

OS 59/2017 Dated 19.08.2022

ORDERS

1. The present situation has arisen on account of the fact that the Plaintiff has produced agreements dated 10.04.2006 and 05.05.2008. The agreement of the year 2006 has been written on a stamp paper worth Rupees hundred while the Agreements of the year 2008 have been written on stamp papers worth Rupees hundred respectively.

2. Sri.KRJ and Sri.HRJ learned Advocates appearing for the Defendants respectively would vehemently contend that the Plaintiff is required to be directed to pay the requisite stamp duty so determined either by this Court or by the Deputy Commissioner. Learned counsel for the Plaintiff would submit that the matter could be referred to the Deputy Commissioner for the purpose of the determination of the appropriate stamp duty.

3. Having heard the learned counsel for the parties the question that arises is

1. Whether the agreements are to be sent to the Deputy Commissioner for adjudication of the proper stamp duty and penalty?

2. What is the appropriate stamp duty and penalty to be paid by the Plaintiff on the Agreements dated 10.04.2006 and 05.05.2008?

4. My answer to the above point No.1 is in the Negative Point No.2 as per the final order for the following;

REASONS

5. **Duty and Penalty on the Agreement dated 10.04.2006:**

Perusal of the agreement dated 10.04.2006 would indicate that possession has been handed over under the said agreement. If that be the circumstance Article 5(e) of the Karnataka Stamp Act stipulates that seven and half percent of the value shall be stamp duty as per the Karnataka Stamp (Amendment) Act of 2006 which came into effect from 01.04.2006. Therefore seven and half percent on 1,80,000/- which is the consideration shown in the

agreement dated 10.04.2006 comes to Rs.13,500/-. What has been paid as stamp duty is a hundred rupees. Therefore the deficit stamp duty is Rs.13,400/- and ten times the penalty would be Rs.1,34,000/- and together the duty and penalty on the agreement dated 10.04.2006 would be Rs.1,47,400/-.

6. **Duty and Penalty on the Agreement dated 05.05.2008:**

Perusal of the agreement dated 05.05.2008 would indicate that the possession has not been delivered under the said agreement and as such Article 5(e)(ii) of the Karnataka Stamp Act stipulates that 10 paise for every hundred rupees for part thereof on the market value equal to the amount of consideration subject to a maximum of Rupees 20,000/- but not less than Rs.500/- would be the stamp duty. In the present case what has been paid as stamp duty is Rs.100/- and a stamp duty of Rs.500/- was supposed to have been paid and the Plaintiff having paid a hundred rupees has fallen short of Four hundred Rupees as the duty. Ten times the duty would come up to Rupees Four Thousand plus the duty

which would together amount to Rupees Four Thousand Five Hundred.

7. *Duty and Penalty on the Agreement dated 05.05.2008:*

Perusal of another agreement dated 05.05.2008 would indicate that the possession has not been delivered under the said agreement and as such Article 5(e)(ii) of the Karnataka Stamp Act stipulates that 10 paise for every hundred rupees for part thereof on the market value equal to the amount of consideration subject to a maximum of Rupees 20,000/- but not less than Rs.500/- would be the stamp duty. In the present case what has been paid as stamp duty is Rs.100/- and a stamp duty of Rs.500/- was supposed to have been paid and the Plaintiff having paid a hundred rupees has fallen short of Four hundred Rupees as the duty. Ten times the duty would come up to Rupees Four Thousand plus the duty would together amount to Rupees Four Thousand Five Hundred.

8. In so far as the prayer to send the matter to the Deputy Commissioner for the purpose of determination of the appropriate stamp duty is concerned, it needs to be said that such is not the proposition of law. Reference in this regard may be had to the judgment of our Hon'ble High Court in the case of ***Lakshminarayanachar Vs. Narayan*** reported in ***1969(2) Mys. L.J. 299*** wherein it has been held as under;

12. Ordinarily, the duty or power of assessing the amount of stamp duty or collecting stamp duty and penalties is invested by the Act in special authorities controlled ultimately by the Chief Controlling Authority. But the proviso to S.34 invests Courts with the special jurisdiction of adjudicating upon stamp duty and imposing penalty in certain cases, and those cases are when a party to a litigation before it tenders a document in evidence. The normal rule in the case of Courts is that when a jurisdiction is invested in them, it is invested for the purposes of the statute which confers that jurisdiction and that Courts should not

abdicate such jurisdiction.

And further as under

14. The position therefore, according to the scheme of the statute, is that when a document chargeable to duty and produced into Court in connection with a proceeding before it is found by that Court to be either not stamped at all or is insufficiently stamped, it is bound to impound it. But the idea of impounding is a enforce collection of duty or deficient duty together with penalty. When a document has come before Court for the purpose of being used in evidence, the first jurisdiction of determining the duty and penalty is that of the Court. It is only when that stage has crossed and the document is not tendered in evidence that it ceases to be evidence and has admitted the same in evidence; though the first part of the description applies to the document, the second part has ceased to be applicable. It is then and only that a document comes within the description of “in every other case” contained in sub-sec. (2) of S.37.

And further as under

19. The correct position therefore, in law, would be that documents which are liable to be impounded should be impounded as soon as heir liability to be impounded comes to the notice of the Presiding Officer. He should retain them till the date of the trial. If they are tendered in evidence, he should act under the proviso so S.34, Sec.37(1)) imposes a duty on him to send an authenticated copy of such instrument together with a certificate stating the amount of duty and penalty levied in respect thereof to the Deputy Commissioner. If they are not admitted in evidence, he will then act under sub-sec.(2) of S.37 and send the original document to the Deputy Commissioner for assessment of duty and penalty.

And further as under

21. Hence no interest or benefit of a party requires that the Court should not act in the first instance under the proviso to S. 34 but should necessarily hold its hands, send the document to

the Deputy Commissioner under sub-sec. (2) of S.37 and wait for his adjudication of duty.

Therefore the submission of the learned counsel to send the case to the Deputy Commissioner for adjudication on stamp duty has to be held as being impermissible in law and hence the same is rejected.

In the light of aforesaid discussion I pass the following;

ORDER

The Plaintiff shall pay the deficit stamp duty and penalty on the agreement dated 10.04.2006 of sum of rupees 1,47,400/-; deficit stamp duty and penalty on the agreement dated 05.05.2008 of sum of rupees 4,500/-; and a deficit stamp duty and penalty on another agreement dated 05.05.2008 of sum of rupees 4,500/- on or before 20.09.2022. Call on 20.09.2022.

Civil Judge, Holenarasipura.