

**IN THE COURT OF THE ADDL.CIVIL JUDGE AND JMFC., ARSIKERE.****O.S.No.1/2014****PRESENT: SRI.AMARANATHA B.N.****B.A. LL.B****Addl.Civil Judge & JMFC****Arsikere****DATED ON THIS THE 24<sup>th</sup> DAY OF FEBRUARY, 2023****PLAINTIFFS:**

Sri.T. Nagaraj  
S/o. Late Thammannagowda ,  
Since dead by his legal representatives

1. Smt.Jayamma  
W/o Late T. Nagaraj,  
aged about 55 yrs,
2. Sri.Raghavendra  
S/o. Late T. Nagaraj,  
aged about 31 yrs,
3. Sri.Manjunath  
S/o. Late T. Nagaraj,  
aged about 28 yrs,

All are R/o Kanaka Nilaya,  
2<sup>nd</sup> Cross, Anjaneya Temple Raod,  
Anchekoppalu Village,  
Arsikere Kasaba.

**(Sri.OAS Advocate)****// Versus //****DEFENDANTS:**

1. Sri.Rafeeq Ahamad  
S/o. M.D.Kahleel, Major  
C/o. Dilshad Begam,  
W/o. Sri Rafeeq Ahamad,

Professor, Hoysala Nagara,  
Police Colony, Hassan.

2. Sri. Y.G.Pyarejan S/o. Mahamadgowse  
Since dead by his legal representatives,
  - a) Smt.Thanweer Sunay  
W/o. Late Pyarejan  
aged about 45 years,
  - b) Sri.Shapeeq S/o. Late Pyarejan  
aged about 35 years,
  - c) Sri.Mubaraq S/o. Late Pyarejan  
aged about 36 years,
  - d) Sri.Thabaraq Husen S/o. Late Pyarejan  
aged about 34 years,

All are R/o. Hoysala Nagara, Police Layout,  
Doddi Road, Hassan.

3. Smt.Pyarejan W/o. M.D.Khaleel,  
Major.
4. Sri. Mahammad Pavees  
S/o. Late M.D.Khaleel, Major.
5. Smt.Pyarejan  
W/o. Late M.D.Khaleel,  
Major.
5. Sri. Mahammad Safeer  
S/o. Late M.D.Khaleel,  
Major.

All are R/o. Yogihalli Village,  
Dudda Holbi, Hassan Taluk.

**(D1, 3 and 4 exparte)**  
**(By Smt.VB Advocate for D2)**

**::ORDERS ON ADMISSIBILITY OF RELEASE DEED**  
**DATED 23.03.2011::**

1. The plaintiff has filed the suit against the defendants for the relief of declaration and injunction to declare that husband of the plaintiff No.1 and father of plaintiff No.2 and 3 by name Nagaraju is the owner and in possession of the suit schedule properties based on the release deed dated 23.03.2011 and consent letter dated 10.11.2011 executed by the defendants by contending that originally the suit schedule property belongs to defendants, the defendants on 23.03.2011 executed release deed in favour of T. Nagaraj upon receiving a sum of Rs.2,00,000/- and handed over the possession. Hence T.Nagaraju is the owner and in possession of the suit schedule property, after his death the plaintiffs are the owners and in possession of the suit schedule property.
2. The PW1 at the time of examination-in-chief produced the release deed dated 23.03.2011. This court upon receiving the said document directed the plaintiffs to pay the duty and penalty. Accordingly the plaintiffs paid stamp duty of Rs.12,000/- and 10 times penalty as per R.O.No.089176490 dated 02.12.2019 same is evident from the order sheet. Further it is relevant to note that after payment of duty and penalty, the defendants objected to mark the release deed dated 23.03.2011 as the release deed is a

compulsory registrable document. Hence this case is posted for hearing on admissibility of the document.

3. Heard Smt.VB advocate for defendant No.2 and Sri.OAS advocate for plaintiff on admissibility of the release deed dated 23.03.2011. Smt.VB advocate for defendant No.2 argued that the release deed is compulsory registrable documents. Hence without registration the release deed dated 23.03.2011 is not admissible in evidence. On the other hand the Sri.OAS advocate for the plaintiffs argued that as per the directions of the court the plaintiffs paid the duty and penalty and the release deed dated 23.03.2011 is admissible in evidence.
4. Upon hearing the both parties, perused the materials on record. Upon perusing the materials on record the following points arises for my consideration:-

**POINTS**

- I. Whether the release deed dated 23.03.2011 is admissible in evidence?
- II: What order?
5. Upon on hearing the arguments and on perusal of the materials on record my answer to the above points is as under:-

Point No.I : In the Negative

Point No.II : 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 declaration and injunction to declare that husband of the plaintiff No.1 and father of plaintiff No.2 and 3 by name Nagaraju was the owner and in possession of the suit schedule property based on the release deed dated 23.03.2011 and consent letter dated 10.11.2011 executed by the defendants, after his death the plaintiffs are the owners and in possession of the suit schedule property.
7. It is specific case of the plaintiffs that the defendants upon receiving a sum of Rs.2,00,000/- executed release deed dated 23.03.2011 in favour of husband of plaintiff No.1 namely T.B. Nagaraj. On perusal of release deed dated 23.03.2011 it is noticed that said document is un-stamped and unregistered document. However as per the order of the court the plaintiffs paid the stamp duty and penalty on the release deed dated 23.03.2011.
8. It is relevant to note that as per section 17 of Registration Act any non testamentary instruments which purport, operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable

property are compulsory registrable documents. For the sake of reference section 17 (1) of Registration Act is extracted as here under:

**Documents of which registration is compulsory.—(1)** *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*

- (a) instruments of gift of immovable property;*
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and*
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*
- <sup>1</sup>*[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provided that the <sup>2</sup>[State Government] may, by order published in the <sup>3</sup>[Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.*

9. On perusal section 17 (1) of Registration Act it is clear that if any document creates any right in respect of any immovable property of value of 100 rupees or upwards it is a compulsory registrable

document. On perusal of release deed dated 23.03.2011 there is no reference with regard to value of the suit schedule properties, but as per the plaint averments deceased Nagaraju paid Rs.2,00,000/- to the defendants. Hence the release deed dated 23.03.2011 is a compulsory registrable document as per section 17 (1) of Registration Act. But the release deed dated 23.03.2011 produced by the plaintiff is unregistered one. Hence, as per section 49 of registration act the unregistered release deed dated 23.03.2011 is not admissible in evidence. For sake of reference section 49 of Registration Act extracted here:

*49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*

*(a) affect any immovable property comprised therein, or*

*(b) confer any power to adopt, or*

*(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:<sup>54</sup> [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877)<sup>55, 56</sup> [\*\*\*] or as evidence of any collateral transaction not required to be effected by registered instrument.]*

10. Upon perusing the materials on record it is notice that the plaintiffs claiming rights under the release deed dated 23.03.2011, as per section 17 (1) of Registration Act the released deed is

compulsory registrable document. But the release deed dated 23.03.2011 produced by the plaintiff is unregistered document. Further it is relevant to note that the plaintiffs claiming ownership and possession over the suit schedule property based on the release deed dated 23.03.2011, hence the release deed cannot be marked to prove the ownership or possession of the plaintiffs over the suit schedule property. Hence this court is of the opinion that the release deed dated 23.03.2011 is inadmissible in evidence. **Hence I answer point No.1 in the Negative.**

11. **Point No.2:-** In view of the finding on point No.1 and for the reasons stated therein, I proceed to pass the following:

**ORDER**

*The unregistered release deed dated  
23.03.2011 produced by the plaintiffs is  
inadmissible in evidence.*

*(Dictated to the stenographer directly on computer and computerized by her, corrected by me and then pronounced in the open court today on this the 24<sup>th</sup> day of February, 2023)*

**(AMARANATHA B.N.)**  
Addl. Civil Judge & JMFC  
Arasikere.