ORDERS ON STAMP DUTY

The Defendants intending to produce an unregistered lease agreements dated 19.10.2012 and 16.03.2017 which are insufficiently stamped. They want to tendor the said documents in their evidence. On perusal of the said documents it *prima-facie* reveals that plaintiffs have entered into agreements of lease with the defendants by agreeing to lease the property 1st floor PID No. 2953/C and 2953/D of Hemmanahalli village, K.R.Pete taluk for monthly rent of Rs.12,000/- for a period of 10 years which effected form 01.10.2012 and 18.03.2016. Said documents are not duly stamped.

2. The agreements of lease is not admitted in evidence for any purpose unless it is duly stamped. Section 34 of Karnataka Stamp Act puts a complete embargo and bar against admissibility of these documents which are not duly stamped. Hence, the defendants have to pay deficit duty and penalty on these documents.

3. Learned counsel for the defendants Sri. N.M., has argued that unregistered documents are already admitted in evidence and got marked as Exhibits in O.S.No.119/2019 before the Hon'ble Addl.Civil Judge and JMFC., K.R.Pete. He has furnished

certified copies of the admitted documents. Hence, he prays for mark the documents as exhibits. In support of his argument he relied on decision reported in **ILR 2023 KAR 2591 (Between Anil V/s Babu and Another)** Wherein our Hon'ble High Court of Karnataka at para no. 39 and 40 has held that,

> ***39. If, however, an instrument is admitted in evidence, the admission of the instrument, by virtue of the mandate of Section 35 is final and cannot be questioned at any stage of the suit or proceeding on the ground that it has not been duly stamped. Section 35 of the Act reads as under:***
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> ***40. It is to be noticed here that the power to examine and impound the instrument is only when it is produced before the impounding officer and before the instrument is admitted in evidence. The power to impound the instrument is thereafter unavailable and this is clear from the wording of Section 35, which states the admission of the document cannot be questioned, except as provided under Section 58 of the Act.***

4. As per the ratio laid down in the above said decision when document admitted in the evidence said document can not be questioned at any stage of the suit on the ground that it has not been duly stamped. In case on hand defendants intend to produce the documents

in separate suit. If it is questioned in the same suit which produced before the Hon'ble Addl. Civil Judge and JMFC, matter could be different. This suit is different from the suit pending before Hon'ble Addl. Civil Judge and JMFC. In this suit court objected the documents to get mark as exhibits on behalf of defendants. Hence, judgment relied by the counsel for the defendants is not helpful to him. Further, he argued that he has furnished certified copies hence he is not entitled to pay duty and penalty as provided under law. It is relevant to note here explanation appending to the **Sec. 3 of the Karnataka Stamp Act** read as follows:

> ***[Explanation. Where no proper duty has been paid on the original of an instrument which is chargeable with an amount indicated in the Schedule as proper duty therefor, then a copy of such instrument whether certified or not and whether a facsimile image or otherwise of the original shall be chargeable with duty of an amount which is indicated in Schedule as proper duty for the original of such instrument, and all the provisions of this chapter and chapters IV, VI, VII and VIII of this Act shall mutatis mutandis be applicable to such copy of the original.](2)any instrument for sale, transfer or***

> ***other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under [the Merchant Shipping Act, 1958]***

5. As per the explanation appending to the Sec. 3 of the Karnataka Stamp Act as mentioned above parties have to pay stamp duty and penalty on certified copy if no proper duty has been paid on the original instrument which is chargeable with an amount indicated in the Karnataka Stamp Act. In case on hand admittedly defendants have not been paid proper stamp duty on original lease deeds, which intends to produced by them. Hence, argument advanced by the learned counsel for defendants is not acceptable.

6. As already stated above 1st lease deed came into effect on 01.10.2012, and 2nd lease deed came into effect on 16.03.2017. Hence, court has to fall-back under article 30 (iii) of the Karnataka Stamp Act, 2011.

7. As per above said article for agreement of lease, where lease purports to be for a term exceeding one year and not exceeding 10 years, it has to be written on stamp paper having value of 1 rupee for every Rs.100/- and average annual rent premium, fine and money advanced. Further on perusal

of the documents it appears that, lease made by the plaintiffs with respect to commercial purpose. On perusal of the said documents furnished by the plaintiff it is written on stamp paper having value of Rs.2 and Rs.100/-. On perusal of the rent fixed by the plaintiffs is Rs.12,000/- per month, term of the lease is 10 years. Hence, it is relevant to note here article 30(iii) of Karnataka Stamp Act as follows:

(iii) where the lease purports to be for a term exceeding one year and not exceeding ten years.	one rupee for every one hundred rupees or part thereof on the total amount or value of; the average annual rent, premium, fine and money advance,

8. A plain reading of the above said article is clear that, when lease purports to be for a term exceeding one year and not exceeding 10 years stamp duty is 1 rupee for every Rs.100/-. In case on hand rent fixed by the parties is Rs. 12,000/- in both deeds. Hence, average annual rent is Rs.1,44,000/-. 1 rupee for 100 rupees is 1,440/-. The stamp duty is Rs.1.440/-.

9. This lease agreement dated 19.10.2012 written on stamp paper having value of Rs.2/-. As already stated above stamp duty is Rs.1440/- for the average annual rent is Rs.1,44,000/- as per the Article 30 (iii) of

Karnataka Stamp Act. Hence, plaintiff has to pay stamp duty of Rs.1440-2= 1,438/-. Hence, Rs.1,438 is the actual deficit stamp duty for the lease deed dated 19.10.2012.

10. Second lease agreement dated 16.03.2017 written on stamp paper having value of Rs.100/-. As already stated above stamp duty is Rs.1440/- for the average annual rent is Rs.1,44,000/- as per the Article 30 (iii) of Karnataka Stamp Act. Hence, plaintiff has to pay stamp duty of Rs.1440-100= 1,340/-. Hence, Rs.1,340 is the actual deficit stamp duty for the lease deed dated 16.03.2017.

11. According to Section 34(a) of Karnataka Stamp Act, the defendants have to pay penalty sum equal to ten times to deficit duty calculated by this court. Accordingly, the defendants have to pay Rs.1438X10=14,380+deficit stamp duty Rs.1438=Rs.15,818/- as duty and penalty on unregistered agreement of lease dated 19.10.2012. Further the defendants have to pay Rs.1340X10=13400 deficit stamp duty Rs.1340=Rs.14,740/- as duty and penalty on unregistered agreement of lease dated 16.03.2017. Accordingly, court proceed to pass the following;

ORDER

O.S. 10/2019

The defendants are hereby directed to pay duty and penalty of Rs.15,818/- on unregistered certified copy of agreement of lease dated 19.10.2012.

The defendants are hereby directed to pay duty and penalty of Rs.14,740/- on unregistered certified copy of agreement of lease dated 16.03.2017.

The defendants are hereby directed to pay duty and penalty on unregistered certified copies of agreement of lease within 15 days from the date of this order.

To pay duty and penalty by the defendants by: 01.02.2025.

Addl. Sr.CJ & JMFC,
K.R.Pete.