

OS 94/2023

ORDERS ON STAMP DUTY

The plaintiff has produced an unregistered agreement of sale dated 09.11.2022 which is insufficiently stamped. On perusal of the said document it *prima-facie* reveals that defendants have entered into an agreement of sale with the Plaintiff by agreeing to sell the property bearing Sy. No.197/2 measuring 12 guntas situated at K.R Pete village, Kasaba hobali, K.R.Pete taluk, for consideration amount of Rs.15,00,000/-, said document is not duly stamped.

2. The agreement of sale is not admitted in evidence for any purpose unless it is duly stamped. Section 34 of Karnataka Stamp Act puts a complete embargo and bar against admissibility of this document which is not duly stamped.

3. As already stated above said agreement is came into effect on 09.11.2022. Hence, court has to fall-back under article 5(e) of the Karnataka Stamp Act, 2011.

4. As per above said article for agreement of sale, when possession of the property is not delivered, it has to be written the said document on stamp paper having value as provided under article 5(e)(i) to (iv). On perusal of the said document furnished by the plaintiff it is written on stamp paper having

value of Rs.500/-. On perusal of the sale consideration amount it appeared as Rs.15,00,000/-. On perusal of the document it prima facie recited that possession has not been delivered through this document. Hence, it is relevant to note here article 5(e) (ii) as follows:

ii) Possession of the property is not delivered .

Explanation-I,- When a reference, of a Power of Attorney granted separately by the seller to the purchaser in respect of the property which is the subject matter of such agreement, is made in the agreement, then the possession of the property is deemed to have been delivered for the purpose of this clause.

Explanation-II,- For the purpose of clause (e)and clause (h) where subsequently conveyance or mortgage as the case may be, is executed between the same parties in pursuance of such agreement or its records or memorandum, the stamp duty, if any, already paid and recovered on the agreement or its record or memorandum shall be

Ten paisa for every one hundred rupees or part thereof on the market value equal to the amount of consideration subject to a maximum of rupees twenty thousand but not less than rupees five hundred

(Provided that the duty paid on power of attorney under Articles 41(e) or 41 (eb), as the may be adjustable towards the duty payable on agreement for sale under article 5(e) or instrument of sale or transfer, as a case may be, executed between the same parties and in respect of the same property).

adjusted towards the total duty leviable on the conveyance or mortgage, as the case may be

5. A plain reading of the above said article is clear that, when possession has not been delivered through agreement of sale at the time stamp duty has to pay 10 paise for every Rs.100/- or market value equal to the amount of consideration subject to a maximum of Rs.20,000/- but not less than Rs.500/-.

6. In this case agreement written on stamp papers having value of Rs.200/-. The market value of the property has recited in the document is Rs.15,00,000/- as per the Article 5(e) (ii) has stated above 10 paise for every Rs.100/- or not less than Rs.500/-. In case on hand its comes Rs.1,500/- which is more than Rs.500/- and less than 20,000/-. Hence, plaintiff has to pay stamp duty of Rs.1,500/- on agreement of sale. As already stated above agreement written on stamp paper having value of Rs. 200/-. Hence, $1500-200=1300$ is actual deficit stamp duty.

7. According to Section 34(a) of Karnataka Stamp Act, the plaintiff has to pay penalty sum equal to ten times to deficit duty calculated by this court. Accordingly, the plaintiff has to pay $Rs.1,300 \times 10 = 13,000$ + deficit stamp duty $Rs.1,300 = Rs.14,300/-$ as duty and penalty on unregistered agreement of sale. In order to meet ends of justice and to prevent the abuse of the process of the court it is necessary to direct the plaintiff to pay

the duty and penalty. Accordingly, court proceed to pass the following;

ORDER

The plaintiff is hereby directed to pay duty and penalty of Rs.14,300/- on unregistered agreement of sale dated 09.11.2022.

To pay duty and penalty kept by 20.01.2026.

I Addl. Sr.CJ & JMFC,
K.R.Pete.