

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
HAGARIBOMMANAHALLI**

Dated this the 7th day of April 2025

PRESENT

MADHUSUDHANA D.K.
Senior Civil Judge & JMFC
Hagaribommanahalli

OS No. 82/2021

Plaintiffs: Sri Umapathi Naik

V/s

Defendants : Sri M Nagaraj Shetty

**ORDERS ON IA NO.4 FILED BY THE DEFENDANT
UNDER SECTION 114 READ WITH SECTION 151
OF CPC.**

The Defendant has filed the above Review Petition by way of filing the IA No.4 by seeking to Review of the Order dated 04.09.2024 in respect of determining the Stamp Duty on the Sale Agreement dated 29.03.2021.

2. In support of the IA No.4, the Defendant has filed his Affidavit by deposing on oath that, on 04.08.2022, the Plaintiff has filed his examination-in-chief by way of Affidavit and produced the Sale Agreement. The Defendant has raised Objections to mark the unregistered Sale Agreement dated 29.03.2021 for the reason of insufficient

Stamp Duty and Penalty. This Court has called for the Report of the District Registrar Ballari on 29.09.2022 and the District Registrar has calculated the Stamp Duty at Rs.25,900/- payable on the Sale Agreement. The Penalty of 10 Times comes to Rs.2,59,000/- and the Stamp Duty payable is at Rs.25,900/- and therefore, the Plaintiff is liable to pay the Stamp Duty and Penalty of Rs.2,84,900/-. On 04.09.2024, this Court has passed the Order that, *the Sale Agreement was written on Stamp Paper of Rs.500/- and since the delivery of Possession was not given under the Sale Agreement, the Article 5 of the Karnataka Stamp Act, 1957 permits the Plaintiff to mark the Document.* Therefore, by filing the IA No. 4, the Defendant seeks Review of the Order dated 04.09.2024.

3. The Plaintiff has filed his Objections to the IA No.4. In brief, the Plaintiff has contended that, the Review Petition is not maintainable and since the Possession was not delivered, the Order of the Court dated 04.09.2024 does not suffers from any infirmity and therefore, the Plaintiff has prayed for dismissal of the IA No.4.

4. I have heard arguments of Rival Parties and perused the Material placed on Record. The Counsel for the Defendant has relied on the Reported Judgments in the Case of **Seetharama Shetty vs Monappa Shetty** reported in **2024 AIAR (Civil) 930, Ramanathappa vs**

Ananthappa reported in **2024(4) KCCR 3507** and **Suman vs Vinayaka** reported in **AIR 2015 (NOC) 93 (KAR)**.

5. On appreciation of the factual and legal aspects involved in the above Case, the following Points are arisen for my consideration:

POINTS

1. Whether the Defendant shows reasons for Review of the Order dated 04.09.2024?

2. What Order?

6. Now, My answers to the above Points are as follows:

ANSWERS

POINT NO.1 : In the Affirmative

POINT NO.2 : As per the final Order, for the following:

REASONS

7. **POINT NO.1** : Before commencement of my discussion, it will be convenient for me to carve out the Provisions under which the IA No.4 was filed by the Defendant. The Provisions of Order 47 of CPC provides as follows:

1. Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.

(2) A party who is not appealing from a decree on Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

1 [Explanation- The fact that the decision on a question of law on

which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

8. The Sale Agreement in dispute is written on Stamp Paper of value of Rs.500/-. The District Registrar Ballari has submitted his Report about liability of payment of Stamp Duty at Rs.25,900/- and therefore, the Plaintiff is liable to pay Stamp Duty and Penalty of ten times which comes to Rs.2,84,900/ as per submission of the Defendant. In the Reported Judgment relied by the Defendant in the Case of ***Seetharama Shetty vs Monappa Shetty*** reported in ***2024 AIAR (Civil) 930***, the Hon'ble Apex Court has held that, ***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 Sec.34 of the Act.*** Therefore, the Order passed by me on 04.09.2024 holding that, *the Sale Agreement written on Rs.500/- Stamp Paper is sufficient* is not in accordance with the Reported Case law of the Hon'ble Apex Court stated supra and therefore, the said Order is liable for Review and hence, ***the Point No.1 is answered in the Affirmative.***

9. **POINT NO. 2:** For the above discussion,
I proceed to pass the following:

ORDER

The IA No.4 of the Defendant filed under Section 114 read with Section 151 of CPC is hereby allowed.

The Order dated 04.09.2024 is recalled and the Plaintiff is directed to pay the Stamp Duty and Penalty as per the Report of the District Registrar.

Call on for compliance by 11.06.2025.

Sd/-

MADHUSUDHANA D K
Senior Civil Judge & JMFC
Hagaribommanahalli