

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
KHANAPUR. AT: KHANAPUR

PRESENT: SHRI. SIDDARAMAPPA KALYAN RAO
B.A.,L.L.B.

ADDL. CIVIL JUDGE & JMFC., KHANAPUR

ORIGINAL SUIT No.244/2013

DATED THIS THE 2nd DAY OF DECEMBER, 2016

BETWEEN:

- 1. Shri. Fondu Maruti Sutar,**
Age: 64 years, Occ: Carpenter,
R/o. H.No.111, Nidgal, Tal: Khanapur, Dist: Belagavi.
..... Plaintiff
(By Shri.H.N.Desai, Advocate For plaintiff)

AND :

- 1. Shri. Hanmant Narayan Sutar,**
Age: 40 years, Occ: Carpenter,
R/o. Nidgal, Tal: Khanapur and another.
...Defendants
(By Shri.V.N.Patil, advocate for defendants)

ORDERS ON I.A.No.II

Applicant/Plaintiff:

1. Shri. Phondur N. Sutar,
// Vs //

Opponents/Defendants:

1. Shri. Hanmant N. Sutar and others.

The plaintiff has filed the above said application Under Section. 28(2) of the Karnataka Stamp Act, 1957 R/w. K.S.Rules, 1958. seeking permission to pay the proper stamp duties as per the Karnataka Stamp Act, 1957 and as amended on the documents produced by the plaintiff or the purpose of making the said documents in evidence. The certificate of valuation issued by the Sub-Registrar, Khanapur is produced.

2. The plaintiff has filed the present application alongwith the affidavit, contending that the above defendants are the joint owners of the said property and both have executed agreement

of sale in his favour and fixed the sale consideration amount of Rs.1,28,500/- on 15.07.2009 and the defendants have received part consideration amount of Rs.53,500/- and also agreed to execute the registered sale deed and also handed over the possession in his favour. The said document is not registered after execution of the said document. It is further stated that the agreement of sale in the top noted suit but due to non registration of said documents as per the stamp act not marked and read in evidence during the time of evidence. Hence, the plaintiff prays to allow the above application.

3. On the other hand, the defendant has filed the objections to the above said I.A. and denied all the affidavit averments of the plaintiff. It is submitted that the alleged claim of the plaintiff is based upon the agreement as narrated by the plaintiff, discloses that the alleged agreement mentioned the consideration amount of Rs.1,28,500/- as on 15.07.2009, clearly established that his claim based upon the alleged agreement of sale and as such the plaintiff has to pay the court fee upon the consideration shown over the alleged document as well as plaintiff has to pay court fee upon the consideration shown over the alleged document as well as plaintiff has to pay court fee upon the consideration shown over the alleged document as well as plaintiff has to pay court fee upon the market value of the alleged suit property as on the date of filing of the suit as provided in case of specific performance of contract or agreement under Section.40(A) of Karnataka Court Fees and Suit Valuation Act, 1958. It is also submitted that as on the date of filing of the suit the market value of the suit schedule property fetches Rs.2,50,000/- and the plaintiff is required to pay the same over the market value of the suit schedule property as the plaintiff claims house and open

space as mentioned in the alleged agreement of sale. Hence, it is submitted that the plaintiff has to pay the court fee upon the market value of the alleged suit property which require to pay of Rs.10,125/- as provided under the provisions of Section.40(A) of the Karnataka Court Fees and Suit valuation Act, 1958. Hence, it is submitted that the application filed by the plaintiff under the provision of Section.28(2) of Karnataka Court Fees and Suit Valuation Act, does not comes to an aid to the plaintiff. Hence, this application is liable to be rejected with heavy costs.

4. Based upon the above said pleadings, my points for consideration are as under:

1. Whether the application filed by the plaintiff is deserves to be allowed?

2. What order?

5. Heard. Perused the materials on record. After due perusal, I proceed to answer above said Points are as under:

Point No.1: In the Affirmative.

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

REASONS

6. **POINT NO.1:-** This is a suit filed by the plaintiff against the defendant for the relief of specific performance of contract and at the time of cross examination of PW.1, has contended that the agreement of sale dated 15.07.2009, has to be marked in evidence. Since the above said document was insufficiently stamped and a copy of the said agreement of sale dated 15.07.2009 was sent to the Sub-Registrar, Khanapur for calculation of the stamp duty and penalty. The Sub-Registrar, Khanapur has sent a letter on 30.11.2015 and in the said letter it is contended that as per Article 5e(1) of the Karnataka Stamp

Act, 1957, the plaintiff is entitled to pay 6% of the stamp on an amount of Rs.1,28,500/-. Hence, on calculation on 1,28,500/- X 6/100=7710 and the above said agreement is already written on stamp of Rs.50/- and there is a deficient of payment of stamp duty of Rs.7,660/- and as per article 34 of Karnataka Stamp Act, the plaintiff is entitled to pay 10 times penalty, i.e., 7760 X 10= 76600+7710=84310. Hence, in all total, the plaintiff is entitled to pay an amount of Rs.84,310/- stamp duty and penalty. Though in the present application, the defendant has filed objections, the said objections are with regard to the payment of court fee and that question can be raised by the defendant in different application and not in the present application filed by the plaintiff. Hence, in view of my above discussion, the application filed by the plaintiff is entitled for the above relief. ***Hence, in view of my above discussion, I proceed to answer Point No.1 in the Affirmative.***

7. **POINT NO.2** :- For the above discussed reasons, I proceed to pass the following:

ORDER

I.A.No.XV filed by the plaintiff is hereby allowed.

The plaintiff is hereby directed to pay the stamp duty and penalty of Rs.84,310/-.

(Dictated to the stenographer directly on the computer. corrected by me and then pronounced in the open court on this 2nd day of December, 2016)

**(SIDDARAMAPPA KALYANRAO)
Addl. Civil Judge & JMFC., Khanapur.**