

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

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

THIS 4th DAY OF NOVEMBER, 2019

ORIGINAL SUIT No.203/2015

PLAINTIFF :- R. Kantharaj: Dead by Lr;
Smt. S.L. Anurani

-V/S-

DEFENDANTS :- B.M. Veerabhadrapa & Others

BETWEEN

APPLICANT/ PLAINTIFF's LR: Smt. A.L. Anurani

AND

OPPONENTS/DEFENDANTS: B.M.Veerahadrappa
& Others

ORDER ON IA No.IX

The plaintiff has filed this application under section 151 of CPC seeking an order re-call in order passed this Court on IA.V filed under section 33 of Karnataka Stamp Act R/w section 151 of CPC and also the order impounding the document named ಖುಷ್ಕಿ ಜಮೀನಿನ ಕ್ರಯ ಒಪ್ಪಂದದ ಕರಾರು ಪತ್ರ (Agreement of Sale).

2. In the affidavit accompanying the application, the plaintiff has stated that she has filed this suit seeking the relief of specific performance of contract on the basis of agreement executed by the defendants in favour of her husband. It is further stated that there are litigations between the defendants and their brothers with respect to suit schedule property pending before the Hon'ble High Court of Karnataka. It is further stated that the suit schedule property has been acquired to some extent by the government for Upper Bhadra Project. It is alleged that during the pendency of the suit, the defendants have forcibly taken the possession of the suit property from the plaintiff on 22/03/2019. It is further stated that the panchayath held by the elders has gone in vain. It is further stated that having no possession over the suit schedule property, the plaintiff is unable to pay the deficit stamp duty and penalty imposed by this Court vide order dated 23/03/2019. It is contended that the plaintiff is a poor lady and it is difficult for her to make payment as per the orders. It is stated that the plaintiff will be

put to great hardship if the application is not allowed. Therefore, the plaintiff has prayed for allowing the application.

3. The defendants have filed their objections to the said application. It is stated in the objections that the application is not maintainable in law. It is alleged that the plaintiff instead of complying with the orders passed by this Court for paying deficit stamp duty and penalty. It is further stated that the order of this Court cannot be re-called by entertaining the application. It is further stated that there are no grounds allowing the application. It is alleged that the plaintiff has stated false facts in her affidavit. It is contended that the defendants will be put to great hardship if the application is allowed. Hence, the defendants have prayed for rejection of the application with costs of Rs.5,000/-.

4. Heard, the counsel for plaintiff. Perused the application and affidavit.

5. The following points arise for my consideration:-

1.Whether the application U/s 151 of CPC filed by the plaintiff is maintainable?

2.Whether the plaintiff has made out grounds for allowing the application?

2.What order?

6. My answers to the above points are as follows:

1. Point No.1 : In the Negative.
2. Point No.2 : As per final order for the following :

R E A S O N S

7. Point No.1and 2 :- The plaintiff has filed this application seeking an order to re-call the order passed by this Court on 23/03/2018. This Court has rejected the application filed by the plaintiff under section 33 of Karnataka Stamp Act R/w section 151 of CPC and consequently impounded the document named ಮಿಷ್ಕಿ ಜಮೀನಿನ ಕ್ರಯ ಒಪ್ಪಂದದ ಕರಾರು ಪತ್ರ (Agreement of Sale) on 23/03/2018. The plaintiff filed the said application seeking an order to direct the District Registrar,

Chitradurga to determine the stamp duty and penalty payable on the suit agreement. This Court has given its findings upon consideration of the said application and the submission made by both the parties. The said applications (IA.V) came to be dismiss with following observation ;

“ 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.

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.”

8. After dismissal of the said application, the Court proceeded to impound the document as per section 33 of Karnataka Stamp Act and directed the plaintiff to pay Rs. 13,625/- as deficit stamp duty and Rs.1,36,250/- as penalty.

While passing the said order, the Court has taken the contents of the instrument into consideration as per law. The provision under section 33 of Karnataka Stamp Act is punitive in nature. The person who intends to tender document in his evidence, has to pay the deficit stamp duty and penalty imposed by the Court. At no point of time such an order be re-called by the Court imposing the penalty in my opinion. This Court cannot exercise its power under section 151 of CPC to re-call such orders.

9. The counsel for plaintiff argued that on 22/03/2018 the defendants have dispossessed the plaintiff out of the suit schedule property and therefore the plaintiff need not pay the deficit stamp duty and penalty. This Court has directed the plaintiff to deposit deficit stamp duty of Rs.13,625/- and imposed penalty of Rs.1,36,250/- on the basis of contents of the instrument which disclosed that the delivery of possession has taken place on the date of execution of the instrument. The stamp duty and penalty is not determined on the basis of actual possession of the parties over the property but on the

basis of recitals made in the instruments. Such being the case, the submission made by the plaintiff that she is not in possession of the suit schedule property cannot be taken into consideration for re-calling the order passed earlier.

10. In the light of the discussion made above, the application filed by the plaintiff to re-call the order dated 23/03/2018 cannot be maintainable. This Court cannot exercise its power under section 151 of CPC to re-call the said orders. Hence, I answer point No.1 and 2 in the Negative.

11. Point No.3:- In the light of the above discussion I pass the following:-

ORDER

*The IA-IX U/s 151 of
CPC filed by the plaintiff
is dismissed.*

No order as to costs.

(Dictated to the Stenographer, typed by her on computer and corrected by me, then pronounced in the open Court on this day 4th November -2019)

Prl.Civil Judge and JMFC.,
Hosadurga.

