

KACD420002762015



IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.

AT : HOLALKERE

Present : NIRUPAMA RENAKAPPA DHANG,
B.A.,LL.B.
ADDL.CIVIL JUDGE AND J.M.F.C.
HOLALKERE

Dated: On this the 05th day of December - 2024

O.S No.118/2015

PLAINTIFF/S : Hanumanthappa @ Hanumantha Reddy
Aged about 50 years,

(By Sri K.S.J. Adv.)

V/s

DEFENDANT/S : Rangappa S/o Bidarekere Thippanna
and others

(By Sri J.T.S/K.P Adv for defendant No.1)
(By Sri M.B.A. Adv for defendant No.2, 4 to 6)
(By Sri K.K.M. Adv for defendant No.3)
(By Sri M.S. Adv for defendant No.7, 9, 10)

PARTIES TO I.A NO.IX

APPLICANT/S : Hanumanthappa @ Hanumantha Reddy
PLAINTIFF/S

-v/s-

OPPONENT/S:
DEFENDANTS

Rangappa S/o Bidarekere Thippanna
 and others

ORDER ON I.A No.IX FILED BY THE PLAINTIFF U/O XIII
RULE 8 OF CPC R/W SECTION 33 OF INDIAN STAMP ACT

The plaintiff has filed this application U/o XIII Rule 8 Of CPC R/W Section 33 of Indian Stamp Act praying to impound the sale agreement executed by the defendant in favour of plaintiff dated 05/04/1997.

2. The plaintiff has filed his affidavit along with the present I.A. In the affidavit accompanying to the application the plaintiff has stated that, he has filed this suit against the defendants for the relief of Specific Performance of the Contract in respect of the suit schedule property. It is stated that, after service of suit summons the defendants have appeared before this court through their counsel and filed their written statement. Further, the plaintiff has stated that, he has purchased the suit schedule property through agreement to sell dated 05/04/1997 for valuable consideration of Rs.75,000/- and on the said date he has paid the part of consideration amount of Rs.55,000/- as an earnest money to the defendant No.1, his brothers Rudrappa and T.Thippesh. He has also stated that, the remaining balance consideration amount has also paid to the defendant No.1 and his brothers on 15/07/2003 and the said amount has been received by them in front of the Panchayathdars and

also they have executed the shara on the agreement to sell in front of witnesses on 15/07/2003. It is also stated that, on the date of agreement to sell the possession of the suit schedule property has been handed over to the plaintiff and from the date of said agreement he has been in lawful possession and enjoyment of the suit schedule property. Further, it is also stated that, at the time of agreement the sale agreement deed was not registered before the competent authority and the said agreement has been written on Rs.5/- stamp paper. Hence, today the plaintiff is ready and willing to pay the insufficient stamp duty and also penalty as per law and this Hon'ble Court has got ample power to impound the said document. If this court does not allowed the application, the plaintiff will be put to great injustice and hardship which cannot be compensated under any means and on the other hand there is no harm or injustice will caused to other side.

Further it is also stated that, prior to this suit the defendant No.8 had previously filed a suit in O.S.No.37/2007 seeking relief of partition and separate possession in respect to this suit schedule property before Hon'ble Senior Civil Judge, Holalkere. In the said suit the present plaintiff has been impleaded as defendant No.4 and he has also filed his written statement by contesting the said suit. In the said suit the Hon'ble Senior Civil Judge, Holalkere has framed the additional issues in respect to the suit schedule property. In

order to prove the said additional issues the agreement to sell dated 05/04/1997 was confronted during the trial of said suit and the said document was got marked as Ex.D10. The said issues have been proved by the present plaintiff. Accordingly, the said suit has been dismissed. Thereafter, the defendant No.8 has filed the appeal before the Hon'ble High Court of Karnataka. The said appeal has also been dismissed by the Hon'ble High Court of Karnataka. Thereafter, the present plaintiff had obtained the said document from the record of O.S.No.37/2007 and submitted before this court. As such the said document is to be send before the District Registrar, Chitradurga to impound the same. Accordingly, plaintiff has filed this application for impounding of agreement of sell dated 05/04/1997. If the application is not allowed, it will cause heavy and irreparable loss to him and on the other hand, no loss, injury or hardship would be caused to the other side, if the application is allowed. Hence, he prayed to allow the application.

3. Per contra, the defendants have filed objection to the said application contending that application filed by the plaintiff is not maintainable in law or on facts and not bona-fide and it is liable to be dismissed. The contents of the affidavit are all false and baseless. The plaintiff has not stated any valid ground in his application. It is contented that, the plaintiff is not the owner in possession and enjoyment of the

suit schedule property. The land bearing Sy.No.189 measuring 10 acre 15 guntas is situated at Nanadana Hosur Village, and Sri. Bidarakere Thippanna of Nandana Hosur Village is the original owner of the said property and he had acquired the said property under IHC. He had enjoyed the said property along with his family members by paying land revenue to the Government till his last breath. The Bidarakere Thippanna had three sons by name (1) T. Rudrappa (2) T. Rangappa (3) T. Thippaiah and they have not executed any document infavour of any person during their life time. They have got partitioned their property under Jubani Partition deed and on the strength of said Jubani Partition deed the katha was mutated in their names under M.R.No.3/1980-81. In the said partition the land bearing Sy.No.189 measuring 2 acre 25 guntas and Sy. No.187 measuring 2 acre 21 guntas are allotted to T.Rudrappa and he has enjoying the said properties along with his family members and defendant No.2 to 6 by paying land revenue to Government till his death. After the death of said T.Rudrappa the katha of the said properties were mutated in the name of his wife by name Smt. Nagamma and his children by name R.Nagaraj (Defendant No.2) and R.Ramesh (Defendant No.3) jointly under IHC as per M.R.No.H-40/2015-16. Further, it is contended that the defendant No.2 has filed a case against the plaintiff before the Hon'ble Prl. Civil Judge and JMFC, Holalkere in

O.S.No.81/2015 seeking relief of permanent injunction and said suit has been decreed in favour of the defendants. Accordingly, defendant No.2 to 6 are enjoying said properties without any disturbance from anybody.

Further, it is contended that, in this case already the plaintiff has examined as PW-1 and certified copy of agreement to sell dated 05/04/1997 has been got marked as Ex.P1. Based upon the agreement to sell dated 05/04/1997 the plaintiff has filed this suit against the defendants on 29/6/20015. Hence, the present suit is barred by limitation. The plaintiff has filed this suit by creating the alleged deed of agreement to sell.

Further it is also contended that, the duty and penalty of insufficiently stamped document has to be collected before marking of the said document but, in this suit without payment of the duty and penalty the certified copy of alleged agreement of sell dated 05/04/1997 has been marked as Ex.P1. Hence, it is not necessary to collect the duty and penalty in respect to the alleged agreement of sell. Therefore, the application filed by the plaintiff is not maintainable at this stage of the suit. On all these grounds defendants prays to reject the application filed by the plaintiff with cost.

4. Heard the arguments of both sides and perused the entire materials on record. Now the points that arise for consideration of this court are as follows:

1. Whether the plaintiff has made-out sufficient grounds to impound the agreement of sell dated 05/04/1997 as sought ?

2. What Order ?

5. Having regard to the arguments heard and the materials on record. This court has answered the above points as hereunder;

Point No.1:-In the Affirmative;

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

REASONS

6. **Point No.1:-** The plaintiff has filed this suit against the defendants for the relief of Specific Performance of the Contract in respect of the suit schedule property. The suit is pending for consideration. In this suit the plaintiff has been already examined as PW-1 and since the original Agreement of Sell was in the records of the O.S.No.37/2007 the plaintiff got marked the certified copy of the said document of Agreement of Sell dated: 05/04/1997 as Ex.P.1. Further during the pendency of this suit the plaintiff has filed the original Agreement of Sell dated: 05/04/1997 before this court and stated that, he is ready to pay the duty and penalty in respect to the said document and hence, he prays to

impound the said document. Per contra the defendants have contended that, already the certified copy of the said document has got marked as Ex.P.1 through PW-1 and as such it is not necessary to impound the original document of Agreement of Sell at this stage of the proceedings. However, it is to be noted that, though the certified copy of Agreement of Sell was got marked as Ex.P1 but, now the original copy of the said document is produced by the plaintiff for the first time before this court. Hence it is bounden duty of this court to impound the said document for the collection of the duty and penalty. In this case agreement of sale is executed for total consideration amount of Rs.75,000/-, out of which 55,000/- has been paid as EMD. As per agreement of sale, possession of the property has been delivered. Hence, as per Sec.34 of Karnataka Stamp Act, duty is at 10 % of the total consideration amount. Penalty is at 10 times of the same. First of all as per procedure agreement of sale is to be impounded by the court.

7. I have gone through the document namely agreement of sale produced in this case. It is on a stamp paper worth Rs.5/- only. The recitals in the document are that defendants offered to sell the suit property. The plaintiff has agreed to purchase the property for Rs.75,000/-. Therefore, the defendants agreed to sell it for the said amount. The defendants had received Rs.55,000/- and given

possession of the said property to the plaintiff as on the date of agreement of sale. Remaining amount will be given within one year from date of execution of said document. There is clear recital of delivery of possession of property to the plaintiff in the said document. When the document which is styled as "ಋಷಿ ಜಮೀನಿನ ಕ್ರಯದ ಕರಾರ್" is dated 05/04/1997, Stamp duty is payable as if it were be a conveyance. Therefore, this document is to be impounded U/O XIII Rule 8 of CPC first hence, the said document is impounded accordingly by this court.

8. The next question to be decided is on the impounded document what is duty and penalty to be collected. It is a simple calculation of 10% of the total consideration amount on Rs.75,000/- and accordingly U/Sec.34 of Karnataka Stamp Act duty is 10% of the total consideration amount, penalty is 10 times. Hence, Rs.7,500/- is duty, its 10 times is Rs.75,000/-. The term duty refers to stamp duty payable on the instrument. The deficit stamp duty is the balance, which is not paid in the insufficient stamped instrument and duty on such unpaid portion, 10 times penalty may be imposed. This calculation is just forgotten. Sale consideration amount in this case is Rs.75,000/-. According to Article 5 R/w Article 20 of the Karnataka Stamp Act for conveyance before the amendment

was 7.5 % of the value is to be paid as stamp duty. In this suit the Agreement of sale is dated 05/04/1997. Therefore 7.5 % of the total consideration amount is stamp duty. It comes to Rs.5625/-. The stamp duty which is already paid is Rs.5/-. It is to be deducted. $\text{Rs.5625/-} - \text{Rs.5/-} = \text{Rs.5620 /-}$ is deficit stamp duty. 10 times of it comes to Rs.56200 (+) Rs.5620/- deficit stamp duty = Rs. 61,820/- will be duty and penalty which is required to be paid on this agreement of sale. With this observation if the plaintiff pays duty and penalty on suit agreement of sale, then it can be looked into or marked in evidence. For these reasons, points No.1 in the Affirmative.

9. **Point No.2:-** In view of the forgoing observations and discussions, this court proceed to pass the following:-

ORDER

The I.A No.IX filed by the plaintiff
U/o XIII Rule 8 of CPC R/w Section 33
of Indian Stamp Act is hereby allowed.

The agreement of sale deed is
impounded U/Or. XIII Rule 8 of CPC.
The plaintiff is directed to pay duty and
penalty of Rs.61,820/- and pay the
amount under required head.

If plaintiff pays the same, then the
office is directed to make the entry in
that regard on the document and send
the authenticated copy thereof to the
Deputy Commissioner, with intimation

that said duty and penalty is paid on the said document in accordance with law.

Produce a challan/receipt to that effect.

No order as to costs.

(Dictated to the Stenographer, directly on computer, script corrected and then pronounced in the open Court on this 05th day of December-2024)

(Nirupama Renakappa Dhang)
Addl. Civil Judge & JMFC,
Holalkere.