

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE
AT BANGALORE [CCH.No.87]

Present:

Sri. SUNIL ANDANEPPA SHETTAR, B.Sc., LLB (SPL)
LXXXVI ADDL.CITY CIVIL JUDGE,

Dated this the 28th day of July, 2022

Com.O.S.No.945/2021

Plaintiff/s : Mr.K.A.Mohammad Ali

- Vs -

Defendant/s : Mrs.Asha.L @ Asha Chetan Kumar

ORDER ON I.A.No.IX

This is an application dated 23.05.2022 filed by the defendant under section 33 of the Karnataka Stamp Act, 1957 R/w Sec.151 of C.P.C to impound the agreement for sale of stock-in-trade furniture and effects dated 03.08.2018 as it is not duly stamped.

2. The defendant has sworn to an affidavit annexed to the application and contended that the suit is for recovery of cheque amount mentioned in the agreement for stock-in-trade, furniture and effects dated 03.08.2018, which is chargeable with stamp duty under article 5 (g) of the

schedule to the Karnataka Stamp Act, 1957. The plaintiff ought to have paid a stamp duty of Rs.1,68,000/- on the said agreement instead of Rs.500/-. The plaintiff has not paid the stamp duty on the said agreement and hence, the same has to be impounded under section 33 of the act by allowing the application.

3. The application is opposed by the plaintiff by filing his objections and contended that the stamp paper was purchased by the defendant under the heading memorandum of understanding and the defendant had paid only a sum of Rs.500/- instead of requisite stamp duty for agreement to purchase and the plaintiff with a bonafide belief did not ascertain the actual stamp duty paid by the defendant.

4. It is further contended that as per Sec.30 (m) of Karnataka Stamp Act, 1957 R/w article 5(c) a duty is cast on the purchaser to pay the stamp duty and hence, the defendant is liable to make payment of stamp duty along with ten times the duty so payable. Further the plaintiff has prayed to impound the said agreement directing the

defendant to pay the stamp duty and penalty in accordance with law.

5. Considering the contentions of the respective parties, the following point arises for my consideration:

“ Whether the agreement for sale of stock-in-trade furniture and effects dated 03.08.2018 is insufficiently stamped and if so who is liable to pay the deficit stamp duty and penalty?”

6. Having heard the arguments of both the counsels on the application and considering the entire materials available on record, I answer the above point in ‘Affirmative’ and the defendant is directed to pay the stamp duty and penalty for the following:

REASONS

7. The plaintiff has instituted the summary suit under Order 37 Rule 1 of CPC for judgment and decree directing the defendants to pay a sum of Rs.16,10,500/- together with future interest at the rate of 18% from the date of suit till realization with cost.

8. The plaintiff has produced the copy of agreement for sale of stock-in-trade furniture and effects dated 03.08.2018 subsequent to the institution of the suit. Admittedly the said agreement is written on a stamp paper of Rs.500/- and both the parties to the suit admits that the document is insufficiently stamped. Under the facts and circumstances of the case the said agreement attracts payment of deficit stamp duty and penalty.

9. On the one hand the applicant/defendant claims that the plaintiff has relied upon the said agreement and hence, he is liable to pay the deficit stamp duty and penalty. On the other hand it is the contention of the plaintiff that the defendant being the purchaser is bound to pay the deficit stamp duty and penalty.

10. Upon considering the contentions of the respective parties it is necessary to go through Sec.33 of the Karnataka Stamp Act, 1957, which reads as under:

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is

produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in ¹[India] when such instrument was executed or first executed:

Provided that--

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,--

(a) ²[the ³[State Government]] may determine what offices shall be deemed to be public offices; and

(b) ⁴[the ²[State Government]] may determine who shall be deemed to be persons in charge of public offices.

11. The Hon'ble High Court of Karnataka in its judgment reported in ILR 2013 KAR 368 and ILR 2018 KAR 2089 has discussed the requirements of Sec.33 of the Karnataka Stamp Act, 1957 and impounding of instruments. It has been held in the said judgment that "under section 33 of the Karnataka Stamp Act, 1957, the moment insufficiently stamped instrument comes to the notice of the court, the same has to be impounded in accordance with sec.33, whether the same would be relied upon the party under Sec.34 or not". The Hon'ble High Court has also discussed the powers of the court and the mode in which the documents have to be impounded.

12. Admittedly the agreement is for sale of stock in trade, furniture and effects entered on 03.08.2018 between the plaintiff and his power of attorney holder as a vendor/seller and the defendant. The total sale consideration amount mentioned in the agreement is Rs.56,00,000/-. As per article 5(c)(ii) of the Karnataka

Stamp Act, 1957 if the agreement relating to the purchase of sale of shares, scripts etc., the stamp duty payable is one rupee for every rupees ten thousand or part thereof of the value of the security at the time of its purchase or sale. Considering the sale consideration mentioned in the agreement, the stamp duty payable comes to Rs.560/-.

13. The defendant contends that plaintiff is relying upon the aforesaid agreement and hence the plaintiff is liable to pay the deficit stamp duty and penalty. On the other hand the plaintiff claims that as per Sec.30 (m) of the Karnataka Stamp Act, 1957 it is the defendant who has to bear the expenses of stamp duty and hence, the liability of payment of stamp duty is upon the defendant.

14. Sec.30 of the Karnataka Stamp Act, 1957 deals with the person upon whom the burden of payment of stamp duty is saddled. As per Sec.30(m) in the case of an agreement for purchase or sale of shares, stocks, it is the purchaser who has to bear the expenses of proper stamp duty. In the case on hand the defendant is the purchaser

and the plaintiff is the vendor and hence, the liability of payment of duty and penalty is upon the defendant only.

15. As already discussed above the actual stamp duty payable on the agreement dated 03.08.2018 is Rs. 560/- and the agreement is written on a stamp paper of Rs.500/- and hence the deficit stamp duty is Rs.60/-. As per Sec.34 of the said act the defendant who happens to be the purchaser has to pay the deficit stamp duty of Rs.60/- and also penalty at the rate of ten times the deficit stamp duty, which comes to Rs.600/-. Hence, in all the deficit stamp duty and penalty comes to Rs.660/-, which the defendant has to pay. Hence, I answer above point in the affirmative and proceed to pass the following;

ORDER

I.A.No.IX filed by the defendant under section 33 of Karnataka Stamp Act 1957 R/w Sec.151 of C.P.C is hereby allowed and the agreement for sale of stock in trade, furniture and effects dated 03.08.2018 is impounded and the

defendant is directed to pay the deficit stamp duty and penalty of Rs.660/- within one week.

If the defendant fails to pay the duty and penalty within one week, the agreement for sale of stock in trade, furniture and effects dated 03.08.2018 will be sent to the District Collector for further action.

(Dictated to the Stenographer online transcribed & computerized by her, corrected on computer and signed by me then pronounced in the Open Court, dated this 28th the day of July, 2022)

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge
Bangalore.