

### **ORDER ON I.A.No.XIII**

The defendant No.1 has filed the present I.A.No.XIII under Section 151 of CPC., prays to send the partition agreement, unregistered exchange deed and partition deed dated 11.08.2009 to the District-Registrar, Vijayanagara District for deciding and collecting the duty and penalty over the said documents.

**2.** In the accompanying affidavit to the I.A. it is stated by the defendant No.1 that, it is just and necessary to send the above said documents to the District-Registrar, Vijayanagara District for deciding and collecting the duty and penalty over the unregistered partition agreement, exchange deed and unregistered partition deed dated 11.08.2009. Hence, he prays to allow the application. To the said application the counsel for the plaintiff and the counsel for the defendant No.3 has submit no objections.

**3.** Heard and perused the records.

4. The plaintiff has filed the present suit against the defendants for the relief of partition and separate possession with respect of suit schedule properties. Now the defendant No.1 has filed the above said to send the unregistered partition agreement dated 20.04.2005, unregistered partition exchange deed dated 06.01.2006 and unregistered partition deed dated 11.08.2009 to the District Registrar, Vijayanagara District for deciding and collecting the duty and penalty over the said documents. I have perused above said documents, the said documents are appeared to be insufficiently stamped. In the reported decision **2024 SCC Online SC 2320 between Seetharama Shetty V/s Monappa Shetty** In Para No.21 and 22 of the said decision the Hon'ble Supreme Court of India held as under;

***21. As per the steps taken under Sections 33<sup>19</sup>, 34<sup>20</sup>, 35<sup>21</sup>, 37<sup>22</sup>, and 39<sup>23</sup> under Chapter IV of the Act, the position in law is well-established, and axiomatic by the letter of law and precedents of this Court. However, there are a few misgivings in the sequence of its application. For the benefit of practice and procedure, we sum up the steps as follows;***

***21.1 Section 33 of the Act is titled Examination and impounding of instruments.- The object of the provision is to disable persons from withdrawing the instruments produced by them on being told that proper stamp duty and penalty should be paid.***

***21.1.1. The person who intends to rely on an insufficiently/improperly stamped instrument has option to submit to the scope of Section 34 of the Act, pay duty and penalty. The party also has the option to directly move an application under Section 39 of the Act before the District Registrar and have the deficit stamp duty***

*and the penalty as may be imposed collected. In either of the cases, after the deficit stamp duty and the penalty are paid, the impounding effected under Section 35 of the Act is released and the instrument available to the party for relying as evidence. In the event, a party prefers to have the document sent to the deputy commissioner for collecting the deficit stamp duty and penalty, the Court/Every Person has no option except to send the document to the District Registrar. The caveat to the above is that, before the Court/Every Person exercises the jurisdiction under Section 34 of the Act, the option must be exercised by a party.*

*21.2. Section 34 of the Act is titled instruments not duly stamped inadmissible in evidence. This provision bars the admission of an instrument in evidence unless adequate stamp duty and the penalty are paid. Every person so authorised to collect deficit stamp duty and penalty has no discretion except to levy and collect ten times the penalty of deficit stamp duty.*

*21.3. Section 35 of the Act is titled admission of instrument where not to be questioned. Section 35 prohibits questioning the admission of an insufficiently stamped instrument in evidence.*

*21.4. Section 37 of the Act is titled instruments impounded, how dealt with. This Section arises when the party pays the deficit duty and penalty, the Court is to impound the instrument under Section 33 of the Act and has to forward the instrument to the Deputy Commissioner/District Registrar. Sub-section (2) of Section 37 of the Act deals with cases not falling under Section 34 and 36, and the person impounding an instrument shall send it in original to the Deputy Commissioner. This includes the exigencies set out in paragraph 21.1.1.*

*21.5. Being a regulatory and remedial statute, a party who follows the regulation, and pays the stamp duty and penalty, as per Sections 34 or 39 of the Act, the legal objection emanating from Section 33 of the Act*

*alone is effaced and the document is admitted in evidence. In other words, the objection under the Stamp Act is no more available to a contesting party.*

*21.6. Section 39 of the Act is titled deputy commissioner's power to stamp instruments impounded. This Section provides the procedure to be followed by the Deputy Commissioner/District Registrar while stamping instruments that are impounded under Section 33 of the Act. As per Section 39(1)(b) of the Act, the penalty may extend to ten times the stamp duty payable; however, ten times is the farthest limit which is meant only for very extreme situations. Therefore, the Deputy Commissioner/District Registrar has discretion to levy and collect commensurate penalty.*

*21.7. The above steps followed and completed by paying/depositing the deficit duty and penalty would result in the instrument becoming compliant with the checklist of the Act. The finality is subject to the just exceptions envisaged by the Act addressing different contingencies.*

*21.8. The scheme does not prohibit a party to a document to first invoke directly the jurisdiction of the District Registrar and present the instrument before Court/Every Person after complying with the requirement of duty and penalty. In such an event, the available objection under Sections 33 or 34 of the Act is erased beforehand. The quantum of penalty is primarily between the authority/court and the opposing party has little role to discharge.*

*22. Reverting to the circumstances of the case by keeping in perspective the steps summarised in the preceding paragraph, we notice that, before the stage of admission of the instrument in evidence, the respondent raised an objection on the deficit stamp duty. Therefore, it was the respondent who required the suit agreement to be impounded and then sent to the District Registrar to be dealt with under Section 39 of the Act. In this case, the respondent desired the impounding of the suit agreement*

*and collect the deficit stamp duty and penalty. The trial court is yet to exercise its jurisdiction under Section 34 of the Act. On the contrary, the trial court has called for a report from the District Registrar, so for all purposes, the suit instrument is still at one or the other steps summed up in paragraph 21. Therefore, going by the request of the respondent, the option is left for the decision of the District Registrar. Contrary to these admitted circumstances, though the suit instrument is insufficiently stamped, still the penalty of ten times under Section 34 of the Act is imposed through the impugned orders. The imposition of penalty of ten times at this juncture in the facts and circumstances of this case is illegal and contrary to the steps summed up in paragraph 21. The instrument is sent to the District Registrar, thereafter the District Registrar in exercise of his jurisdiction under Section 39 of the Act, decides the quantum of stamp duty and penalty payable on the instrument. The appellant is denied this option by the impugned orders. It is trite law that the appellant must pay what is due, but as is decided by the District Registrar and not the Court under Section 34 of the Act.*

5. on going through the records it is just and necessary to send the said documents to the District Registrar, Vijayanagara District for collecting the deficit stamp duty and penalty if any over the above said documents. On the basis of above reasons and discussions, I answer **Point No.1** in the **AFFIRMATIVE**.

6. **Point No.2** :- For the aforesaid reason and discussions made above, I proceed to pass the following:-

### **ORDER**

The IA No.XIII filed by the defendant No.1 under Section 151 of CPC is hereby allowed.

Office is directed to send the unregistered partition agreement dated 20.04.2005, unregistered partition exchange deed dated 06.01.2006 and unregistered partition deed dated 11.08.2009 along with the copy of this order to the District Registrar for collecting the deficit stamp duty and penalty over the said documents, after retaining the copy of the said documents.

The District Registrar, Vijayanagara District is hereby directed to submit the compliance report to the Court along with the said documents on or before 18.03.2026.

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)**  
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.