becomes duly stamped, then it would be admissible to evidence to prove the division in status but not the terms of the partition."

In *Sanjeeva Reddi v. Johanputra Reddi,* [AIR 1972 A.P. 373], it has been held :-

> "9. While considering the scope of Section 35 of the Indian Stamp Act we cannot bring in the effect of non-registration of a document under Section 49 of the Indian Registration Act. Section 17 of the Indian Registration Act deals with documents, the registration of which is compulsory and Section 49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 or by any provision of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such

property or conferring such power. But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purposes. It would amount to receiving such a document in evidence for a purpose which Section 35 prohibits. There is nothing in the case of *B. Rangaiah v. B. Rangaswamy,* (1970) 2 Andh WR 181 which supports the contention of the petitioner. That was a case as pointed out by Kuppuswami, J., where there were two instruments though contained in one document one a settlement in favour of the 4th defendant therein and the other a will. It was therefore held that part of the instrument which constitutes a will did not require any stamp and will be admissible in evidence for proving the bequest contained therein. It was for that reason that the learned Judge said that Sec. 35 of the Stamp Act has no application to a case where one of the separate instruments relating to one such matters would not at all be chargeable under the Act as in the case before him."

In *T. Bhaskar Rao v. T. Gabriel and others,* [AIR 1981 A.P. 175], it has been held :-

"5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of

course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence." A B

It was further held :-

"7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act." C D

(See also *Firm Chuni Lal Tukki Mal v. Firm Mukat Lal Ram Chanda and others,* [AIR 1965 All. 164] and *Chandra Sekhar Misra v. Gobinda Chandra Das,* [AIR 1966 Ori. 18]).

23. For the reasons aforementioned, there is no merit in this appeal which fails and is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. E

K.K.T. Appeal dismissed.