

KABC170006212025



**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS  
JUDGE, AT BENGALURU (CCH-86) (Commercial Court)**

**THIS THE 16<sup>th</sup> DAY OF DECEMBER 2025**

**PRESENT:  
SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,  
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**Com.OS.No.214/2025**

**PLAINTIFFS:**

**1. Mrs. Vijaya Subramaniyan**

W/o Late Mr. T.R.Subramaniyan,  
Aged about 61 years,  
R/At No.1094, 12-A Main Road,  
ESI Hospital, HAL 2<sup>nd</sup> Stage  
Bengaluru-560 008.

**2. Mrs. Rajeswari Venkatesh**

W/o Mr. Venkatesh Vaidyanathan,  
D/o Late Mr. T. R. Subramaniyan,  
Aged about 61 years,  
R/At No.1094, 12-A Main Road ESI Hospital  
HAL 2nd Stage Bengaluru-560 008.

**3. Mr. K Balasubramaniyan**

R/At No.19, Flat No.103

Mantri Residency Bannerghatta Road  
Bengaluru-560 076.

Plaintiff Nos. 1 to 3 are Rep By SPA Holder:  
Mr. Venkatesh Vaidyanatha

**(Represented By Sri. Anirudh Suresh, Advocate)**

**: Versus:**

**DEFENDANTS:**

**1. M/S Gaurav Housing Development Pvt Ltd**

Registered Office At No.3442,  
Service Road, RPC Layout,  
Vijayanagar  
Bangalore-560 040.

**2. Mr. Sanchit Gaurav**

Director Of M/S Gaurav Housing Development Pvt Ltd  
Holding 75% of shares in defendant No.1  
S/o Mr. Rajiv Raman Sinha,  
R/At No.1148, 13th Cross, 1st Stage  
Nagarbhavi Behind Siddayanga School  
Chandra Layout Bangalore-560 040.

Also At No.651/B Surya,  
19th Main Road, Ideal Home Township  
Bangalore-560 098.

**3. Mr. Rajiv Raman Sinha**

Director Of M/S Gaurav Housing Development Pvt Ltd.  
Holding 25% of shares in defendant No.1  
S/o Bishnu Deconarayan Sinha,

R/at No. No.651/B Surya, 19th Main Road,  
Ideal Home Township  
Bangalore-560 098

**(Represented by Sri. Anupam Agarwal, Advocate for D2  
D1 is absent D3 is abated)**

**IA.NO.V**

**Applicant/Defendant No.2: Mr. Sanchit Gaurav**

(Represented by Sri. Anupam Agarwal, Advocate)

**V/s**

**Opponents/Plaintiffs: Mrs. Vijaya Subramaniyan and  
others**

(Represented By Sri. Anirudh Suresh, Advocate)

(i)	Provisions under which the application is filed	Under Sec.33 of Karnataka Stamps Act, R/w Sec.151 of CPC
(ii)	Relief sought for	Seeking impounding of the documents at Ex.P.5 and P.6 and transmitting the same to the District Registrar of Stamp Duties for determination of the stamp duty and penalty payable

		under the said instruments.
(iii)	The date on which the application is filed	08.10.2025
(iv)	Number of the application	I.A.No.V
(v)	The date on which the objections are filed by different opponents	16.10.2025
(vi)	The date on which the orders were passed on the said application	16.12.2025

### **ORDERS ON IA.NO.V**

I.A.No.5 is filed by the defendant No.2 under Sec.33 of Karnataka Stamps Act, R/w Sec.151 of CPC seeking impounding of the documents at Ex.P.5 and P.6 and transmitting the same to the District Registrar of Stamp Duties for determination of the stamp duty and penalty payable under the said instruments.

**2.** It is contended by the defendant No.2 that the documents at Ex.P.5 and P.6 the agreement of sale dated 27.06.2012 and 13.08.2012 are insufficiently stamped instrument and unregistered instruments and as they are insufficiently stamped no evidentiary value can be

attached to them and therefore even though the documents are admitted in evidence the Court has got powers to impound the instrument and send them to the Registrar for recovery of required duty and penalty and on these grounds has sought for impounding of the documents at Ex.P.5 and P.6.

**3.** Objections are filed by the plaintiff contending that after as per Sec.35 of the Karnataka Stamp Act once the document is admitted in evidence there no question can be raised with regard to the admissibility of the said instrument and further contended that the sale agreements which does not contemplate regarding handing over of the possession of the property need not be compulsorily registered as per Sec.17(2) of the Registration Act 1908 and further contended that once the document is already admitted in evidence no impounding of the document can be undertaken and the defendant No.2 having not objected to at the time of marking of the instrument has no justification to question the validity of the document at this stage and further that the defendant No.2 has not even contested the proceedings and on

these grounds has sought for rejecting the application with costs.

4. Heard the learned counsels appearing for the defendant No.2 and the plaintiff and perused the material on record. Both sides have filed memo with citations.

5. The points for consideration are:-

1) Whether the defendant No.2 has made out justifiable grounds for impounding of the instruments marked at Ex.P.5 and P.6 for the purpose of collection of duty and penalty as prayed?

2) What order?

6. My answer on the above point is as under:

Point No.1: **In the Negative.**

Point No.2: As per final order for the following

### **REASONS**

7. **POINT NO.1**:- The present application is filed by defendant No.2 upon completion of the evidence of the

plaintiff. It is pertinent to mention here that defendant No.2 has forfeited his right of defence having failed to file his statement of defence within the mandatory period of 120 days from the date of service of summons. Defendant No.2 has also not participated in the trial by cross examining the plaintiff witness on the plaint averments.

**8.** It is the specific contention of defendant No.2 that Ex.P.5 and P.6 the agreements of sale dated 27.06.2012 and 13.08.2012 are prima facie insufficiently stamped as they have been executed on a stamp paper value of Rs.500/- each whereas the sale consideration mentioned in the agreement is Rs.60,00,000/- and therefore the plaintiff is required to pay stamp duty at the rate of 0.1% of the total sale consideration and hence the documents are required to be impounded and sent for determination of stamp duty. Per contra the contention of the plaintiff is that the instruments has already been admitted in evidence and the defendant No.2 did not object for marking of the said documents at the time of trial and once the document is admitted in evidence as per the provisions of Sec.35 of the Karnataka Stamps Act the Court cannot once again question the validity of the said

instrument and sought for rejecting the contentions put forth by the defendant No.2.

**9.** The learned counsel for defendant No.2 in the course of his arguments has relied upon the following decisions:

**1. 2019 SCC Online Bom 720, Priya D/o Narayan Puthan vs. Parashuram Printers, Aurangabad and others**, wherein at para 24 of the judgment it is observed as under:

*Para 24: The object of this Section is to safeguard the revenue. As has been held by this Court in the aforesaid Judgment, Section 35 of the Stamp Act only gives finality to the decision in regard to the admissibility of the said document in evidence, it however does not operate as a bar for impounding of the said document. The Trial Court in the impugned order has observed that filing of an application by the present petitioner for impounding of document in question was only with the intention to protract the trial. If that be so, the Trial Court could have taken appropriate care in that regard also. There was no impediment to forward the original document to the Collector to impound the same by keeping on record the attested or certified copy of the document in question. It need not be stated that the Trial Court may not be required to wait for the decision of the Collector on the issue of impounding and can very well proceed further with the trial of the Suit.*

**2. 2024 SCC Online SC 2320, Seetharama Shetty vs. Monappa Shetty**, wherein at paragraphs 21.1.1, 21.2 and 21.3 it has been observed as under:

*21.1.1: The person who intends to rely on an insufficiently/improperly stamped instrument has option to submit to the scope of Section 34 of the Act, pay duty and penalty. The party also has the option to directly move an application under Section 39 of the Act before the District Registrar and have the deficit stamp duty and the penalty as may be imposed collected. In either of the cases, after the deficit stamp duty and the penalty are paid, the impounding effected under Section 35 of the Act is released and the instrument available to the party for relying as evidence. In the event, a party prefers to have the document sent to the deputy commissioner for collecting the deficit stamp duty and penalty, the Court/Every Person has no option except to send the document to the District Registrar. The caveat to the above is that, before the Court/Every Person exercises the jurisdiction under Section 34 of the Act, the option must be exercised by a party.*

*21.2: Section 34 of the Act is titled instruments not duly stamped inadmissible in evidence. This provision bars the admission of an instrument in evidence unless adequate stamp duty and the penalty are paid. Every person so authorised to collect deficit stamp duty and penalty has no discretion except to levy and collect ten times the penalty of deficit stamp duty.*

*21.3:Section 35 of the Act is titled admission of instrument where not to be questioned. Section 35 prohibits questioning the admission of an insufficiently stamped instrument in evidence.*

**3. 2025 SCC OnLine Kar 17472 Mrs. Lalitha vs. Mr. J Chelubaraj and others**, wherein at paragraph 7 it is observed as under:

*Para 7:The Court in W.P. No.47225/2016 has held that merely because an insufficiently stamped instrument is admitted in evidence, unopposed would not be a bar in the court or the authority to exercise and discharge its duties namely to impound and seek payment of stamp duty.*

**4. Judgment of our Hon'ble High Court in MSA 187/2012 dated 13.02.2019, Sri. K V Raju and another vs. Smt. Kamalammal**, wherein at paragraphs 16 and 17 it has been observed as under:

*Para 16: Section 33(1) of the Act states that the Court or any person authorized to receive evidence before whom an insufficiently stamped document is brought shall impound such document. Section 33(2) of the Act imposes a duty on the Court to decide what is the duty payable and if insufficient duty is paid, what is the deficit and what is the penalty payable.*

*Para 17:This Court in K. Amarnath vs. Puttamma [2000(4) Kar.L.J. 55] held that whenever a document insufficiently stamped comes before the Court, the Court has to impound the same, decide the duty and*

*penalty and if such penalty is not deposited, to refer the document to the Deputy Commissioner for collecting the duty and penalty.*

**10.** Per contra the learned counsel for the plaintiff has placed reliance upon the following decisions:

**1.(2024) 7 SCC 719, G M Shahul Hameed vs. Jayanthi R Hegde,** wherein at para 18 of the judgment it has been observed as under:

*Para 18: For section 35 to come into operation, the instrument must have been “admitted in evidence” upon a judicial determination. The words “judicial determination” have to be read into section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by section 35.*

**2. (2023) 10 SCC 725 R Hemalatha vs. Kashthuri,** wherein with respect to unregistered instruments at para 10 and 13 of the judgment it has been observed as under:

*Para 10: Thus as per proviso to Section 49 an unregistered document affecting the immovable property and required by Registration Act 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, or as evidence of any collateral transaction not required to be effected by registered document.*

*Para 13: Under the circumstances as per proviso to Section 49 of the Registration Act, an unregistered*

*document affecting immovable property and required by Registration Act or the Transfer of Property Act 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, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.*

**3. AIR 1961 SC 1655, Javer Chand and others vs. Pukhraj Surana**, wherein the Apex Court at para 7 of the judgment has observed as under:

*Para 7: When a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the*

*document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the Court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, s. 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.*

**4. (2003) 8 SCC 752, R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and**

**others**, wherein at para 16 and 20 of the judgment it has been observed as under:

*Para 16: This document was tendered in evidence and marked as an exhibit without any objection by the defendants when this was done. The plaintiff has in his statement deposed and made it clear that the certified copy, though available, was placed on the record of another legal proceedings and, therefore, in the present proceedings he was tendering the photocopy. There is no challenge to this part of the statement of the plaintiff. If only the tendering of the photocopy would have been objected to by the defendant, the plaintiff would have then and there sought for the leave of the Court either for tendering in evidence a certified copy freshly obtained or else would have summoned the record of the other legal proceedings with the certified copy available on record for the perusal of the Court.*

*Para 20: an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.*

**11.** The plaintiff has filed this suit for recovery of the earnest money paid by them pursuant to an agreement of

sale entered into with the defendants. The defendant No.2 who has appeared through counsel did not file the written statement within the stipulated time and thereby has forfeited his right of defence. The plaintiffs have examined their SPA holder as P.W.1 and through his evidence has got marked documents at Ex.P.1 to P.32 and among them the relevant of documents which are the subject matter of present application are the unregistered agreements of sale dated 27.06.2012 and 13.08.2012 marked as Ex.P.5 and P.6. It is the specific contention of defendant No.2 that both these agreements speak of sale of the schedule property for a sale consideration of Rs.60,00,000/-. Both the documents have been executed on a stamp value of Rs.500/- which is insufficiently stamped as the plaintiff was required to pay the stamp duty at the rate of Rs.0.1% of the total sale consideration. Per contra it is the contention of the plaintiff that both these documents have been admitted in evidence and at the time of marking of the instruments no objections was raised and therefore the defendant cannot question the same. It is pertinent to mention here that though the decisions relied upon by the learned counsel for the plaintiff supports his contention that once the documents is admitted in evidence the

Court is not empowered to go back on the admissibility of the instrument even though if it is insufficiently stamped. What has been observed in the decisions relied upon by the learned counsel for the plaintiff is that once the Court admits the instrument rightly or wrongly the question of admissibility cannot be again called in dispute and the Court has no powers to go back on the admissibility of the instrument.

**12.** It is necessary to mention here that the defendant No.2 is not questioning the validity or admissibility of the instruments at Ex.P.5 and P.6. It is the specific contention of defendant No.2 that even though the instruments are admitted in evidence when it is found to be insufficiently stamped the Court is duty bound to impound the instrument which is an independent act as that of the admissibility of the instrument. In the decisions relied upon by the learned counsel for the defendant No.2 cited supra stipulates that impounding of an instrument is a different act from the admissibility of the instrument and even though an insufficiently stamped instrument is admitted in evidence the Court still has the powers to impound the instrument and collect the duty and penalty

to be paid as it is a money to be paid to the exchequer in the form of revenue.

**13.** In the present case the defendant No.2 has forfeited the right to file the defence and has not cross-examined P.W.1 and has also not objected to marking of the unregistered of agreements of sale at Ex.P.5 and P.6. Under both the instruments it has been stipulated that the purchaser i.e., the father of plaintiff Nos.1 and 2 has agreed to purchase the schedule B apartment for a total sale price of Rs.60,00,000/- and likewise the plaintiff No.3 under Ex.P.6 has agreed to purchase the schedule B apartments also for a total sale consideration of Rs.60,00,000/-. The agreement no where speaks about payment of any advance sale consideration even though the plaintiffs have produced Ex.P.7 to P.10 the receipts issued by the defendant with regard to part sale consideration received from the deceased husband of plaintiff No.1 and father of plaintiff No.2 and likewise the receipts at Ex.P.12 to P.15 with respect to part sale consideration being received from plaintiff No.3. In both the instruments there is no mention about the part sale

consideration being paid subsequent to execution of the unregistered agreements of sale.

**14.** It is pertinent to mention here that under both the instruments there is no mention about possession of the apartment being handed over to the plaintiffs. Also there is no mention about any advance sale consideration being received under the instrument pursuant to execution of same. Even though the plaintiff has produced the receipts with regards to having paid the part sale consideration to the defendant and issued by the defendant, nevertheless the instrument does not carry any recitals/endorsement regarding the part sale consideration being paid while executing the agreement of sale. Therefore under such circumstances the agreements of sale having been executed on a stamp value of Rs.500/- each is sufficiently stamped instrument and contention of defendant No.2 that the instruments are liable to be impounded does not hold any water. Thus the prayer of defendant No.2 seeking for impounding of instruments at Ex.P.5 and P.6 cannot be sustained. Accordingly, I answer Point No.1 in the **Negative.**

**15. POINT NO.2:-** For the aforesaid reasons, I pass the following:

**ORDER**

I.A.No.5 filed by the defendant No.2 under Sec.33 of Karnataka Stamps Act 1957, R/w Sec.151 of CPC is **rejected.**

No order as to costs.

(Dictated to the Stenographer Grade-III, transcribed by her, corrected and then pronounced by me in open court on this the **16<sup>th</sup> day of December, 2025**)

**(ARJUN. S. MALLUR)**  
**LXXXV Addl.City Civil & Sessions Judge,**  
**Bengaluru.**