

OS 36/2021

An application is filed under Section 33 of Karnataka Stamp Act seeking to order to impound the agreement of sale produced in this matter by the plaintiff. Above application is filed by defendant. It is IA No.10.

In the memorandum of facts it is stated that, original agreement of sale has been submitted and it specifies that the transaction asserted in it is to the tune of one crore seventy seven lakhs one thousand and eight seventy five rupees only and it is asserted that advance amount of rupees two lakhs has been paid. The document present before the Court is the certified copy of the said agreement. Nothing has been stated as to why

the original of the same has been not submitted to the Court. The certified copy of the said agreement specifies that the said agreement is an unregistered one. As per the recitals of the said agreement, possession has been not handed over in respect of the suit property to the plaintiff based on said document.

In the memorandum of facts submitted with said application, it is stated that, the stamp duty paid already is not in accordance with law and hence it cannot be considered etc.

In the statement of objections it is contended by the plaintiff that, the said agreement is an agreement simplicitor and it would buttress the factum of contract as to intended sale of the suit property and so also

regarding the payment of advance amount. Said agreement doesn't come under the umbrella of Section 17 of Registration Act nor under the provisions of Stamp Act. For the collateral purposes as detailed in Section 49 of Registration Act the said document can be considered in evidence and hence application is misconceived etc.

In the course of arguments the learned Advocate appearing for the plaintiff has relied on a judgment of Hon'ble Supreme Court of India, delivered in R. Hemalatha V/s Kasturi, in civil appeal No.2535/2023. This Court has carefully gone through the said judgment and perused records of this case.

Said judgment is on a point

whether the agreement of sale requires any registration for the purpose of Section 17 of Registration Act. Entire judgment is with respect to the mandatory registration of the documents specified in clause (1) of Section 17 of Registration Act. But so far as payment of stamp duty is concerned, as the said document is being a certified copy of the said agreement, basis for relying on such a copy is being not detailed by the plaintiff, for the time being, the said application of the defendant is opined to be devoid of merit and keeping open all the contentions of the defendant put forward on the above document- agreement of sale, the application on hand is hereby disposed of as prematured. The defendant is at liberty to raise the point of insufficiency of stamp in

proper stage of this case if the original of the same is relied on and if it so adviced. As the case is in threshold, the matter is proceeded further. For plaintiff's evidence, call on 28-11-2023.

(S.S.Bharath)
Senior Civil Judge & J.M.F.C.
Thirthahalli