**OS 126/2017**

**ORDER**

The plaintiff has produced unregister agreement of sale dated 14.09.2010 in evidence.

The counsel for defendant has objected to for marking the document as it is not sufficiently stamped and as such unless duty and penalty is paid, it can't be received in evidence.

Heard both the counsels on duty on penalty. The counsel for plaintiff argued that he has subsequently paid Rs.400/- before the sub-registrar Hosadurga and receipt as also been issued in this regard. Therefore, the document is sufficiently stamped.

Perused the agreement of sale dated 14.09.2010 and relevant provisions of Karnataka Stamp Act.

On perusal of Sec. 31 of Karnataka Stamp Act it confers power to Deputy Commissioner to determain the duty and Sec. 32 confers the power the certify for having paid the sufficient duty on the document. Whereas, the plaintiff produce the receipt for having paid the deficit duty of Rs. 400/- issued by the sub-registrar, Hosadurga. However, the

Karnataka Stamp Act has not conferred any right upon the sub-registrar to adjudicate as to Stamps. Therefore, the endorsement made by the sub-registrar, Hosadurga on the copy of agreement of sale dated 14.09.2010 by receiving Rs.400/- is without authority and it can't be considered. Accordingly, the agreement of sale dated 14.09.2010 is hereby impounded.

Perhaps, as per Sec. 3-C of Karnataka Stamp Act no instrument shall be charged exceeding the maximum amount of duty with which instruments is chargeable. As such the plaintiff can adjust the amount of Rs. 400/- paid before the sub-registrar, Hosadurga and to pay the remaining amount by deducting Rs.400/-.

This Court has gone through the decision of the Hon'ble High Court of Karnataka reported 2013(4) Kar.L.J.247, wherein the Hon'ble High Court has held that the Court cannot levy the penalty less than 10 times.

In view of the settled proposition of law, this Court has no discretionary power to impose penalty less than 10 times. The agreement of sale is to be charged Under Article 5(e)(ii) of the Karnataka Stamp Act and duty is to be paid is Rs.500/-. Hence, this Court proceed to pass the following:-

**ORDER**

***The plaintiff has to pay duty and penalty as per below calculation:***

***Duty to be paid Rs.500.00***
***Duty paid on A.S. Rs.100.00***
***Deficit Duty is Rs.400.00***
***Deficit Duty Rs.400.00 X 10 times penalty = 4,000.00 + One time duty***
***4,000 + 400 = 4,400/-.***

***For payment of duty and penalty.***

***Call on 07.04.2020.***

*Addl.Civil Judge & JMFC.,*
*Hosadurga.*