ORDERS

On careful perusal of the entire materials on record, it is pertinent to note that, the counsel for the defendant has filed a case law in Anil Vs. Babu and another wherein the Hon'ble High Court of Karnataka in paragraph No.109, has laid down that

> 'Thus, the statute itself prescribes a time limit of five years (ten years in case of fraud, etc.,) for the State to recover stamp duty which is not levied or short levied. It would therefore follow as a natural consequence, that an instrument which was insufficiently stamped five years before it was produced <u>before the impounding officer cannot be impound and consequently duty and penalty cannot also be collected</u>'.

Therefore, the Hon'ble High Court of Karnataka has clearly distinguished the provisions of the Karnataka Stamp Act and has held that since statute i.e., act itself described the time limit of 5 years to state to recovery duty and penalty and instrument produced after the state of time limit cannot be impound and secondly duty and penalty cannot be also to levied (Sec.46(a).

The counsel for the plaintiff has objected to the same and has furnished a case law in (2024) 9 SCR 166 Seetharama Shetty Vs. Monappa Shetty wherein the Hon'ble Supreme Court of India has discussed the Scope of Section 33, 34, 37 and 39 of the Karnataka Stamp Act.

I have carefully went through entire judgment of the Hon'ble Supreme Court and it is pertinent to note that the facts of the said case is not applicable to the facts of the present case as the defendant who seeks to get the documents marked has contended that since the document pertains to the year 2007 and the suit was filed in the year 2016, as more than 5 years as lapsed, as per Sec.46(a) of Karnataka Stamp Act, 1957 and the law laid down by the Hon'ble High Court of Karnataka in Anil Vs. Babu and another, the State has lost the right to recover the duty and penalty and the impound officer cannot impound the document for the purpose of calculation of the duty and penalty.

In the aforementioned judgment of the Hon'ble Supreme Court, it has been observed that since the trial court has sent the insufficiently instrument to the District Registrar, it was for the District Registrar to exercise his jurisdiction U/Sec.39 of the Karnataka Stamp Act and decide the quantum of duty and penalty payable on the instrument and that the appellant ought to pay the duty as decided by the District Registrar and not as decided by the Court and has set aside the direction of the trial court to pay the duty and 10 times penalty.

Therefore, under the said circumstances the case law furnished by the plaintiff is inapplicable to the present circumstances and hence the objections filed by the plaintiff with respect to the marking of the document is dismissed and the defendant is permitted to get the document marked.

For further chief of DW.1.

Call on : 23.04.2025.

C/c Prl. Civil Judge and JMFC,
Pavagada.