

ORDER ON IA NO.6

The plaintiff has filed the I.A under Section 33 of the Karnataka Stamp Act, seeking to impound the sale deed dated 08.07.1996 and to impose duty and penalty on the said document in the present case.

2. Along with the application the plaintiff has sworn affidavit that the suit against the defendants is for the relief of declaration and Permanent Injunction. The sale deed dated 08.07.1996 is produced before the court. Since the document is required to be registered, impounding of document or payment of duty and penalty is feasible under law. Hence prayed to direct the office to verify the sale deed and calculate the duty and penalty. Accordingly, prayed to allow the application.

3. On the receipt of the application, the defendant No.1 has filed objection, wherein it is the contention of the defendant No.1 that the application is not maintainable either in law or on facts. The application lacks bonafides and filed with malafide intention to harass her. The document in question is compulsory registrable document. Hence there is a complete bar under Karnataka Registration Act. Therefore the document cannot be received in evidence. The plaintiff has made false allegation in support of IA, no purpose will be

served by impounding the document and by collecting duty and penalty. The impounding of document in question based on which suit is filed cannot be entertain in evidence for any purpose either main or collateral to prove the matter in issue. The very suit of the plaintiff itself is not maintainable, since suit is based on unregistered and insufficiently stamped sale deed, suit ought to have been dismissed under Order 7 Rule 11(D) of CPC for want of maintainability. The application is filed to harass the defendant No.1 and to have wrongful gain. The application is devoid of merits and liable to be dismissed. The application is filed only with a view to spoil the precious time of the court and to gain time. The application is meritless and filed on flimsy ground. Hence prayed to dismiss the application as well as suit with cost.

4. Heard arguments and perused the materials available on record.

5. The points that would arise for my consideration are:-

- 1) Whether the application filed by the plaintiff under Section 33 of Karnataka Stamp Act, is fit to be allowed?
- 2) What order?

6. My findings on the above points are as under:-

Point No.1 : In the Affirmative

Point No.2 : As per final order below
for the following:-

REASONS

7. Point No.1:- On perusal of the application, objection and pleadings, the suit of the plaintiff is one for declaration and Permanent Injunction, wherein it is the case of the plaintiff that he is the absolute owner in possession of the schedule property by cultivating the same. It is his contention that, one Ningegowda S/o Ningegowda of Tharikal Village has intended to sold the property bearing Sy. No.47/35P (Old No.47/35) measuring 4 acres in favor of the plaintiff through an agreement of sale dated 20.02.1996 by receiving advance amount of Rs. 27,000/-. Later the said Ningegowda has executed a sale deed dated 08.07.1996 in favour of the plaintiff which is not yet durasth. Hence the sale deed was not registered. It is further contended that Ningegowda S/o Ningegowda has executed a registered General Power of Attorney in favour of plaintiff on the same day itself and the said Ningegowda put the plaintiff in possession of the schedule property from the date of purchase. The defendants No.1 to 3 have filed an application for change of Katha with respect to plaint schedule property that they are the legal representatives of deceased Ningegowda. For that the plaintiff has filed objection before the Tahsildar. The Tahsildar has conducted an enquiry in RRT

No.29/2012-13. That after enquiry, has rejected the application with a direction to approach the Civil Court. The plaintiff is cultivating the suit schedule property, on 13.07.2015, a court commissioner along with the defendants came near the suit schedule property stating land has to be bifurcated on the basis of compromise preliminary decree passed in O.S. No.34/2013. On the basis of said preliminary decree, the 1st defendant filed a final decree proceedings which has been numbered as FDP 12/2013 and after came to know that the defendants colluded with each other with an intention to grab the valuable property of the plaintiff without impleading the plaintiff as party to the suit they themselves compromised the suit through the compromise petition on the basis of compromise decree, they filed FDP which is numbered as 12/2013. The decree is nominal one and unenforceable under law. Hence, the plaintiff filed an application for impleading him as a party to the above said final decree proceedings, the same is pending for adjudication. On the guise of the said nominal decree defendants are trying to interfere with the plaintiff's peaceful possession of the suit schedule property. Hence the plaintiff is before the court, seeking the relief.

8. The defendant No.1 on receipt of the summons has appeared before the court through his counsel and filed the written statement denying the case of the plaintiff with an

intention that plaintiff has concocted documents with the assistance of the revenue officials. The defendants are the owners of the schedule property. The plaintiff played fraud by utilizing fake and incorrect documents. Hence prayed to dismiss the suit of the plaintiff.

9. Basing on the pleadings, issues were framed casting burden upon the plaintiff to prove the title, possession over the property. At this juncture, plaintiff has come up with this application seeking impounding of the document i.e., unregistered sale deed with a contention that he is ready to pay deficit duty and penalty.

10. The 1st defendant in support of her contention has got filed the Written Argument on I.A. No.6, wherein it is the contention of 1st defendant that, the sale deed dated 08.07.1996 is a compulsory registrable document. The plaintiff has made false allegation in support of the IA. It is the argument of the 1st defendant that, the unregistered document cannot be looked into either in the evidence for main purpose or collateral purpose and same is not permissible under Section 49 of Registration Act. The very suit of the plaintiff is not maintainable, based on unregistered document. Hence sought to dismiss the application and suit of the plaintiff.

11. The plaintiff has filed this suit against the defendants for the relief of Declaration and Permanent Injunction with respect to the suit schedule property. It is the case of the plaintiff that one Ningegowda S/o. Ningegowda has sold the schedule property through an unregistered sale deed dated 08.07.1996. The possession was also delivered on the date of sale deed. As such, the plaintiff has sought to impound the document. As per Section 34 of Karnataka Stamp Act, instruments not duly stamped inadmissible in evidence. The plaintiff has placed claim against the defendants that the sale deed has been executed by the father of the defendants i.e., Ningegowda S/o. Ningegowda. But the said document is not duly registered and stamped. As per Section 33 of Karnataka Stamp Act,

33. Examination and impounding of instruments.-

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) -----

12. Section 33 of Karnataka Stamp Act, envisages that it is the duty of the person under law to impound every

instrument which has not been duly stamped. Thereby the contention of the defendants as to same cannot be impounded would not suffice. Further, whether the document can be looked into is a question of fact which has to be determined in a full-fledged trial. The court is duty bound so as to see that the instrument which has not been duly registered and stamped has to be impounded, thereby the objection raised by the defendants as to the very suit of the plaintiff basing upon the unregistered document ought to have been dismissed and cannot be considered at this juncture. Accordingly, point No.1 is answered in the affirmative.

13. Point No.2:- In view of the above discussion, I proceed to pass the following:-

ORDER

I.A. No.6 filed by the plaintiff under Section 33 of the Karnataka Stamp Act, is hereby allowed.

The unregistered sale deed dated 08.07.1996 is impounded.

Office is hereby directed to get the valuation of the property mentioned in the unregistered sale deed from the District

Registrar, Mysuru.

**For calculation of duty and penalty
by 22.02.2023.**

(Dictated to the Stenographer, transcribed by her, corrected by me and pronounced in the open court on 18th January 2023)

**(Manu Patel B.Y.)
Prl. Civil Judge & JMFC.,
Hunsur.**

Orders pronounced in the open court

Vide separate order

ORDER