IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.4307 OF 2020 (GM-CPC)

BETWEEN:

1. SMT. RAMLA
AGED ABOUT 48 YEARS
W/O A.P.M SHARAFUDHIN
R/AT NAMIRA CHETTAMOON,
POST THALASSERY
THALASSERY AMSOM VIDIKKAKAM
DESOM OF THALASSERY TALUK
KANNUR DISTRICT – 670 101.

2. MRS A.P.M BEEFATHIMA
AGED ABOUT 60 YEARS
D/O C.K.P MAMMOO KEYI
R/AT NAMIRA CHETTAMOON,
POST THALASSERY
THALASSERY AMSOM VIDIKKAKAM
DESOM OF THALASSERY TALUK
KANNUR DISTRICT – 670 101.

3. MRS. A.P.M KAYYU
AGED ABOUT 56 YEARS
D/O C.K.P MAMMOO KEYI
R/AT NAMIRA CHETTAMOON,
POST THALASSERY
THALASSERY AMSOM VIDIKKAKAM
DESOM OF THALASSERY TALUK
KANNUR DISTRICT – 670 101.

...PETITIONERS

(BY SRI.VIJAYA KRISHNA BHAT.M, ADVOCATE)

AND:

1. MR. A. SHASHIRAJ
AGED ABOUT 62 YEARS
S/O JOHN AMBAT,
R/AT HOUSE NO D-4H-109/D
GODS DELIGHT, 6TH CROSS ROAD

LAND LINKS TOWNSHIP
DEREBAIL KONCHADY
MANGALURU TALUK – 575 008.

2. MR. ARUN COELHO
AGE ABOUT 48 YEARS
S/O ANTONY FRANCIS COELHO
R/AT SACRED HEARTS
NEAR VIDYADAHINI SCHOOL
SURATHKAL
MANGALURU – 575 014.

3. MRS. T. M. NABISA
AGED ABOUT 75 YEARS
W/O LATE C.K.P CHERIYA KHADER KUTTI KEYI
R/AT T. M. HOUSE, POST TELLICHERY,
JUBILEE ROAD, TIRUVANGAD AMSOM DESOM
OF THALASSERY TALUK
KANNUR DISTIRCT, KERALA – 670 101.

4. MR. SOOPY KUTTY
AGED ABOUT 50 YEARS
S/O LATE C.K.P CHERIYA KHADER KUTTI KEYI
R/AT T. M. HOUSE, POST TELLICHERY, JUBILEE ROAD,
TIRUVANGAD AMSOM DESOM OF THALASSERY TALUK
KANNUR DISTIRCT, KERALA – 670 101.

5. MS. T. M. SALIHA
AGED ABOUT 50 YEARS
D/O LATE C.K.P CHERIYA KHADER KUTTI KEYI
R/AT T M HOUSE POST TELLICHERY JUBILEE ROAD
TIRUVANGAD AMSOM DESOM OF THALASSERY TALUK
KANNUR DISTIRCT KERALA - 670101

6. MR. T. M. IQBAL
S/O LATE C K P CHERIYA KHADER KUTTI KEYI
R/AT T M HOUSE POST TELLICHERY JUBILEE ROAD
TIRUVANGAD AMSOM DESOM OF THALASSERY TALUK
KANNUR DISTIRCT KERALA - 670101

7. MR A.P.M KHALIL
S/O LATE C. K. P CHERIYA KHADER KUTTI KEYI
AG E ABOUT 58 YEARS
R/AT T. M. HOUSE, POST TELLICHERY, JUBILEE ROAD
TIRUVANGAD AMSOM DESOM OF THALASSERY TALUK
KANNUR DISTRICT, KERALA – 670 101.

8. MR. A. P. M ABDUL REHMAN
AGED ABOUT 58 YEARS
S/O LATE C. K. P MAMMOO KEYI
R/AT NAMIRA CHETTAMOON,
POST THALASSERY
THALASSERY AMSOM VIDIKKAKAM
DESOM OF THALASSERY TALUK
KANNUR DISTRICT – 670 101.

9. MR. A. P. M ABDUL RIYAZ
AGED ABOUT 55 YEARS
S/O LATE C. K. P MAMMOO KEYI
R/AT NAMIRA CHETTAMOON,
POST THALASSERY
THALASSERY AMSOM VIDIKKAKAM
DESOM OF THALASSERY TALUK
KANNUR DISTRICT – 670 101.

10. MR. K. M. AJITH KUMAR
AGE ABOUT 58 YEARS
S/O LATE K. VADIRAJ RAO
R/AT OPP KURUAMBE RAJARAJESHWARI TEMPLE
KALBABI KODICAL,
MANGALURU – 575 006.

…RESPONDENTS

(BY SRI.CYRIL PRASAD PAIS, ADVOCATE FOR C/R1 & R2;
NOTICE TO R3 TO R10 ARE D/W VIDE ORDER DT: 16/12/2020)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 09.12.2019 PASSED BY THE I ADDITIONAL CIVIL JUDGE AND JMFC, MANGALURU, D.K IN O.S.NO.837/2010 ON I.A.NO.4 AS PER ANNEXURE-F.

THIS WRIT PETITION COMING ON FOR **PRELIMINARY HEARING** THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners being the defendants in a specific performance suit in O.S.No.837/2010 are knocking at the doors of Writ Court for assailing the order dated 09.12.2019, a copy whereof is at Annexure-F whereby the learned I Additional Civil Judge, Mangaluru, DK having impounded the four instruments namely three GPAs & one Agreement to Sell on which the suit is founded, has directed payment of deficit Stamp Duty with ten times penalty that too on the present market value of the property comprised in them.

2. Notice to respondent Nos.3 & 4 is dispensed with since, they are not stake holders in this writ petition. Respondent Nos.1 & 2 being the plaintiffs in the suit have entered caveat through their learned counsel and vehemently resist the writ petition making submission in justification of the impugned order placing heavy reliance on the Division Bench decision of this Court in **MISS. SANDRA LESLEY ANNA BARTELS VS. MISS P.GUNAVATHY, ILR 2013 KAR 368,** paras 12 & 13.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant reprieve to the petitioners as under & for the following reasons:

(a) the impugned order to the extent it impounds the agreement to sell dated 19.09.2009 which is already admitted to evidence & marked as Ex.D1, is unsustainable since the stage of section 32 & 33 of the Karnataka Stamp Act, 1957 is already crossed and such a course is not open now; therefore, the said instrument could not have been impounded at all; this apart the application of the contesting respondents had mentioned only three GPAs and not the instrument at Ex.D1 as rightly pointed out by the learned counsel for the petitioners;

(b) so far as the three instruments namely GPAs specified in the subject application of the respondent-plaintiffs are concerned, there again is an error apparent on the face of the record inasmuch as the stage of Section 33 of the Act is confused with the stage of Section 32, the difference between them being quite apparent and they being poles apart; Section 32 is invokable when the document is produced or otherwise comes to the notice of the Court and at

that stage it can be only impounded on the ground of insufficiency or absence of Stamp duty; Section 33 stage will come when an unstamped or unduly-stamped instrument is pressed into evidence; in fact the subject documents, Bar fairly submits, are yet to be pressed into evidence; that being the position the Court below is not justified in asking the petitioners to pay the deficit Stamp Duty along with penalty;

(c) there is also force in the contention of the learned counsel for the petitioner that in adjudging the deficit Stamp Duty, the Court could not have gone for these present market value of the subject property comprised in these instruments; the value stated in the subject instruments ought to have taken into consideration for adjudging the deficit stamp duty and the penalty;

(d) the vehement contention of the learned counsel for contesting respondents that Sections 32 & 33 constitute one composite scheme in view of the decision of Division Bench in Miss SANDRA's case supra and therefore, impugned order cannot be faltered is bit difficult to countenance; paragraphs 12 & 13 of the said judgment also maintain a certain difference between the stages of Sections 32 & 33; it hardly needs to be mentioned that impounding of a document is one

thing and levy of deficit Stamp Duty along with penalty is another; this aspect having not been duly considered by the learned Judge of the Court below, matter merits remand for consideration afresh.

In the above circumstances, this writ petition succeeds in part; the impugned order to the extent it impounds the instrument at Ex.D1 i.e. Agreement to sell dated 09/09/2009 is quashed; the rest of the impugned order concerning the three instruments namely the GPAs is set at naught, and matter is remanded for consideration afresh in accordance with law.

All contentions of the parties are kept open.

No costs.

Sd/-
JUDGE

DS