

IN THE COURT OF THE SENIOR CIVIL JUDGE, AT KUDLIGI.

**Present: Sri B.S. HONNASWAMY, B.A., LL.M.,
Senior Civil Judge & JMFC, Kudligi.**

DATED THIS THE 19TH DAY OF MARCH, 2016.

O.S.No: 46/2015

PLAINTIFF:-

Kater. Hanumanthappa, S/o. Late Kater. Durgappa, aged: 58 years, Proprietor of Valamiki Maharshi Agro Center, dealing in Fertilizer & Pesticide Business, Hosalli road, Kudligi, R/o. Azad Nagar, 5th Ward, Kudligi Town, Kudligi Taluk, Ballari District.

(By Sri. S.A.H., Advocate).

//VS//

DEFENDANTS:-

1. T.Valibasha @ Chotavali, S/o. Late Azeez Saheb, aged: 65 years, Business, R/o. Ward No.20, Azad Nagar, Opp: Anjuman Shadhi Mahal, Hospet, Hospet Taluk, Ballari District and another.

(By Sri. T.M.S., Advocate for D-1 and 2)

ORDERS ON I.A.No.5

The plaintiff counsel filed I.A.No.5 U/o.3 Rules 2(A) r/w S.151 of CPC and prays to permit the Power of Attorney in the top notes suit by allowing the production of the power of attorney

which is produced along with this application Power of attorney holder K.Nagaraj stated in his affidavit plaintiff is his father his father has executed a General Power of Attorney in his favour to represent the case and to give evidence etc and to do all the necessary acts that he could have done if he were to represent of the case. His father has become incapable of giving evidence because of deafness and also because of his other bodily infirmities he is capable of giving evidence by representing his father. He has produced the original power of attorney today in the suit along with this application for kind perusal of this court. He prays to allow the application.

2. The said defendant counsel filed objection stating that at the outset, the petition filed by the petitioner is not maintainable, as the said petition is not supported with the affidavit of the plaintiff. Unless and Until, the Power of attorney is permitted to conduct the case, he has no power or right to file any application with hi affidavit. The plaintiff first he has to seek permission to conduct the case through power of attorney holder. The contention of the petitioner that his father has become incapable of giving

evidence because of deafness and also because of his other bodily infirmities is false and is specifically denied by the defendants. The plaintiff is hale and healthy and not suffering from any disease. The plaintiff is avoiding to enter into witness box, as he has filed false suit. Hence he prays to dismiss the petition. The defendant also filed objections to the report of the District Registrar, regarding collection of duty and penalty.

1. It is submitted that plaintiff has filed the above suit against the defendants for specific performance of contract on the basis of alleged unregistered agreement of sale, alleged to have been executed by the defendants. The defendants have stoutly denied the alleged agreement of sale.

2. The defendants have filed application under Section 33 and 34 of Karnataka Stamp Act seeking to impound the alleged document by collecting the duty and penalty as per article 5(e) (i) of Karnataka Stamp Act. The court has allowed the said I.A. and sent the document to District Registrar, for impounding.

3. The District Registrar, has sent the report stating that the stamp paid on the said document is sufficient, which is not correct.

4. The plaintiff himself has contended in para-8 of the plaint that he postponed his promise under the one or the other pretext, but, however, he consented and agreed orally to handover possession of the suit property and he actually placed the possession of the suit property with the plaintiff from October 2005 and since then plaintiff is in peaceful possession and enjoyment of the suit property.

5. According to the pleadings of the plaintiff that the alleged document is coupled with possession. Hence, the plaintiff has to pay court fee as per article 5 (e) (i) of the Karnataka Stamp Act. The plaint pleadings are not referred by the District Registrar and without considering the same, he has sent the report, which is not correct.

6. It is settled law that the duty and penalty is to be calculated by the office of the court. Therefore, they pray this court, to reject the report of the District Registrar and direct the office to calculate the Duty and penalty on the said document as per article 5(e)(i) of Karnataka Stamp Act. "

3. Heard the arguments on both sides.

4. On the above said pleadings of both the parties, the following points that arise for my consideration are:

1. Whether IA.5 filed by the plaintiff deserves to be allowed.?
2. Whether the duty and penalty calculated by the District Registrar is proper and correct?
3. What order?

5. My answers to the above Points for consideration are:-

Point No:1 Is in the Affirmative.

Point No:2 Is in the Affirmative.

Point No:3 Is as per the final order,

for the following:-

REASONS

6. **POINT No.1 and 2 :-** The power of attorney holder is a son of plaintiff. His father has become incapable of giving evidence because of deafness and also because of his other bodily infirmities he is capable of giving evidence by representing his father. He has produced the original power of attorney today in the suit along with this application for kind perusal of this court. He prays to allow the application. If this IA.5 is allowed no injury will be caused to the

defendants on the other hand the defendant will get opportunity to cross examine the plaintiff son, he is stepping into the shoes of his father. His father is suffering from deafness instead of wasting the court time it is better to allow the IA.No.5 by giving an opportunity to the power of attorney to depose evidence on behalf of his father.

7. The plaintiff has filed a suit for specific performance of contract directing the defendants to pay Rs.4,00,000/- as damages and loss caused to the plaintiff. He also produced the said agreement of sale at the time of filing the suit and after issuing summons to the defendants, the defendants appeared before the court through their counsel and raised objection to the said sale agreement, it requires duty and penalty and thereafter this court sent the agreement of sale to the District Sub-Registrar, Bellary for collecting duty and penalty. The District Sub-Registrar office after calculated the duty and penalty and submitted report to this court dated 14.12.2015 stating that,

“ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಉಲ್ಲೇಖಿತ ಪತ್ರದಲ್ಲಿ ಕಳುಹಿಸಿದ ದಿನಾಂಕ: 8-9-2015 ರಂದು ಮಾಡಿಕೊಂಡ ಕ್ರಯ ಕರಾರು ಪತ್ರಕ್ಕೆ ದಸ್ತಾವೇಜು ಬರೆದುಕೊಂಡ ದಿನಾಂಕದಲ್ಲಿರುವಂತೆ ಕರ್ನಾಟಕ ಮುದ್ರಾಂಕ ಕಾಯ್ದೆ 1957ರ ಮುದ್ರಾಂಕ ಪರಿಶಿಷ್ಟದ

ಅನುಚ್ಛೇದ 5(e)(ii)(a)(iv) ಪ್ರಕಾರ ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ.200/- ವಿಧಿಸಬಹುದಾಗಿರುತ್ತದೆ. ಈಗಾಗಲೇ ಸದರಿ ದಸ್ತಾವೇಜನ್ನು ರೂ.200/- ರ ಮುದ್ರಾಂಕ ಹಾಳೆಯಲ್ಲಿ ಮಾಡಿಕೊಂಡಿರುವುದರಿಂದ ಭರಿಸಿಕೊಳ್ಳಬೇಕಾದ ಕೊರತೆ ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಹಾಗೂ ದಂಡ ಶುಲ್ಕಗಳೇನೂ ಇರುವುದಿಲ್ಲವೆಂಬ ಮಾಹಿತಿಯನ್ನು ಗೌರವಪೂರ್ವಕವಾಗಿ ಸಲ್ಲಿಸಿದೆ.”

8. Thereafter the defendants counsel filed objection to the said report stating that there is no proper calculation and he also relied upon the ruling reported in 2015 (1) KCCR 389 – Court directing impounding of document and office to calculate stamp duty and penalty.

9. As per the said ruling Hon'ble High Court has stated that, Court directing impounding of document and office is calculated the same during the time of evidence and not at the present stage and he also produced the Xerox copy of Karnataka Stamp Act. If relating to sale of immovable property wherein part performance of the contract. Possession of the property is delivered or is agreed to be delivered without executing the conveyance. The same duty as a Conveyance (No.20) on the market value of the property.

10. On perusal of the plaint in para-6, the plaintiff is ready to deposit the balance consideration amount of Rs.1,50,000/- as he has made part payment to the defendants on 8.9.2005. But in para-8 of the plaint that, the plaintiff has been carrying his business for more than a decade. Since 2005 the plaintiff is so stocking and storing in the suit property, having constructed a shed in it. The defendant No.1 represented to the plaintiff on or about October 2005 for additional Rs.1,00,000/-. The plaintiff reposing great confidence in the defendant No.1 has paid it in terms of cash. The defendant No.1 assured the plaintiff that he will pass proper receipt (Bharapai) on the agreement itself. But he postponed his promise under the one or the other pretext, but however he consented and agreed orally to hand over the possession of the suit property to the plaintiff and he actually placed the possession of the suit property with the plaintiff from October 2005. Since then the plaintiff is in lawful possession of the suit property. If the defendants deny the receipt of Rs.1,00,000/- paid by the plaintiff to the defendant No.1 on his demand, which was not endorsed by him, this plaintiff ready to pay the full balance consideration amount as per agreement of

sale.

11. On perusal of the para-8 of the plaint, it is clearly stated that, he agreed orally to hand over the possession of the suit property to the plaintiff in the month of October 2005. But still possession has not been handed over to the plaintiff subject to condition that, if the defendants denied the receipt of Rs.1,00,000/- paid by the plaintiff to the defendant No.1. If the defendants agrees, then the plaintiff is going to appear the possession and still the possession is not handed over to the plaintiff.

12. On perusal of the calculation made by the District Registrar, it clearly goes to show that, agreement of sale has executed on Rs.200/- and as per Clause 5(e)(ii)(a)(iv) Stamp duty paid by the plaintiff is proper and correct and there is no duty and penalty paid by the plaintiff on the agreement of sale. But as per the Stamp Act produced by the defendants counsel, if relating to the purchase of the property is not delivered, then 0.25 rupee for every one hundred rupees or part thereof on the market

value equal to the amount of consideration and if the possession of the property is delivered or is agreed to be delivered without executing the conveyance and the same duty as a conveyance (No.20) on the market value of the property. So the question of calculating by the CMO of this office does not arise. Hence, for the above ruling at the time of evidence the Sub-Registrar has submitted report stating that sale agreement executed on bond of Rs.200/- which is correct does not require any stamp of duty and penalty. Hence, the arguments of the defendants counsel holds no water, because still the possession is not delivered to the plaintiff. I do not found any ground for calculating once again on the said agreement of sale. Hence, I answer the above point No.1 and 2 is in the Affirmative.

13. **POINT No:3**:- For the aforesaid discussions and reasons stated above on the above point, I proceed to pass the following:-

ORDER

I.A.No.5 filed by the plaintiff counsel U/o.3 Rule 2(A) , R/w S.151 of CPC is hereby allowed.

Power of attorney can give evidence on behalf of his

father.

The plaintiff counsel is permitted to lead evidence.

The objections filed by the defendant to the report of the District Registrar , regarding collection of duty and penalty is rejected.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 19.3.2016 at Kudligi).

(B.S. HONNASWAMY),
Senior Civil Judge, Kudligi.

