

Heard on clarification  
by both the sides.  
For orders. Kept by.

**ORDERS ON ADMISSIBILITY OF INSUFFICIENT STAMPED  
DOCUMENT**

The Counsel for the defendant has filed a memo seeking to return the partition agreement which was called for from Tahasildar, Ankola on the ground that it is insufficient stamped document and the same has to be impounded for payment of deficit stamp duty and further submitted that the same will be produced after payment of deficit stamp duty.

2. In the memo, the partition agreement has been mentioned. Hence on clarification the respective counsels for the plaintiff and defendant submits that it is release/relinquishment deed. I have perused the said release/relinquishment deed which was called for from the Tahasildar Office. The said document is unregistered and insufficient stamped document written on RS.10/- bond paper which is insufficient. The said document is unregistered as well as insufficient stamped. However, The documents being unregistered and insufficient stamped are two different acts. For instance, when an unregistered and insufficient stamped document which does not require compulsory registration, is produced before the Court, then

such document can be admitted in evidence after making good the deficit of stamp duty. But when an unregistered and insufficient stamped document which requires compulsory registration, is produced before the Court, and even if the proper stamp duty is paid but such document can be admitted in evidence only for collateral purpose. The main difference between the unregistered and insufficient stamped document is that insufficient stamped document which does not require compulsory registration is a curable defect whereas an unregistered and insufficient stamped document which requires compulsory registration is not a curable defect even after paying proper stamp duty.

**3.** At this juncture, it is pertinent to go through the relevant provisions of Karnataka Stamp Act.

Section 33 provides as under -

**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) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the 1[State of Karnataka]1 when such instrument was executed or first executed:

**Provided that,—**

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, the Government may determine,—

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in charge of public offices.

**34. Instruments not duly stamped inadmissible in evidence, etc.-** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having

by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

**Provided that,—**

(a) any such instrument not being an instrument chargeable with a duty not exceeding fifteen naye paise only, or a mortgage of crop Article 35 (a) of the Schedule chargeable under clauses (a) and (b) of section 3 with a duty of twenty-five naye paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, or the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal

Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Deputy Commissioner as provided by section 32 or any other provision of this Act and such certificate has not been revised in exercise of the powers conferred by the provisions of Chapter VI.

**4.** After going through the aforesaid provisions, it is clear that under Sec. 33 of the Act, the moment an insufficiently stamped instrument comes to the notice of the Court and when such document is produced before the Court, then the same has to be impounded in accordance with Sec. 33, whether the same would be relied upon by the party under Sec. 34 or not and section 34 of the said Act operates as a bar in admitting such document unless it is duly stamped.

**5.** When the document is tendered in evidence by the plaintiff while in a witness box and the objection is raised by the defendants that the document is inadmissible in evidence as it is not duly stamped, then it is obligatory upon the Court to impound the document and recover the duty and penalty as provided and it is only after paying the proper stamp duty, the said document can be admitted in evidence.

6. In the instant case on hand, the said release/relinquishment deed relied upon by the defendant is insufficient stamped document. Unless and until the proper duty is paid on the said document, the unstamped document cannot be admitted in evidence for any purpose including collateral purpose. This proposition finds support from the decision of Hon'ble High Court of Karnataka reported in **2003 (1) KLJ 518** ( which reads as under:

*“6. The only area of controversy in regard to the use of such documents lies in determining whether the purpose for which it is sought to be used is really a collateral purpose. In Rana Vidya Bhusahan Singh Vs Rati Ram, the Apex Court held that even when an unregistered lease deed for a period of fifteen years was not admissible in evidence in support of the creation of lease of the lease in that period, yet the document could support the plea that the possession of the person in whose favour the same was executed was that of a tenant. To the same effect are the decision of the Supreme Court in the Padma Vithoba Chakkayya V Mohd. Multani and another and that of the Privy council in N.Varada*

***Pillai and anothers Vs Jeevarathanammal. The decision of this court in Raoji Appaji Kulkarni (dead) by L.Rs. V. Badibi and Others and Abdul Razack Sab V. H.K.Gopal Shetty have following the above decision reiterated the legal position and declared that even when a document is inadmissible for want of registration, the same is admissible to show the character of the possession of the person in whose favour it is executed. There is therefore no gainsaid that the unregistered sale deed relied upon by the petitioner could for the limited purpose of proving the nature of the possession be let into evidence notwithstanding the fact that the deed was compulsorily registrable under Section 17, but had not been so registered. The view taken by the Court below does not therefore suffer from any error as indeed none of the two parties have been assailed the correctness of the order of the extent it holds the document to be admissible for a collateral purpose.***

***7. That a document is being admitted for a collateral purpose does not however***

*necessarily mean that it can be let in for that purpose for that purpose even when it is not duly stamped. Section 34 of the Karnataka Stamp Act, 1957, deals with instruments not duly stamped and inter alia provides that no instrument which is chargeable to duty shall be admissible in evidence for any purpose or shall be acted upon, registered or authenticated by any person or by any public officer unless such instrument is duly stamped. The expression 'for any purpose' used in Section 34 of the Karnataka Stamp Act 1957 is wide enough to include use of any document for a collateral purpose or transaction. In Ram Rattan V Parma Nand. Their Lordships held that the words 'for any purpose' used in Section 34 of the Karnataka Stamp Act, 1957, had to be given their natural meaning and would include even a collateral purpose for which the party relying upon the document like the same to be admitted the following passage in this regard is apposite.*

*“ The words 'for any purpose'; Section 34 of the Stamp Act should be given their*

*natural meaning and effect and would include a collateral purpose. Where an unstamped document is admitted in proof of some collateral matter it is certainly admitted in evidence for that purpose which the Statute has prohibited. Consequently an unstamped partition deed cannot be used to corroborate the oral evidence for the purposes of determining even the factum of partition as distinct from its terms”*

*8. It is therefore difficult to accept the submission made by Mr. Shetty that just because an unregistered document can be admitted in evidence for proving a collateral transaction, any such use would entitle the document to be marked as an exhibit de hors the provisions of Section 34 of Karnataka Stamp Act 1957. The provisions of Section 49 of the Act remain limited to the consequences of non-registration of compulsorily registrable documents. The said provision does not deal with or stipulate the consequence that follow if an instrument sought to be proved is not duly stamped. That part is provided*

*for separately by provisions of Section 34 of Karnataka Stamp Act 1957, which does not make any exception in favour of documents sought to be admitted to evidence for proving a collateral transaction. So long as an instrument is chargeable with duty, the provision of Section 34 would render it inadmissible in evidence for any purpose unless the same is duly stamped.*

*9. The proviso to Section 34 prescribes the conditions subject to which a document which is not duly stamped can be admitted in evidence. It inter alia provides for payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, the amount which is required to make up such duty together with the prescribed penalty. Suffice it to say that there is no conflict between what is permitted by the proviso to Section 49 of the Registration Act on the one hand and Section 34 of the Karnataka Stamp Act, 1957, on the other. The demand of duty and penalty in terms of the proviso to Section 34 before the*

***document could be marked in token of its having been admitted in evidence did not therefore suffer from any error of law to warrant interference. As a matter of fact, whenever an objection regarding the admissibility of an instrument on the ground of its being unstamped or insufficiently stamped is raised, the Court is required to determine the objection before proceeding any further, unlike other case where an objection to the admissibility of a document on any other ground may be examined at a later stage and the document tentatively marked to avoid delay in recording of the evidence. The decision of the Supreme Court in Ram Rattan (dead) by L.Rs. V. Bajrang Lal and Others and Bipin Shantilal Panchal V State of Gujarrat and Another and that of Single Bench of this Court in Riyza Khan and Other V.s Modi Mohammed Ismail and others, clearly settle the legal position in this regard.***

7. Therefore the document release/relinquishment deed for its non-registration and drawn on insufficiently stamped

document is inadmissible in evidence. Therefore, with all these observations, this Court proceeds to pass the following:

**ORDER**

It is held that Release/relinquishment deed is written on insufficient stamped document and the same is hereby impounded.

Office is hereby directed to send the original document of release/relinquishment deed to the District Registrar for collection of the deficit stamp duty by keeping on record the attested or certified copy of the said document.

Sd/-

**C/c Civil Judge, Ankola**