In view of the general instructions of the Hon'ble High Court of Karnataka dated 03/05/2020 and 29/05/2020(VC) and as per the Circular of the Office of City Civil court dated 23/05/2020 during closure of courts due to Covid-19, above numbered cases are got advanced/preponed on today's board from 02/07/2020 which were being reserved for orders on duty and penalty after hearing only.

Today is non- sitting day for this court. Accordingly, this court made efforts to intimate both the counsels on record, but their mobile numbers are not available in the records. Hence, as per the aforesaid instructions, the following orders passed in this office with a direction to the office to intimate the same and also uploaded in the CIS :-

ORDERS ON PAYMENT OF DUTY AND PENALTY

The plaintiff late Sampath Raj has filed the above numbered suit against the defendants for the relief of declaration to declare that alleged sale deed dated 10/09/2003 executed by Smt. Sunandamma in favour of 2^{nd} defendant is null and void and not binding on the plaintiff and also sought the relief of permanent injunction to restrain the defendants and their henchmen from dispossessing the plaintiff from the schedule property by virtue of sale deed dated 29/07/2004 executed by Smt. Pushpa in favour of plaintiff. Records reveal that defendants appeared and filed written statement. This Court framed issues in both the suits in the month of August 2010 itself.

2. It is evident that, the plaintiff examined himself as P.W. 1 and got marked documents at Ex.P.1 to P.18 in the month of January 2011 and thereafter he has been fully cross-examined. In the meanwhile the application filed by the plaintiff under Order 1 Rule 10(2) CPC to implead the proposed witness Smt. Sunandamma came to be dismissed. Further, the defendant No.1 examined himself as D.W.1 and got marked the documents at Ex.D.1 to 60, when the case was posted for cross-examination of D.W.1 in the month of August 2014, P.W. 1

reported to be dead, accordingly his L.Rs were brought on record after holding enquiry.

3. As could be seen from the perusal of order sheet dated 01/08/2016 that the application filed by the L.Rs of the plaintiff to reject the amended plaint para 7(a) and prayer column 'a' came to be allowed. After completion of cross-examination of D.W.1 case was posted for argument on 17/11/2017.

4. Thereafter when the case was posted for further cross-examination of P.W. 2, the counsel for the plaintiff produced certified copy of the orders passed by our Hon'ble High Court of Karnataka in W.P. No.11435/2019 dated 23/04/2019, wherein the writ petition filed by the L.Rs of the plaintiff came to be disposed off with an observation that if the plaintiffs succeed in the suit and establishes that the part of the suit schedule properties are acquired by KIADB then they are entitled for compensation. After completion of further cross-examination of P.W. 1 again case was posted for arguments on merits.

5. In the meanwhile, I.A. No.16 to 19 filed by the plaintiffs came to be dismissed and W.P. filed by the plaintiffs against the said orders came to be partly allowed subject to payment of cost and conditions.

6. It is evident from the perusal of order sheet dated 16/11/2019 that when the case was posted for further examination-in-

chief of P.W. 2, the learned counsel for defendants raised objections while marking GPA dated 18/05/1992 along with affidavit and agreement of sale (with possession) for want of sufficient stamp duty. Accordingly further chief was being deferred.

7. While arguments were being heard the learned counsel for the plaintiffs submitted that the duty of Rs.10/- paid on the aforesaid agreement of sale is proper and correct. Other side objected. In this regard, this office has made the following endorsement:-

ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಮತ್ತು ದಂಡದ ಬಗ್ಗೆ :

1) ಕ್ರಯದ ಕರಾರು ತಾಃ 18.05.92 ರ ದಾಖಲಾತಿಯಡಿ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನ ನೀಡಲಾಗಿದೆ. ಕ್ರಯದ ಮೊತ್ತ ರೂ. 60,000-00 ಎಂದು ತೋರಲಾಗಿದೆ.

ಕರ್ನಾಟಕ ಮುದ್ರಾಂಕ ಕಾಯಿದೆಯ ಕಲಂ 2(ಡಿ) R/W ಆರ್ಟಿಕಲ್ 20 ರಡಿಯಲ್ಲಿ ರೂ. 6,000-00 ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಪಾವತಿ ಮಾಡಬೇಕಿದ್ದು.

ಈಗಾಗಲೇ ರೂ. 10-00 ಪಾವತಿಸಿದ್ದು ಬಾಕಿ ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ. 5,990-00 ಜೊತೆಗೆ ದಂಡ ರೂ. 59,900-00 ಒಟ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಮತ್ತು ದಂಡ ಸೇರಿ ರೂ. 65,890-00 ಪಾವತಿಸಬೇಕಿದೆ.

2. ಜಿಪಿಎ, ಅಫಿಡವಿಟ್ ತಾಃ 18.05.92 ರ ದಾಖಲಾತಿಗಳು ಮೇಲ್ಕಂಡ ವ್ಯವಹಾರದ ಇತರೆ ದಾಖಲಾತಿಗಳಾಗಿದ್ದು ಕರ್ನಾಟಕ ಮುದ್ರಾಂಕ ಕಾಯಿದೆಯ ಕಲಂ 6 ರಡಿ ಈಗಾಗಲೇ ಪಾವತಿಸಿರುವ ಶುಲ್ಕ ಕಾಯಿದೆ.

8. Section 2(d) of Karnataka Stamp Act, 1957 reads thus:-

"i) a conveyance on sale
ii) every instrument
iii) every decree of final order of any civil court
iv) every order made by the High Court under Section 394 of the Companies Act,

1956 in respect of amalgamation of companies

by which property, whether movable or immovable or any estate is transferred to, or vested in, any other person, and which is not otherwise specifically provided for by the schedule".

9. The aforesaid amendment Act 1987 of schedule to Section 2 says that,

i) In article (e) for the words 'five rupees' the words "ten rupees" shall be substituted.

ii) For Article 20 except the proviso the following shall be substituted viz., where the market value of the property which is the subject matter of conveyance:-

Does not exceed Rs.50 Rs.5/-
Where it exceeds 50 but does not exceed Rs.100/- Rs.10/-
Where it exceeds 100 but does not exceed Rs.200/- Rs.20/-
Where it exceeds 200 but does not exceed Rs.300/- Rs.30/-
Where it exceeds 300 but does not exceed Rs.400/- Rs.40/-
Where it exceeds 400 but does not exceed Rs.500/- Rs.50/-
Where it exceeds 500 but does not exceed Rs.600/- Rs.60/-
Where it exceeds 600 but does not exceed Rs.700/- Rs.70/-
Where it exceeds 700 but does not exceed Rs.800/- Rs.80/-
Where it exceeds 800 but does not exceed Rs.900/- Rs.90/-
Where it exceeds 900 but does not exceed Rs.1000/- Rs.100/-
And for every Rs.500 or part thereof in excess of Rs.1000/- Rs.50/-

10. Article 5(d)&(e)(i) of the Act reads thus:-

Article 5(d) – If relating to a transaction of lease cum sale in connection with the allotment of a building site, with or without building thereon by BDA etc, then the proper stamp duty is – the same duty as a conveyance (20) for market value equal to the security deposit and the amount of average annual grant reserved under such agreement

5(e) (i)- if the sale of immovable property wherein part performance of the contract - possession of the property is delivered or is agreed to be delivered (before) executing the conveyance, then proper stamp duty is -same duty as a conveyance (20) on the market value of the property.

11. Article 20 as amended by Act No.9/1987 referred supra says that:-

"For conveyance- as defined by clause (d) of Section 2, **not being a transfer charged or exempted under No.52**, on the market value of the property which is the subject matter of conveyance, then as per the aforesaid amended Act proper stamp duty was five percent of the value".

The first proviso to the said article as inserted by Act No.16 of 1981 says that, provided further that in any case where a **lease cum sale agreement** is executed and is tamped with the ad valorem stamp required for such agreement under item (d) of Article 5 and in furtherance of such agreement a conveyance is subsequently executed, the duty on such conveyance shall not exceed Rs.10/- or the difference of the duty payable on such conveyance and the duty already collected on the security deposit under item (d) of Article 5 which ever is greater.

The second proviso to the said article as inserted by Act No.8/2003 states that **not withstanding anything contrary contained in this Act**, whereas lease cum sale agreement was executed before the 31st day of March 2001 in respect of a site alloted by any House Building Co-operative Society registered under the Societies Act and in furtherance of such agreement a conveyance is subsequently executed, the duty payable on such conveyance shall be on the market value of such site as on the date of execution of the lease cum sale agreement.

12. Art.41(2)(1)(e) of the Act reads thus:-

"**Power of attorney-** when given for consideration and or when coupled with interest and authorizing the attorney to sell any immovable property – then the proper stamp duty is the same duty as a conveyance under Art.20(1) on consideration or on market value of the property which is the subject matter of such power of attorney which ever is higher, subject to adjustable towards duty already paid on agreement of sale under Art.5(e) of the Act.

13. Section 33 of the Act provides about examination and impounding of instruments and Section 34 of the Act states that instruments not duly stamped are inadmissible in evidence. Section 49 of Registration Act says about effect of non registration of documents required to be registered under Section 17 of the Act.

14. So in the case on hand, as observed supra admittedly the late plaintiff has filed O.S. No.3504/2007 for the relief of bare injunction and later on got amended the plaint and inserted the relief of declaration and possession in respect of the suit property bearing site No.1A, Katha No.728, measuring 40 x 50 feet of Singasandra village based on sale deed dated 29/07/2004. Similarly, late plaintiff Sampath Raj has also filed O.S. No.3505/2007 for the relief of declaration, possession and injunction in respect of the

suit property bearing site No.1, Katha No.728, measuring 40 x 50 feet of Singasandra village based on sale deed dated 29/07/2004.

15. It is pertinent to note here that alleged unregistered GPA, an affidavit and agreement of sale (with possession) for sale consideration of Rs.60,000/- in respect of the suit schedule property came to be executed on 18/05/1992. Accordingly learned counsel for the plaintiffs relying on amended provisions of Karnataka Stamp (second amendment) Act, 1987 submits that, duty of Rs.10/- paid on the said document is correct. But, as per the recitals of the affidavit with agreement of sale (with possession) depicts handing over of the possession of the schedule site/ property No.1A as on the date of execution of aforesaid documents itself.

16. This being the fact, if we read Section 2(d), Art.5 (e)(i) r/w Article 20 and 41(e) of the Karnataka Stamp Act, 1957, then stamp duty is payable as a conveyance under Art. 20 of the Stamp Act. However, in view of the fact that GPA has been executed along with agreement of sale, so these documents are contemporaneous one, as such if the plaintiffs pay duty and penalty on the agreement of sale dated 18/05/1992, then the same has to be adjusted in respect of GPA as per the proviso to Art.41(e) of the Act. For these reasons the arguments advanced by

the learned counsel for the plaintiffs do not have weight and cannot be accepted, on the other hand the arguments canvassed by the learned counsel for defendants holds good. Consequently the aforesaid three original documents viz., GPA, an affidavit and agreement of sale dated 18/05/1992 are not admissible in evidence without payment of duty and penalty, accordingly liable to be impounded with a direction to the plaintiffs to pay appropriate duty and penalty i.e. deficit duty of Rs.5,990/- and penalty of Rs.59,900/- = Rs.65,890/- as per the office note dated 04/12/2019 on or before next date of hearing without fail.

For compliance call on hearing date 02/07/2020.

(C.D. Karoshi)
V ADDL.CITY CIVIL JUDGE
BANGALORE

In view of the general instructions of the Hon'ble High Court of Karnataka dated 03/05/2020 and 29/05/2020(VC) and as per the Circular of the Office of City Civil court dated 23/05/2020 during closure of courts due to Covid-19, above numbered cases are got advanced/preponed on today's board from 16/07/2020 which were being reserved for orders on duty and penalty in main suit after hearing only.

Today is non- sitting day for this court. Accordingly, this court made efforts to intimate both the counsels on record, but their mobile numbers are not available in the records. Hence, as per the aforesaid instructions, the orders on duty and penalty passed in this office in main suit with a direction to the office to intimate the same and also uploaded in the CIS.

Call with main suit on 02/07/2020.

(C.D. Karoshi)
V ADDL.CITY CIVIL JUDGE
BANGALORE