

*Case called out.
For Orders kept by.*

:: ORDERS ON IA No. XVI::

Plaintiff has filed this IA No. XVI under section 151 of CPC seeking impound the unregistered sale deed and send to the registrar for calculation of stamp duty and penalty, the plaintiff filed suit for declaration, injunction and rectification of revenue records, the unregistered sale deed purported to be executed by the previous owner of suit property in favour of the deceased plaintiff. The plaintiff has produced the agreement of sale provided on stamp paper of Rs. 50/-. On perusal of the agreement it reveals that defendant has handed the possession of the property in favour of the deceased plaintiff. Therefore, as per article 5(E) (I) of Karnataka Stamp Act its attracts as that of conveyance. Admittedly the agreement is written on stamp paper of Rs. 50/-. Therefore, it is required to be impounded.

It has been held by the Hon'ble High Court of Karnataka in **K DINESH V/S KUMAR SWAMY, REPORTED IN 2010(4) AIR KARNATAKA REPORTS 647**, as soon as the suit filed, the question of impounding can be considered for effective adjudication. At this juncture relevant portion of the judgment is extracted here below.

“ d) Whether a document which is not duly stamped is presented alongwith the plaint, or when at a stage before the document is sought to be tendered and marked in evidence, could the Court proceed to impound the document? What is the procedure to be followed?- This question need not detain this Court for long. It is to be noticed that the Code of Civil procedure, 1908 and the Karnataka Civil Rules of Practice, do provide for the stage of suit at which documents shall be produced and the manner of production of the same. As also the procedure to be followed in admitting the same in evidence. While Order XIII, Rule 8 specifically provides for impounding a document or documents produced before it, for sufficient reason, on such terms as the Court may direct. It cannot be said that it is only such documents as are produced and sought to be admitted in evidence that can be impounded, if not duly stamped or for such other reason. In other words, the Court can impound a document, in the very first instance that it is produced before the Court. In terms of Section 33 of KS Act, the moment it comes to the

attention of the Court, that a document produced in a suit is not duly stamped with duty chargeable, the Court shall impound the same. Except that a Magistrate or Judge of a Criminal Court is not required examine or impound any such document, if does not think fit so to do, excluding proceedings under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898(Now see Chapter IX and X of Cr.P.C. 1973) Insofar as the Judge of a High Court is concerned the duty of examining and impounding any instrument under the Section may be delegated to an officer to be appointed in evidence on payment of the requisite duty and penalty that would be attracted, if the party seeking to produce and rely upon the same chooses to do so. This is in terms of Section 37(1) of the KS Act. In every other case, the Court shall send the document to the Deputy Commissioner, as provided under Section 37(2). The said authority would then deal with the same insofar as recovery of duty and penalty and prosecution for violation of the provisions of the Act, as provided thereunder. A view expressed by this Court in an unreported decision in S. Suresh's case supra, nor does not accord with the ratio of the decision of the Apex Court in Peteti Subbarao's case, supra nor does it accord with the provisions of the Stamp Act which would be rendered unworkable. As for instance, in a suit where it may be possible for the Court to pass a judgement on admissions, under Orders, XII Rule 6 even without having to settle the issues or to record

evidence and if the Courts finds that a document produced along with the plaint is not duly stamped- the mandate under the KS Act, that the Court shall not act upon such a document would have to be ignored. To contemplate yet another situation, if in a given case, an unstamped document is impounded and if the party who seeks to rely upon it either abandons the proceedings or is not in a position to pay the duty and penalty, the Court would have to take recourse to S. 37(2) of the KS Act.

In the light of principles emerging from the above referred decision, the document styled as agreement of sale is required to be impounded.

*Further it is held by the Hon'ble High Court of Karnataka in a Decision reported in **2011 (4) KCCR 2799 (Sri. K.Govinde Gowda V/s Smt. Akkayamma & Others)**. The Hon'ble High Court of Karnatata after considering the matter at threadbare, proceeded to hold thus:*

“ Both the provisions declare that deficit of the stamp duty together with a penalty of Rs. 5/- or in the alternative 10 times the duty could be collected. Both the provisions does not declare that the highest of the penalty to be collected. In other words, “Whichever is higher” is not stated in the provision. Therefore, in the discretion of the Court arid the Deputy Commissioner the penalty

that could be collected may be Rs. 5/- or the 10 times of the duty imposed. It is not as a rule that the Court shall have to levy penalty of 10 times which is only an alternative provision. When the State collects the proper stamp duty under Sec. 34 there cannot be any grievance of loss of public revenue. Penalty is in the nature of a fine for violating Sec. 17 of the Act. The penalty should not be unduly harsh and arbitrary. The law itself provides the levy penalty of Rs.5/- or in the alternative 10 times the duty. Therefore, the Court or the Deputy Commissioner should normally levy penalty of Rs. 5/- in extreme and exceptional cases a harsher step of levy of penalty should be invoked. Even while levying a harsher penalty, the Court or the Deputy Commissioner has to give special reasons and levy of alternative penalty should not normally be more than double the duty payable.”

Turning to the factual matrix of the present case, the plaintiffs have not at all placed any record to show that he is a poor and unable to pay the stamp duty to the extent of double the stamp duty. However in the light of principles emerging from the above-referred decision, duty which required to be imposed is double as the duty payable. Hence, in my considered opinion, the

plaintiffs are required to pay the duty equivalent to the double payable. It is needless to state that this court empowered to collect the stamp duty under the concerned head. Court may very well impound the document. With these observations, this court proceed to pass the following:

ORDER

Document styled as Agreement of Sale dated 12.06.2002 is ordered to be impounded.

Office is directed to calculate the stamp duty, take assistance of the Sub- Registrar Afzalpur if in case of need.

For plaintiff evidence. Call on 28-01-2026.

**Civil Judge and JMFC
Afzalpur.**