ORDER

The plaintiff has filed present suit for the relief of partition and separate possession with respect to the suit schedule properties and claimed half share in the suit schedule properties by holding partition deed dtd:08-10-2009 and palu vibhaga pathra dtd:24-08-2011 as illegal and void.

2. The plaintiff got examined himself as P.W.1, produced documents as per Ex.P.1 to P13 and closed his evidence.

3. The defendant No.1 got examined as D.W.1 and produced documents as per Ex.D.1 to D.111. The defendant No.1 intended to mark panchayathi palu vibhaga patra dtd:17-07-2008 and the release deed dtd:10-08-1986. At that time the counsel for the plaintiff objected to mark the documents and submitted that, those documents are inadmissible in evidence on the ground that, the documents are insufficient stamped and non registered documents.

4. Heard the arguments on documents from the both side.

5. The following points that would arise for my consideration –

1. Whether the partition deed (Panchayathi palu vibhaga patra) dated 17-07-2008 is required to be impound?

2. Whether the release deed dated 10-08-1986 is required to be impound?

3. What Order?

6. My findings to the above points as follows –

Point No.1	–	In the Affirmative
Point No.2	–	In the Affirmative
Point No.3	–	As for the final order for the following –

<u>**R E A S O N S**</u>

7. <u>**Point No.1 and 2:**</u> The plaintiff has filed suit for the relief of partition and separate possession of his legitimate share in the suit schedule properties. The plaintiff got examined as P.W.1 and produced documents to support of his case. The defendant No.1 got examined as D.W.1 and produced documents as per Ex.D.1 to 111 and also the defendant No.1 intended to mark the documents styled as panchayathi palu vibhaga patra (Partition deed) dated 17-07-2008 and release deed dtd:10-08-1986. At that time the counsel for the plaintiff objected to mark the document on the ground that the document is required to be properly stamped and registered.

8. The counsel for the defendant No.1 filed memo stating that, he is ready to pay stamp duty on the release deed dtd:10-08-1986 and Panchayathi Palu Vibhaga Pathra dtd:17-07-2008 and argued that, an unregistered documents can be marked subject to objection. The plaintiff's counsel argued that, an unregistered and unstamped documents cannot be marked. The plaintiff counsel argued that, there is no pleading regarding partition deed and the said partition deed and release deed are incomplete and invalid documents. There is no signatures of the parties on the documents , hence those incomplete documents cannot be admitted. Further argued that, release deed cannot be admitted for collateral purpose.

9. The defendant counsel relied on Gowramma and others Vs. B.Muniswmy and others, writ petition no.10718/2012 dtd:10-02-2016, wherein it is held that, when a document is required to be registered under registration Act or under any of provisions of transfer of property Act, it could still be received in evidence to prove collateral transaction which were not required to be effected by a registered instrument.

10. In K.Anjaneyashetty Vs. K.H.Rangaiahshetty, ILR 2002 KAR 3613, wherein it is held that, when an objection is raised for a marking of document , the court should record the objections and thereafter permit the document to be marked subject to objection. Thereafter the parties may be allowed to cross examined the witness on the basis of said documents . At the end of the trial while hearing the arguments on the main suit, arguments regarding admissibility of the document also be heard. If the court up holds the objection it could exclude the said documents and oral evidence led in respect of the said documents from consideration. If the said objection is over ruled then the court would decide the case on merits by taking note of the said document and the oral evidence in respect of the said document on record.

11. In the instant case the partition deed dtd:17-07-2008has been written in stamp paper of Rs.50/- and Rs.2/- and the release deed was written a stamp paper of Rs.20/- those documents are not written in a sufficiently stamped paper and stamp duty was not paid. Therefore, those documents have to be impounded and the deficit stamp duty has to be paid. Therefore defendant is liable to pay deficit stamp duty and penalty.

12. **Point No.3:** In view of findings on Point No.1 and 2 and for the reasons stated therein, this court proceed to pass the following;

O R D E R

The defendant is hereby directed to pay the deficit stamp duty and penalty on partition deed (Panchayathi Palu Vibhaga Pathra) dtd:17-07-2008 and release deed dtd:10-08-1986.

Office is directed to calculate duty and penalty.

To pay duty and penalty.

Addl. Civil Judge & JMFC,
Sira.