C/o Parties Absent.

ORDERS ON PAYMENT OF DUTY AND PENALTY AND MARKING OF DOCUMENT AS EXHIBIT IN EVIDENCE

In this suit filed by the plaintiff seeking relief of partition and for separate possession sought against the defendants in respect of the suit schedule immovable properties as mentioned in the plaint schedule, that the defendant No.2 has produced a document styled as ವಿಭಾಗದ ಪಾಲು ಪಟ್ಟಿ and would like to get it marked as one of the exhibits in her evidence in support of her case.

2. That while defendant No.2 had produced and the document which is about to be exhibited, at the time of oral evidence of DW-2, the learned counsel appearing for the plaintiff had raised objection to mark such document as an exhibit. On the basis of such oral objection, the evidence of DW-2 has been deferred.

3. It is the oral objection of the learned counsel appearing for the plaintiff is that it is a document which is not an admitted document, that has been disputed by the plaintiff, in such circumstances, when the document itself styled as a ‘Deed of Partition’, it requires registration and proper duty required to be paid, so, it cannot be marked or looked into.

4. I have heard the learned counsels appearing for the parties herein, perused the materials placed on record, and also gone through the relevant law which is laid down by our own Hon’ble High Court of Karnataka, under the situation, what are the criteria to be taken into account to decide whether to mark such document and the procedure to be adopted, then also I have gone through the relevant provisions of the Karnataka Stamp Act, 1957.

5. The records reveal that, plaintiff has filed this suit for partition, where as the defendants have taken different stand in their written statement which need not be discussed here, then plaintiffs have led in evidence on their side, then the DW-1 also got examined, now, the defendant No.2 want to produce this document styled as "ಪಾಲು ವಿಭಾಗದ ಪಾಲು ಪಟ್ಟಿ" now, the question is whether to be treated as mere memorandum of partition or as Deed of Partition in whole, in this regard, the recitals of the said document plays vital role, as such there is a list prepared by the parties to the said document by getting divided their respective shares in the joint family properties, and they agreed to enjoy the same in accordance with the said document.

6. The said "ಪಾಲು ವಿಭಾಗದ ಪಾಲು ಪಟ್ಟಿ has been executed on dt.15/5/1963, at Holalkere between Thimmappa and Kariayappa in the presence of two witnesses namely, 1) Thimmappa, 2) Gursiddappa of Malenahalli village, Holalkere Taluk, that has been drafted by one Patel Basappa.

7. When there is an unambiguous recitals and document also styled as "ಪಾಲು ವಿಭಾಗದ ಪಾಲು ಪಟ್ಟಿ", it is neither memorandum of partition, nor mere ab "agreement to divide property in severally", since no further document has come to be executed as provided under proviso (a) of Art.39 of the Act. So, it is clear that is a document of **"Partition Deed"**. If it is so, certainly, which needs to be

registered as per Section 17 of Indian Registration Act, 1963, since the said ACT, came into force as on the date of execution of such document. In this regard, I have read the **Art. 39 of the Karnataka Stamp Act, 1957,** which speaks that-the instrument of as defined by clause(b) not of proviso clause(a), **Where the property involved in the partition is agriculture land-Rupees Two Hundred Fifty for each share.**

8. Where as the present document which is sought to be produced in evidence is concerned, as such the 10 % of duty amounts Rs.2,500/- of share of the parties as mentioned in the document who are Thimmappa and Kariyappa, it would be Rs.2,500/- + 2,500/- + 5,000/- X 10 times duty and 5 Paise thereof as penalty ought to have paid by the DW-2 to get the document marked in the evidence as sought for, then as calculated, I am of the clear opinion Rs.50,250/- has to be collected before going to admit such document. As per the above noted provision under The Karnataka Stamp Act, 1957 (As amended by Karnataka Act No.20 of 2009) Schedule:-

Art.39. **Partition-Instrument—**of-- as defined by clause (k) of sub-section (1) of Section 2.--

(a) xxxxxxxxxxxxxxx	
(b) Where the property involved in the partition is agricultural land.	Rupees two hundred fifty for each share.
(c) xxxxxxxxxxxxxxx	
(d) Where the property involved	Maximum of the duties

in the partition belongs to any of the combinations of categories mentioned in sub-clause (a),(b) and (c) above.	described in sub-clause (a), (b) or (c) above for each share:]
	Provided always that; (a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument but shall not be less than 1[fifty rupees]1;

9. After heard both sides, the document that has been impounded U/Sec.33 of the Stamp Act, in the meantime, the plaintiff has voluntarily paid the above mentioned Rs.50,250/- as duty and penalty on the questioned document on dt: 15/5/1963 partition deed on the agreement entered into between the parties for partition, so that this Court that has been calculated the duty and penalty to be imposed before admitting in evidence, as such the amount is in accordance with the amount calculated by this Court, therefore, there is no need to go for further discussion in this regard, after having calculated the duty and penalty, that by relying upon the decision reported in **Karnataka State Financial Corporation, Mangalore Branch V/s M/S Siyaram Arcade, Puttur and others in**

2015 (2) KCCR 1772. So, the Court has to direct the defendant No.2 to make good the deficit duty and penalty that would be collected by the office.

10. If the party/defendant No.2 who would like to get the document marked and ready to pay or paid as mentioned above on the said document, which is sufficient to admit the document U/Sec.34 of Karnataka Stamp Act, 1957, which reads thus:

> **INSTRUMENTS NOT DULY STAMPED INADMISSIBLE IN EVIDENCE, -** 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 person or by any public officer, unless such instrument is duly stamped.

Provided that,-

> (pp) Any such instrument not being an instrument chargeable (with a duty not exceeding fifteen paise) only, or a mortgage of crop Article (35) (a) of the schedule chargeable with under clauses (a) and (b) of section 3 with a duty of twenty -five paise shall, subject to all the just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of 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 rupees, of a sum equal to ten times such duty or portion;

11. The above provision itself makes it clear that,

once the said ten times duty and penalty as required under the relevant provision is paid by the defendant No.2, such document be admitted in evidence, accordingly, there is no bar to admit the document in evidence, it is under section. 41 of the Karnataka Stamp Act, 1957, which reads as follows:

> **Endorsement of instruments on which duty has been paid under sections 34, 39 or 40**-(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, Section 39 or Section 40, the person admitting such instrument in evidence or the (Deputy Commissioner), as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof and the name and residence of the person paying them.
>
> (2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

12. As per the above discussion, and in the light of the ratio laid down in the decision (Supra) and also as per the provisions of the Karnataka Stamp Act, 1957, I proceed to pass the following:-

<u>ORDER</u>

U/Sec.*34 of the Karnataka Stamp Act, 1957, the*

document styled as "ಪಾಲು ವಿಭಾಗದ ಪಾಲು ಪಟ್ಟಿ" (Partition Deed) dtd:15/05/1963 is hereby levied with duty and penalty of Rs.50,250/- and the same is to be received in evidence as authenticated one.

Office to remit the amount to the concerned head, and the instrument on which the duty and penalty is paid U/Sec.34 of the Act is hereby certified as an authenticated document and can be used as if had been duly stamped, and endorsed thereon U/Sec.41 of the Act.

U/Sec.38 of the Act, the defendant No.2 is at liberty to claim for refund of any excessively paid stamp duty, the learned Deputy Commissioner may if thinks fit may refund the same to the defendant No.2.

SARAVANAN S

Digitally signed by SARAVANAN S
Date: 2023.04.15 13:54:44 +0530

(SARAVANAN.S)
Sr. Civil Judge,
Holalkere.