



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 9<sup>TH</sup> DAY OF AUGUST, 2024**

**BEFORE**

**R**

**THE HON'BLE MR. JUSTICE H.P.SANDESH**

**WRIT PETITION NO. 102296 OF 2022 (GM-CPC)**

**BETWEEN:**

M/S. SAMRUDHI GROUPS, HUBLI,  
A REGISTERED PARTNERSHIP FIRM,  
HAVING ITS OFFICE AT NO.334 TO 335,  
BHAVANI ARCADE, NEAR BASAVA VANA,  
HUBBALLI,  
REPRESENTED BY ITS MANAGING PARTNER,  
SRI. SHASHIDHAR S/O. DANAPPA UJJANI,  
AGE: ABOUT 55 YEARS, OCC: BUSINESS,  
R/O. NO.97, SHARADHA COLONY,  
7<sup>TH</sup> CROSS, DHARWAD-580001.

...PETITIONER

(BY SRI. KINI N.S., ADVOCATE)

**AND:**

1. SRI. ANAND S/O. HOLEBASAPPA ANGADI,  
AGE: ABOUT 40 YEARS, OCC: BUSINESS,  
R/O. "HOLEBASAWESHWAR NILAYA",  
LINGARAJ NAGAR, HUBBALLI-580020.
2. SRI. HOLEBASAPPA S/O. IRAPPA ANGADI,  
AGE: ABOUT 70 YEARS, OCC: RETIRED,  
R/O. "HOLEBASAWESHWAR NILAYA",  
LINGARAJ NAGAR, HUBBALLI-580020.

...RESPONDENTS

(BY SRI. S.S. HEGDE, ADV. FOR R1;  
SRI. V.S. KOUJALAGI, ADV. FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN NATURE OF CERTIORARI OR DIRECTION OR ORDER QUASHING THE ORDER DATED 10.01.2022 ON IA NO.5 IN O.S.NO.281/2017 PASSED BY THE COURT OF III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, HUBBALLI MARKED AT ANNEXURE-H.





THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.08.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

**CAV ORDER**

(PER: THE HON'BLE MR. JUSTICE H.P.SANDESH)

1. Heard the learned counsel for the petitioner and also the learned counsel for the respondents.
2. This petition is filed by the petitioner invoking Articles 226 and 227 of the Constitution of India and praying this Court to issue writ of certiorari or direction or order quashing the order dated 10.01.2022 passed on I.A.No.5 in O.S.No.281/2017, by the Court of III Additional Senior Civil Judge and JMFC, Hubballi, marked at Annexure-H and grant such other and further reliefs as deemed just and appropriate in the circumstances of the case.
3. The factual matrix of the case of the petitioner is that;
  - 3.1. The petitioner is a partnership Firm constituted to carry on business of construction, real



estate, land development etc. Respondent No.1 is one of the partners. The petitioner firm entered into registered agreement of sale with one Sri.Siddappa S/o. Bharamappa Donkannavar to purchase immovable agricultural land on 17.02.2014 and the said agreement of sale is cancelled on 06.08.2014.

3.2. Respondent No.1 as a partner of the petitioner firm executed an acknowledgement/consent deed, affirming the fact that, since agriculture land cannot be purchased by the petitioner firm, the same is brought in the name of his grandfather by using the firms' funds and the same shall be transferred in accordance with law on 09.04.2015.

3.3. The said agricultural land is purchased in the name of one Sri.Irappa Shivalingappa Angadi – the grandfather of the respondent No.1, on 22.06.2015. On 16.02.2016, respondent No.1



executes an agreement that he has accepted and used the funds raised in the name of petitioner firm for his personal gains and he shall indemnify the petitioner firm.

3.4. The said Sri.Irappa Shivalingappa Angadi expired on 06.12.2016 leaving behind the present respondent No.2 as his legal heir, in whose name the revenue record of the immovable property is mutated.

3.5. The petitioner firm filed a suit in O.S.No.281/2017 before the Court of III Addl. Senior Civil Judge and JMFC, Hubballi, seeking a decree of declaration and injunction against the respondents herein in respect of the immovable agricultural property, on 29.11.2017. The respondent No.2 filed his written statement in the said suit on 06.02.2018 and respondent No.2 filed his written statement on 23.07.2018.



- 3.6. On 28.08.2019, an interim application in I.A.No.V under the provisions of Sections 33, 34, 37 of the Karnataka Stamp Act, 1957 read with Section 151 of CPC is filed on behalf of respondent No.2, to impound the consent deed dated 09.04.2015 and agreement dated 16.02.2016 and the said application is resisted on behalf of the petitioner by filing statement of objections.
- 3.7. The Trial Court having considered the pleadings of both the parties, passed the impugned order on 10.01.2022. On 21.01.2022, the respondent No.2 also filed memo of calculation sheet. Challenging the said order dated 10.01.2022 at Annexure-H, the petitioner filed this petition.
4. The main contention of the petitioner's counsel in this writ petition is that;



4.1. The Trial Court without any application of the provisions of the Karnataka Stamp Act, 1957 (hereinafter referred to as 'the Stamp Act', for short) and also without determining the nature of the document and the stamp duty chargeable on such documents, the impugned order is passed and the same is not sustainable. The learned Trial Judge has erred in passing the impugned order without there being any deliberation about the provisions of the Stamp Act, which is applicable to the said documents sought to be impounded. Without there being any application of the provisions of the Stamp Act in impounding the documents styled as Consent/acknowledgment Deed dated 09.04.2015 and the Agreement dated 16.02.2016, the impugned order is non-est and the same deserves to be set aside.



- 4.2. The impugned order is also cryptic and does not clarify what is the rate at which the documents have to be charged and the non-determination of the same itself vitiates the impugned order and hence same is liable to be set aside. The Trial Court ought to have determined the nature of the documents and the duty it attracts under the provisions of the Stamp Act and the same is not done. The said document is not conveyance as per the recitals of the same and it does not attract any duty and the Trial Court ought not to have passed the impugned order. On these grounds he prayed for setting aside the impugned order.
5. Per contra, learned counsel appearing for the respondents would vehemently contend that, the plaintiff relies upon the document at Annexure-A Consent Deed and also the Agreement at Annexure-B and no stamp duty is paid on the said documents.



Hence the Trial Court taking note of the nature of the documents and also when the stamp duty is not paid, rightly invoked Section 33 of the Stamp Act while passing the impugned order and not committed any error. The counsel would also contend that the suit is also filed for the relief of declaration in respect of the Sale Deed dated 22.06.2015 executed by defendant No.1 in favour of his deceased grandfather and contend that the same is nominal and the same is on behalf of the plaintiff firm and defendant No.2 do not have any legal, valid heritable transferable and marketable ownership right, title and interest in respect of the suit property, when the suit is filed for the relief of declaration. In the written statement specific defence is also taken and hence the Trial Court not committed any error in allowing the application and hence it does not require any interference.





6. Having heard the petitioner's counsel and also the counsel appearing for the respondents, the point that would arise for the consideration of this Court is;

*"Whether the Trial Court committed any error in allowing the application filed under Sections 33, 34 and 37 of the Karnataka Stamp Act R/w. Section 151 CPC and whether it requires to be quashed as contended in the petition?"*

7. Before considering the question involved in the matter and determining the point for consideration, it is appropriate to extract Sections 33, 34 and 37 of the Karnataka Stamp Act, for consideration:

**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 State of Karnataka 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 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 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.

37. Instruments impounded how dealt with.- (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the Deputy Commissioner an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Deputy Commissioner or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Deputy Commissioner

8. On perusal of the documents at Annexure-A – Consent Deed dated 09.04.2015 and so also Annexure-B – Agreement of Sale dated 17.02.2016, these documents are unregistered documents and hence no stamp duty is paid on these documents. I have already pointed out the nature of the suit. The



suit is for declaration to declare that the Sale Deed dated 22.06.2015 is on behalf of the plaintiff and defendant No.2 did not have any legal, valid heritable, transferable and marketable ownership right and the Court has to declare the documents as the same is in favour of the plaintiff. When the suit is filed based on these two documents and an application is filed before the Trial Court to impound the documents, the impugned order is passed.

9. The main contention in the application filed by defendant No.2 is that, the said documents are in the nature of acknowledgement and receipt of the amount and admitting the liability under the said documents. The plaintiff intended to rely on these two documents and hence prayed to impound the said insufficiently stamped documents. However, the plaintiff by filing the objection resisted the application contending that the said application is beyond the ambit and scope of the provisions of the



Stamp Act and even beyond the ambit and scope of the Indian Stamp Act i.e., the Central enactment.

10. As already pointed out, both the documents are not the registered documents. The deficit stamp duty for the nomenclature of the documents and admissibility of those documents is disputed, as the plaintiff is relying upon those two documents. It is also important to note that, there is bar under Section 34 of the Stamp Act for a document being received in evidence and the same is absolute unless deficit duty and penalty is paid. If the document is not duly stamped, it is inadmissible in evidence. The Trial Court also having taken note of the combined reading of Sections 33, 34, 37 and 41 of the Stamp Act, discussed the procedural aspect in page No.14 and 15. Section 33 of the Stamp Act is very clear that, 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. It is also important to note that, as per Section 34 of the Stamp Act, the instruments which are not duly stamped are inadmissible in evidence, unless such instruments are duly stamped.

11. This Court also would like to rely upon Section 37 of the Stamp Act, if the document is impounded how to dealt with the same. Sub-clause(2) of Section 37 is very clear that, in every other case, other than Section 37(1), the persons, so impounding an instrument shall send it in original to the Deputy Commissioner.
12. This Court also would like to rely upon the judgment of this Court reported in the case of ***Dr.Vidhya Vs. R. S. Venkata Reddy*** reported in **2011 (4) Kar.LJ 92**, wherein discussion was made in Sections 33(1)



and 37(2) of the Stamp Act. The documents said to be insufficiently stamped not produced in evidence, but produced subsequent to settlement of issues, at the time of filing interlocutory application for temporary injunction, the jurisdiction of the Trial Court to calculate the deficit stamp duty and penalty and direct the party to pay the same, in respect of Temporary Injunction, in suit for specific performance of contract for sale, sought on the basis of document evidencing delivery of possession of suit property to party in part performance of contract; As said document was not produced in evidence in suit, the Trial Court held, erred in directing the party to pay deficit stamp duty and penalty, and order of Trial Court is, therefore, liable to be quashed. It is further observed that, it is however open to the Trial Court to send the document to the Deputy Commissioner for determination of the stamp duty and proceed with suit on receipt of the Deputy Commissioner's order





regarding the document, and stamp duty payable thereon. But an observation is made that, however, the Trial Court is directed to impound the sale agreements as indicated in Section 33(1) of the Act. If the plaintiff seeks the determination of the deficit stamp duty and penalty, the same be determined and he may be permitted to remit the same. In case the plaintiff is not willing, the Trial Court to forward the sale agreements to the Deputy Commissioner concerned, as envisaged in Section 37(2) of the Act. The Trial Court shall await the receipt of the certificate or the order passed by the Deputy Commissioner for proceeding further in the suit. The suit be revived only on receipt of such certificate and the copy of the order of the Deputy Commissioner so passed.

13. Having taken note of the principles laid down in ***Dr.S. Vidya's*** case (supra), it is very clear that, if plaintiff makes an application to determine the stamp



duty, then the Court has to determine. But in the case on hand, no such application is filed and plaintiff even resisted the very application filed by defendant No.2. When such being the case, it is very clear that under Section 37(2) of the Stamp Act, the sale agreement and consent deed to be forwarded to the concerned Deputy Commissioner.

14. This Court also would like to rely upon the judgment of this Court in the case of ***Suman Vs. Vinayak and Others*** reported in **2014(1) Kar.L.J.575**, wherein while discussing Section 33 of the Stamp Act, it is held that, options of the Deputy Commissioner, when an document is to be impounded or received such instrument for impounding, he may either impound and collect the stamp duty and penalty or certify that it is duly stamped or declare that the said instrument is not so chargeable to any stamp duty and hence it is held that the Deputy Commissioner may exercise any of the three options, when an instrument was



placed before him for impounding. It is held that, then the course open to the Court would be to refer such document to the Deputy Commissioner for being adjudicated for collection of chargeable duty and penalty thereof by invoking sub-section(2) of Section 37 of the Stamp Act.

15. In the case on hand, it is to be noted that, when the Consent Deed and Agreement of Sale are the basis for claiming the relief of declaration and an application is filed to pay the duty and penalty when the document is insufficiently stamped, the Trial Court rightly invoked Section 33 of the Stamp Act, since the Court is empowered to impound the document. The very contention of the petitioner's counsel that the nature of the documents ought to have been determined by the Court and without determining the nature of the documents, the impugned order is not sustainable, cannot be accepted. The nomenclature of the documents is



very clear that one is Consent Deed and another one is Agreement of Sale. Hence, without determining the nature of the documents, the Trial Court ought not to have impounded the documents, cannot be accepted. The very contention that, without there being any determination about the provisions of the Stamp Act, which is applicable to the said documents sought to be impounded also cannot be accepted. The Trial Court while passing the order elaborately discussed the same and even taken note of Sections 33, 34, 35, 37 and 47 of the Karnataka Stamp Act, which requires the procedure to be adopted by the Court, while considering the question of admissibility of the document with reference to the Stamp Act and it is the duty of the Court also to examine and determine whether it is properly stamped. Hence the very contention that, without deliberation about the provisions of the Stamp Act, which is applicable to the said documents sought to be impounded, the



impugned order has been passed cannot be accepted.

16. This Court also would like to rely upon the judgment of the Hon'ble Apex Court in ***Shakeel Pasha and Ors. Vs. M/s. City Max Hotels India Pvt. Ltd.,*** in Civil Appeal Nos.2139-2140 of 2024 dated 12.02.2024. The Hon'ble Apex Court also in this judgment discussed with regard to Section 33 and 34 of the Karnataka Stamp Act and directed penalty to be paid on account of non-payment of stamp duty on the Arbitral Award. It is held that, under the Karnataka Stamp Act, there is no power conferred on the Courts to direct payment of penalty and it is the power of the appropriate authorities under the Karnataka Stamp Act to impose penalty. In the case on hand also, it has to be noted that, when the document is placed before the Court and those documents are termed as Consent Deed as well as Agreement of Sale, when the Court found that the



documents are not sufficiently stamped, in terms of Section 33 of the Stamp Act, the documents are impounded. After impounding the documents, as envisaged under Section 37(2) of the Stamp Act, the Court has to send the documents to the concerned authority and accordingly, the document is sent to the Registrar to collect the duty and penalty.

17. When such being the case, I do not find any error committed by the Trial Court and the contention that the court itself has to determine the nature of documents and calculate the stamp duty cannot be accepted, unless the very plaintiff himself makes an application to determine the deficit stamp duty and no such circumstance is warranted since the plaintiff resisted the application. Hence I do not find any force in the contention of the petitioner's counsel to quash the order of the Trial Judge at Annexure-H, as contended in the petition. The petition is devoid of any merits. Hence I answer point in the negative.



18. In view of the discussion made above, I pass the following:

ORDER

The petition is dismissed.

**Sd/-  
(H.P. SANDESH)  
JUDGE**

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ct-mck