



CNR: KAHC010030272022

NC: 2026:KHC:43152
WP No. 1422 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 1422 OF 2022 (GM-CPC)

BETWEEN:

MR AKRAM PASHA
S/O MAHBOOB PASHA
AGED ABOUT 43 YEARS
R/AT NO.35, GROUND FLOOR
1ST MAIN, 3RD CROSS, S.K. GARDEN
BENSON TOWN POST
BENGALURU - 560 046.

...PETITIONER

(BY SRI. RAGHUNATH M D, ADVOCATE)

AND:

1. MR. S SHAMA RAO
AGED ABOUT 74 YEARS
2. MR. S S RAO
AGED ABOUT 69 YEARS
3. MR. S ESHWAR RAO
AGED ABOUT 59 YEARS
4. MR. S YESHWANTH RAO
AGED ABOUT 55 YEARS
5. MRS. HIRA BAI
AGED ABOUT 72 YEARS

Digitally signed
by
ANNAPURNA G
Location: High
Court of
Karnataka



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6. MRS. GAYATHRI BAI
AGED ABOUT 68 YEARS
7. MRS. KASTURI BAI
AGED ABOUT 58 YEARS
8. MRS. MANJULA BAI
AGED ABOUT 51 YEARS
9. MRS RAJESHWARI BAI
AGED ABOUT 49 YEARS

RESPONDENTS NO.1 TO 9 ARE CHILDREN OF
LATE D SURYANARAYANA RAO
RESIDENTS OF NO.35, 2ND FLOOR
1ST MAIN 3RD CROSS S K GARDEN
BENSON TOWN POST
BENGALURU - 560 046.

10. STATE OF KARNATAKA,
BY ITS SECRETARY,
DEPARTMENT OF REVENUE,
VIDHANA SOUDHA,
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI. CHIRANTHA S.H., ADVOCATE FOR
SRI. YESHU BABA MISHRA, ADVOCATE FOR R1 TO R3
R4, R5, R6, R7, R8, R9 ARE SERVED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO-ALLOW THE WRIT



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PETITION WITH COSTS. QUASH THE ORDERS PASSED BY HONBLE LXXIII ADDL CITY CIVIL AND SESSIONS JUDGE, MAYO HALL, CCH 74 BENGALURU IN O.S.NO.26412/2012 DTD 16.08.2021 VIDE ANNEX-G AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 16.08.2021 passed in O.S.No.26412/2012 by LXXIII Additional City Civil and Sessions Judge, Mayo Hall (CCH-74), Bengaluru (hereinafter referred to as the 'trial Court' for short).

2. Heard Sri M.D. Raghunath, learned counsel appearing for the petitioner and Sri Chirantha S.H, learned counsel on behalf of Sri Yesu Baba R Mishra, learned counsel for respondent Nos.1 to 3.

3. The petitioner filed a suit in O.S.No.26412/2012 against the respondents herein seeking the relief of



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specific performance of an agreement of sale. In the said suit, the Office of the trial Court made a note on 05.07.2014 stating that the stamp duty of Rs.85,500/- and Rs.29,800/- is to be paid in respect of Ex.P1 and Ex.P2 under the provisions of the Karnataka Stamp Act, 1957.

4. It is to be noticed that Ex.P1 and Ex.P2 are the agreements of sale produced by the plaintiff in the aforesaid suit and were consequently marked. Defendant No.2 filed an application under Sections 34 and 35 of the Karnataka Stamp Act, 1957 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') seeking to impound the agreements of sale on the ground that instruments are insufficiently stamped. The trial Court heard the parties on both sides and vide order dated 16.08.2021, partly allowed the application filed by defendant No.2 and impounded Ex.P1, subject to payment of duty and penalty.



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5. It would be useful to extract the relevant reasoning of the trial Court, which reads as under:

"I have gone through the Article 5(e)(I)(i) of the Karnataka Stamp Act and Ex.P1. As per Article 5(e)(I)(i) of Karnataka Stamp Act, the plaintiff has to pay stamp duty on Ex.P.1 at 7.5%. So, the sale consideration in Ex.P.1 is Rs.35,00,000/- x 7.5% = Rs.2,62,500/-. The plaintiff has already paid Rs.85,500/-. After deduction of Rs.85,500/-, the plaintiff has to pay Rs.1,77,000/- as duty on Ex.P.1 as per Article 5(e)(I)(i) of the Karnataka Stamp Act.

So far as Ex.P.2 is concerned, the plaintiff has to pay Rs.3,000/- as duty and penalty. The plaintiff has already paid Rs.29,800/- on Ex.P.2. Thus, the plaintiff has paid excess amount of Rs.26,800/- on Ex.P.2. In the interest of justice, this Court is of opinion that, the plaintiff is entitled to deduct excess amount of Rs.26,800/- and same is to be adjusted in stamp duty of Rs.1,77,000/-. After deducting Rs.26,800/- in Rs.1,77,000/- the plaintiff has to pay deficit stamp duty of Rs.1,50,200/- on Ex.P.1. Thus, plaintiff has to pay stamp duty of Rs.1,50,200/- on Ex.P.1 and 10 time penalty, which amounts to Rs.1,50,200/- x 11 = Rs.16,52,200/-. Thus the plaintiff has to pay deficit stamp duty and penalty of Rs.16,52,200/- on Ex.P.1."

6. The contention of learned counsel for the petitioner is that the Office had raised the objection of insufficiency of payment of duty and had calculated the same and, based on such calculation, payment was made,



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the Court again reopened the same and asked the plaintiff to pay the difference amount, which is impermissible.

7. In considering the aforesaid submission, it would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **KRISHNAVATHI SHARMA VS BHAGWANDAS SHARMA AND OTHERS¹** and also the decision of the Hon'ble Supreme Court in the case of **G.M.SHAHUL HAMEED Vs. JAYANTHI R. HEGDE²**, paragraph Nos.27 to 30 which are extracted as below:

"27. On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the trial court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a "decision" on the question of admissibility or, in other words, the trial court not having "decided" whether the GPA was sufficiently stamped, Section 35 of the 1957 Act cannot be called in aid by the respondent. For Section 35 to come into operation, the instrument must have been "admitted in evidence" upon a judicial determination. The words "judicial determination" have to be read into Section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by Section 35.

¹ 2026 Live Law (SC) 309

² (2024)7 SCC 719



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However, in a case of "no judicial determination", Section 35 is not attracted.

28. *In the light of the aforesaid reasoning of the trial court of admitted failure on its part to apply judicial mind coupled with the absence of the counsel for the appellant before it when the GPA was admitted in evidence and marked exhibit, a factor which weighed with the trial court, we have no hesitation to hold that for all purposes and intents the trial court passed the order dated 19-10-2010 in exercise of its inherent power saved by Section 151 CPC, to do justice as well as to prevent abuse of the process of court, to which inadvertently it became a party by not applying judicial mind as required in terms of Sections 33 and 34 of the 1857 Act. We appreciate the approach of the trial court in its judicious exercise of inherent power.*

29. *Reference to Section 58 of the 1957 Act by the learned counsel for the respondent is without substance. The clear language of Section 58 refers to a situation, where an order is passed admitting an instrument in evidence as duly stamped or as one not requiring a stamp, for its attraction. As is evident from a bare reading of the order dated 19-10-2010, the trial court did neither hold the GPA as duly stamped or as not requiring a stamp and, therefore, its applicability was not attracted.*

30. *We may not turn a blind eye to the fact that the Revenue would stand the risk of suffering huge loss if the courts fail to discharge the duty placed on it per provisions like Section 33 of the 1957 Act. Such provision has been inserted in the statute with a definite purpose. The legislature has reposed responsibility on the courts and trusted them to ensure that requisite stamp duty, along with penalty, is duly paid if an unstamped or insufficiently stamped instrument is placed before it for admission in support of the case of a party. It is incumbent upon*



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the courts to uphold the sanctity of the legal framework governing stamp duty, as the same are crucial for the authenticity and enforceability of instruments. Allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the State. The courts ought to ensure that compliance with all substantive and procedural requirements of a statute akin to the 1957 Act are adhered to by the interested parties. This duty of the court is paramount, and any deviation would set a detrimental precedent, eroding the integrity of the legal system. Thus, the court must vigilantly prevent any circumvention of these legal obligations, ensuring due compliance and strict adherence for upholding the rule of law."

8. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court in the aforesaid decisions, it is to be noticed that the note submitted by the Office of the trial Court dated 06.08.2014 and the calculation made by the Office are not based on a judicial determination of the duty and penalty. Hence, the calculation of the duty payable by the Office cannot be termed as an adjudication on the payment of duty and penalty on the insufficiently stamped instrument.



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9. The trial Court, considering the rival submissions, has now assessed the duty and penalty. I do not find any good ground to interfere with the said order.

10. Accordingly, the writ petition is ***disposed of***, without interfering with the order passed by the trial Court.

11. The order sheet of this Court indicates that the parties are at negotiation to resolve the dispute. In my considered view, the disposal of the present petition ought not to come in the way of the parties resolving the dispute amicably.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

SHS
List No.: 1 Sl No.: 20