

**IN THE COURT OF THE PRL. CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS AT HOSADURGA.**

PRESENT: SRI PRASHANTH NAGALAPUR,
 B.B.A.,LL.B.,(Hons)
 Addl. Civil Judge, Hosadurga.

THIS 23rd DAY OF MARCH, 2018

ORIGINAL SUIT No.203/2015

PLAINTIFF :- Sri. R.Kantharaj:
 Dead by L.R. Smt. S.L Anurani,
 By P.A. Holder,
 H.H. Bhogeshwarappa.

-V/S-

DEFENDANTS :- Sri. B.M. Veerbhadrappa
 and others,

BETWEEN

APPLICANT/ PLAINTIFF:- Sri. R.Kantharaj:
 Dead by L.R.
 Smt. S.L Anurani,
 By P.A. Holder,
 H.H. Bhogeshwarappa.

AND

OPPONENT/DEFFENDANTS :: Sri. B.M. Veerbhadrappa
 and others,

ORDER ON IA-V

The plaintiff has filed this application U/s 33 of
Karnataka Stamp Act R/w Sec. 151 CPC seeking an order to

direct the District Registrar of Chitradurga, District to fix the duty and penalty to the suit unregistered sale agreement dated 14/8/2006.

2. In the affidavit accompanying in the application, the plaintiff has stated that he is relying on the sale agreement dated 14/08/2006 in this suit. The suit of the plaintiff is for specific performance of contract. Since, the plaintiff is intending to tender the said document in his evidence, the plaintiff has sought for determination of duty and penalty payable for the reason that the stamp duty paid is deficit. The plaintiff has sought for an order to direct the District Registrar Chitradurga to fix the duty and penalty on the suit agreement. It is stated that the plaintiff will be put to great hardship if the said application is not allowed. Hence, the plaintiff prayed for allowing the application.

3. The defendants have filed their objection to the said application. The defendants have contended that the application filed by the plaintiff is not maintainable in law. It is also contended that the plaintiff does not have any right file this application before the Court. It is also contended by the defendants that the contents of the affidavits are false. The defendants have prayed for dismissal of the application.

4. Heard counsel for plaintiff and counsel for defendants.
5. Perused the application, objection and the plaint.
6. The following points arise for my consideration:-

1)Whether the District Registrar Chitradurga needs to be directed for the determination of duty and penalty payable on the suit agreement by allowing this application?

2) What order?

7. My answer to the above aforesaid points are as follows:

Point No.1 : In the Negative.

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

REASONS

8. POINT NO.1:- The plaintiff has contended that the suit agreement is not stamped properly and the deficit stamp duty and penalty has to be determined in order to tender the document in evidence. The plaintiff has filed this application seeking an order to direct the District Registrar to determine the duty and penalty payable on the suit agreement. It is necessary to look into the provision mentioned by the plaintiff in his application i.e., section 33 Karnataka Stamp Act, 1957. The said section reads as under;

Examination and impounding of instruments;

(1) Every person having by law or consent of parties authority to receive evidence, and every person in-charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of karnataka when such instrument was executed or first executed;

Provided that,-

(a) Nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under1[Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898];

(b) In the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purpose of this section, in cases of doubt, the Goverment may determine,-

(a) What offices shall be deemed to be public officer; and

(b) Who shall be deemed to be persons in-charge of public offices.

9. It is clear from the above provision that this Court has got no power to send the document to District Registrar Chitradurga for the purpose of determining the deficit stamp duty and penalty. The provision empower this Court to impound the document if the same is not duly stamped. Section 33 of the Act

does not talk about anything other than impounding of document when it is produced or comes in performance of function of the Court, when the same is in duly stamped, the document produced by the plaintiff can only be impounded as per section 33 of the Act, but not sent to the District Registrar for determination of duty and penalty.

10. The section 37 of Karnataka Stamp Act, lays down the procedure that has to be followed by this Court after impounding the document. It is the duty of this Court to determine the deficit stamp duty and penalty payable on the instrument as per section 37 of the Act. Therefore, application of the plaintiff seeking an order to direct the District Registrar to determine the duty and penalty payable on the instrument is not maintainable in law. Hence, I answer Point No.1 in the Negative.

11. Point No.2:- In the light of the above discussion I pass the following:

ORDER

*The IA.No.V filed by the plaintiff
U/s 33 of Karnataka Stamp Act R/w
Sec.151 of CPC is dismissed.*

(Dictated to the stenographer, typed by her on computer and corrected by me, then pronounced in the open Court on this the 23rd day of March-2018)

*C/c Prl. Civil Judge and JMFC.,
Hosadurga.*

Order on impounding of the document and determination of deficit stamp duty and penalty payable.

The plaintiff has produced the document named as “ ಖುಷ್ಕಿ ಜಮೀನಿನ ಕ್ರಯ ಒಪ್ಪಂದದ ಕರಾರು ಪತ್ರ ”(agreement of sale) The plaintiff has produced this document and he is relying on the same for the purpose of this suit for specific performance of contract. As per the sale agreement dated 14/08/2006, the possession of the suit schedule property was delivered to the plaintiff under the same agreement on date of execution by the defendant No.1. The sale consideration as per the agreement is 1,83,000/-. The said agreement is written on 100/- stamp paper. Since the stamp duty paid on the agreement is insufficient, I proceed to impound the document as per section 33 of Karnataka Stamp Act.

The suit agreement is in agreement with possession. The agreement discloses that the possession was delivered to the plaintiff on the date of execution of the same. As per article 5 of the Karnataka Stamp Act 1957, When possession of the immovable property is delivered the stamp duty payable on the instrument under which possession is delivered is same as that of conveyance under article 20 of the Act. As on the date of agreement the stamp duty payable for conveyance was 7.5% i.e., **Rs.13,725/-**. Therefore, the plaintiff herein has paid stamp duty on the instrument which is less than the prescribed stamp duty as on the date of execution of suit agreement. **Rs.13,625/-** is the deficit stamp duty. The plaintiff has to pay 10 times penalty as per law. Therefore, the plaintiff has to pay **Rs.1,36,250/-** as

penalty. In view of the discussion, I proceed to pass the following.

ORDER

The document named " ಖುಷ್ಕಿ ಜಮೀನಿನ ಕ್ರಯ ಒಪ್ಪಂದದ ಕರಾರು ಪತ್ರ" which is agreement of sale hereby impounded as per Sec.33 of Karnataka Stamp Act 1957.

*The plaintiff is directed to pay **Rs.13,625/-** as deficit Stamp Duty and **Rs.1,36,250/-** as penalty.*

The office is hereby directed to collect the Stamp Duty and penalty levied and send an authenticated copy of the document along with the deficit Stamp Duty and penalty to the Deputy Commissioner as per Sec.37 of Karnataka Stamp Act.

For Payment of duty and penalty and further chief of PW.1.

Call on :

(Prashanth Nagalapur)
C/c Prl. Civil Judge & JMFC.,
Hosadurga.

