



CNR: KAHC010393432023

NC: 2026:KHC:42258
WP No. 16798 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 16798 OF 2023 (GM-CPC)

BETWEEN:

SMT. ANUPAMA JAIN
AGED ABOUT 42 YEARS,
W/O MANOJ JAIN,
RESIDING AT NO. 65, N-13/1,
"MANASI" NEW INDIRA VENKATALINGAIAH
LAYOUT,
NAZARABAD MOHALLA,
MYSURU - 570 009.

...PETITIONER

(BY SRI. SHANKARANARAYANA BHAT N., ADVOCATE)

AND:

SRI M R SRINIVASAMURTHY
SINCE DECEASED BY HIS LR

1. DR. HEMALATHA MURHTY,
W/O. LATE M.R. SRINIVASAMURTHY,
AGED ABOUT 84 YEARS,
2. DR. GEETHA MURALI GANESH
W/O LATE M.R. SRINIVASAMURTHY,
AGED ABOUT 57 YEARS,

RESPONDENTS NO.1 AND 2 ARE RESIDING AT
NO.119, LADIES MILE ELLERSLIE,
AUCKLAND - 1015, NEW ZEALAND.

Digitally signed
by
ANNA PURNA G
Location: High
Court of
Karnataka



CNR: KAHC010393432023

SRI. M.R. ATMA RAM
SINCE DECEASED WITHOUT ISSUES,
HOWEVER 3RD DEFENDANT,
BEING HIS SISTER TREATED AS HIS LR

3. SMT.M.R. MALATHI,
W/O AHRI ANANTHA PRASAD
D/O LATE DR. T. RAMAIAH,
AGED ABOUT 68 YEARS,
RESIDING AT NO. 2961/75,
(NEW NO. CH24)
2ND MAIN ROAD, 5TH CROSS
SARASWATHIPURAM,
CHAMARAJA MOHALLA,
MYSURU - 577 009
4. SMT. B.A. MAHALAXMI PRASAD,
W/O DR. VIKRAM KULAKARNI AND
D/O SMT. M.R. MALATHI,
AGED ABOUT 42 YEARS,
PERMANENT RESIDENT OF
NO. 2961/75, 2ND MAIN,
5TH CROSS, SARASWATHIPURAM,
MYSURU - 577
PRESENTLY RESIDING AT NO. 402,
HERITAGE, MEDICAL COLLEGE,
NH-2, G.T. BYPASS ROAD, VARANASI,
UTTARA PRADESH- 22.
PIN - 221 311.

...RESPONDENTS

(BY SRI. JAYAKRISHNAPPA T.M., ADVOCATE FOR R1 AND R2
SRI. MILASH ARROL NORONHA, ADVOCATE FOR
SRI. B. PANEESH KUMAR, ADVOCATE FOR R3
R4 - SERVED)



THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS AND QUASH THE ORDER OF THE COURT OF THE IV ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MYSURU PASSED IN O.S.NO.655/2015 ON I.A.NO.XII DTD 06.07.2023 MARKED AS ANNEXURE-F.

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 06.07.2023 passed in O.S.No.655/2015 by the IV Additional Senior Civil Judge and JMFC, Mysuru (hereinafter referred to as the 'trial Court' for short).

2. Heard Sri N. Shankaranarayana Bhat, learned counsel for the petitioner, Sri Jaya Krishnappa T.M., learned counsel for respondent Nos.1 and 2 and Sri Milash Arrol Noronha, learned counsel appearing on



behalf of Sri B Paneesh Kumar, learned counsel for respondent No.3.

3. The petitioner filed a suit in O.S.No.655/2015 seeking the relief of specific performance of the agreement of sale dated 27.10.2013. In the said proceedings, the petitioner got marked Ex.P1 and Ex.P2, which are unregistered agreements of sale. Subsequently, defendant No.3 filed an application in I.A.No.12 under Order XIII Rules 3 and 6 read with Section 151 of the Code of Civil Procedure, 1908 seeking to De-Exhibit the documents, ie., Ex.P1 and Ex.P2, on the ground that the instruments are insufficiently stamped and are liable to be impounded. The trial Court, vide order dated 06.07.2023, partly allowed the said application, which is assailed in the present petition.

4. The primary contention of the learned counsel for the petitioner is that once the documents are marked as exhibits, there is no provision for de-exhibiting the same. In my considered view, the said issue is no longer



CNR: KAHC010393432023

NC: 2026:KHC:42258
WP No. 16798 of 2023

res integra. The Hon'ble Supreme Court, in the case of **G.M.SHAHUL HAMEED Vs. JAYANTHI R. HEGDE¹**, in and at paragraph Nos.9, 10 and 27 to 30 are extracted hereunder:

"9. A short but interesting question has engaged our consideration. There is no doubt that the GPA is insufficiently stamped. What we need to consider on facts and in the circumstances is, which of the two conflicting views taken by the Trial Court and the High Court is right.

10. Despite the GPA having been admitted in evidence and marked as an exhibit without objection from the side of the appellant, we propose to hold for the reasons to follow that the Trial Court did have the authority to revisit and recall the process of admission and marking of the instrument, not in the sense of exercising a power of review under section 114 read with Order XLVII, CPC but in exercise of its inherent power saved by section 151 thereof, and that the other remedy made available by the 1957 Act was not required to be pursued by the appellant to fasten the respondent with the liability to pay the deficit duty and penalty.

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

¹ (2024)7 SCC 719



CNR: KAHC010393432023

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. 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.*



CNR: KAHC010393432023

NC: 2026:KHC:42258
WP No. 16798 of 2023

It is incumbent upon 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."

5. The Hon'ble Supreme Court in the case of **KRISHNAVATHI SHARMA VS BHAGWANDAS SHARMA AND OTHERS²**, at paragraph Nos.18 to 20 reads as under:

"18. What comes out from the above decisions and the plain reading of the provisions is that the non-payment of stamp duty is a curable defect as held by a Constitution Bench in In Re: Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 18998 . Inadmissibility of insufficiently stamped instruments and impounding thereof; when it is brought before a person or authority empowered to take evidence, is a statutory mandate. The payment of deficit duty and a penalty of rupees five also is a statutory mandate which does not fall for any discretion. However, if the party producing the instrument opts under the first proviso to Section 34, there lies no discretion on the Court in imposing a penalty less than ten times the deficit duty. But when the copy of

² Civil Appeal No.3476/2026, DD: 23.03.2026



CNR: KAHC010393432023

the duly stamped instrument, with penalty paid at ten times, is sent to the Deputy Commissioner under Section 37(1), the Deputy Commissioner has the discretion to refund the penalty above five rupees fully or partially under Section 38. On the other hand, if the insufficiently stamped instrument is transmitted to the Deputy Commissioner under Section 37(2) then the discretion on the question of penalty kicks in under Section 39.

19. *The law being so stated since the matter is pending before the trial court for long, we give the plaintiff, who has produced the document, the option to either approach the court under Section 34 or seek that the document be made over to the Deputy Registrar for determination of deficit duty and imposition of penalty, at his discretion. If the document is made over to the Deputy Commissioner, we make it clear that the Deputy Commissioner shall issue notice to the lessees, who have the liability, before carrying out the exercise provided under Section 39. The imposition of penalty is the discretion of the Deputy Commissioner but on imposing such penalty; the payment of deficit duty and the penalty would be on the lessee as is provided under the Act.*

20. *Obviously, the document can be produced in evidence only after it is stamped properly and penalty, if any imposed by the Deputy Commissioner paid in accordance with the Act. There is no question of the suit being expedited, pending proceedings pursuant to the impounding of the document since if the document is to be admitted in evidence, it has to be properly stamped. The plaintiff would be entitled to produce a certified copy of this order before the trial court, which would act in accordance with the impounding as carried out by the High Court and invoke the proviso to Section 34 or transmit the documents under Section 37(2) of the Act, at the option of the plaintiffs. The plaintiffs would be entitled to seek expeditious consideration under Section 39 of the Act before the Deputy Commissioner once the document is transmitted to the said authority."*

6. In view of the enunciation of law laid down by the Hon'ble Supreme Court in the aforesaid decisions, I



NC: 2026:KHC:42258
WP No. 16798 of 2023

am of the considered view that the trial Court has fully justified in partly allowing the application by directing the Office to calculate the stamp duty and penalty payable on Ex.P1 and Ex.P2 by the plaintiff.

7. Accordingly, the writ petition is ***disposed of***, upholding the order of the trial Court.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

SHS
List No.: 1 Sl No.: 17