HC-KAR

NC: 2026:KHC:24487
W.P. No.4528/2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.4528/2020 (GM-CPC)

BETWEEN:

SRI. GREGORY
S/O LATE AROGYAPPA
AGED ABOUT 69 YEARS
R/OF. KAMMANAHALLI VILLAGE
KASABA HOBLI
BANGALORE NORTH TALUK.

...PETITIONER

(BY SRI. SIDDAPPA B.M. ADV.,)

Digitally signed by RUPA V
Location: HIGH COURT OF KARNATAKA

AND:

1. SRI. BALARAM
   S/O LATE M. SHAMANNA
   AGED ABOUT 46 YEARS
   RESIDINT AT NO.9, EV LANE
   S P ROAD CROSS, THIGALARPET
   BANGALORE-560002.

2. RAMACHANDRA .C
   S/O LATE CHINNAKUTTY
   AGED ABOUT 58 YEARS
   RESIDING AT NO.5, VIJAYA COMPLEX
   BEHIND BATA SHOWROOM
   ST. THOMAS TOWN POST
   BANGALORE-560084.

   DECEASED REP. BY LR'S.

2(a) KALAVATHI R
W/O LATE RAMACHANDRA
AGED ABOUT 58 YEARS.

2(b) SANTHOSH KUMAR R
S/O LATE RAMACHANDRA
AGED ABOUT 29 YEARS.

2(c) VIJAYA KUMAR R
S/O LATE RAMACHANDRA
AGED ABOUT 45 YEARS.

2(a) TO 2(c) ALL ARE R/AT.
VIJAYA COMPLEX
KAMANAHALLI MAIN ROAD
BEHIND BATA SHOWROOM
ST. THOMAS TOWN POST
BANGALORE-500084.

[AMENDMENT CARRIED OUT
ON 30.04.2026].

3. SRI. P. BABU
S/O LATE SRI. PADMANABHA
AGED ABOUT 63 YEARS
RESIDING AT NO.671, PREM NIVAS
GRAPES GARDAN
ST. THOMAS TOWN POST
KAMMANAHALLI
BANGALORE-560098.

4. SRI. HANUMANTHA RAYAPPA
AGED MAJOR
RESIDING AT NO.3/1
ST JOHN STREET, 1ST CROSS
KAMMANAHALLI MAIN ROAD
KAMMANAHALLI
BANGALORE-560084.

5. ROSE MARY
W/O LGNATUUS

AGED MAJOR
RESIDING AT NO.3/2
ST JOHN STREET, 1ST CROSS
KAMMANAHALLI MAIN ROAD
KAMMANAHALLI
BANGALORE-560084.

6. S. MUNIRAJU
S/O M. SHAMANNA
AGED ABOUT 51 YEARS.

7. S. NARAYANA
S/O M. SHAMANNA
AGED ABOUT 50 YEARS.

BOTH RESIDING AT NO.43
HEERACHAND LAYOUT
JEEVANAHALLI, COX TOWN
BANGALORE-560005.

8. DEPUTY COMMISSIONER (STAMPS)
AND DISTRICT REGISTRAR FOR SOCIETIES
GANDHINAGARA REGISTRATION
DISTRICT NO.17, MARUTHI PLAZA
2ND MAIN ROAD
VAYALI KAVAL EXTENSION
BANGALORE-560003.

…RESPONDENTS

(BY SRI. N. NAGARAJA, ADV., FOR R5
HCGP FOR R8
R3, R4, R6 & R7 ARE SERVED AND UNREPRESENTED
V/O/DTD:03.11.2025, NOTICE TO R1 IS H/S
V/O/DTD:04.03.2026, NOTICE TO R2 (a to c) IS H/S)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER WRIT IN THE NATURE OF WRIT

QUASHING THE ORDER PASSED BY THE LEARNED XII ADDL. CITY CIVIL AND SESSION JUDGE BANGALORE DATED 12.11.2019 AND ON 03.02.2020 IN O.S.NO.7730/2013 VIDE ANNEXURE-G TO THE WRIT PETITION AND THE ORDER PASSED BY THE DY. COMMISSIONER (STAMPS) AND DISTRICT REGISTRAR GANDHINAGARA REGISTRATION DISTRICT I.E. , R-8 IN CASE NO.GNR/ADJ/125/2019-20 DATED 29.11.2019 VIDE ANNEXURE-H TO THE WRIT PETITION & 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 orders dated 12.11.2019 and 03.02.2020 passed in O.S.No.7730/2013 by the XII Additional City Civil and Sessions Judge, Bengaluru (for short, 'the Trial Court').

2. Sri.B.M.Siddappa, learned counsel for the petitioner submits that the petitioner is the plaintiff in the suit and he has produced Ex.P1-copy of the General Power of Attorney (for short, 'GPA') which was marked in the

evidence and later the defendant No.2 raised an objection with regard to the insufficiency of stamp duty on Ex.P1. It is submitted that the Trial Court, vide order dated 12.11.2019 impounded the document and referred it to the Gandhinagar Sub-Registrar to collect the duty and penalty. It is further submitted that once the Court marks the document, the remedy to the defendant is to challenge the said order under Section 58 of the Karnataka Stamp Act, 1957 (for short, 'the Act') as provided under Section 35 of the Act. It is also submitted that the petitioner should have an opportunity to dispute the calculation arrived at by the concerned Registrar and the Trial Court is required to hear him and then direct to pay the duty and penalty. In support of his contentions, he placed reliance on the following decisions:

(a) JAVER CHAND AND ORS V PUKHRAJ SURANA[1]

(b) SHYAMAL KUMAR ROY V SUSHIL KUMAR AGARWAL[2]

[1]AIR 1961 SC 1655
[2] AIR 2007 SC 637

(c) ANIL RAMACHANDRA MASHALKAR V BABU HASANSAB KADAKOL[3]

3. Though served, there is no representation for the respondents.

4. I have heard the arguments of the learned counsel for the petitioner and meticulously perused the material available on record.

5. The petitioner has filed O.S.No.7730/2013 seeking the relief of declaration and possession with regard to the suit schedule 'A' to suit schedule 'C' properties and for other reliefs. The respondents filed a written statement. The Trial Court framed the issues. The petitioner adduced the evidence and during the course of evidence, got marked Ex.P1 i.e. GPA dated 14.06.2017. The said document was marked on 05.07.2018. On 17.11.2019, the matter was set down for further cross-examination of PW-1. The learned counsel for the defendant No.2 raised an objection with regard to

[3] AIR Online 2022 KAR 382

insufficiency of stamp duty on Ex.P1. The Trial Court comes to the conclusion that Rs.200/- stamp duty is paid on Ex.P1 and the covenants of the GPA indicate that it is given for sale which requires a higher stamp duty and proceeded to impound the document under Section 33 of the Act and ordered the office to forward Ex.P1 to the Gandhinagar Sub-Registrar Office with a direction to collect the duty and penalty for Ex-P1 in accordance with law and return the same to the Court.

6. The concerned Registrar, vide order dated 29.11.2019 comes to the conclusion that the required stamp duty and penalty on Ex.P1 is Rs.33,21,600/-.

7. The contention of the petitioner is that once the instrument is rightly or wrongly marked and admitted in the evidence, the remedy is to challenge as provided under Section 58 of the Act.

8. The Hon'ble Supreme Court in the case of ***JAVERA*** referred *supra,* has held as under:

"4. *…."Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."*

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognised by the section is the class of cases contemplated by Section 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the

document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement "admitted in evidence" under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction."

9. The aforesaid decision of the Hon'ble Supreme Court makes it very clear that where a question as to the admissibility of the document is raised on the ground that it has been stamped, or has not been properly stamped, it

has to be decided then and there when the document is tendered in evidence. It is the duty of the Court to judicially determine the matter as to the document is tendered in the evidence and before it is marked as exhibit in the case. In the case on hand, admittedly when the document at Ex.P1 was marked, there was no judicial determination by the Court with regard to the admissibility of the document and later, on raising of the objection by the defendant, the Trial Court judicially determined and has come to the conclusion that Ex.P1 is insufficiently stamped and proceeded to impound the document. In the aforesaid circumstances, the contention with regard to the challenge to such order under Section 58 of the Act, has no merit.

10. The Hon'ble Supreme Court in the case of ***SHYAMAL KUMAR ROY*** referred *supra,* has held at paragraph 17 as under:

> ***"17.*** *Objection as regards admissibility of a document, thus, specifically is required to be taken*

that it was not duly stamped. On such objection only the question is required to be determined judicially."

11. The aforesaid decision makes it clear that the question of judicial determination of a matter arises when the objection is taken when the document is tendered in the evidence and before marking as an exhibit in the case. However, in the cases where objections are not raised at the time of marking and if there is no judicial determination of the sufficiency or insufficiency of stamp duty, it can always be raised and the concerned Court is required to determine judicially with regard to the sufficiency of the stamp duty and under such circumstances, the effect of Section 35 of the Act would not apply.

12. A similar view is taken by the Co-ordinate Bench of this Court in the case of ***ANIL RAMACHANDRA***, referred *supra*.

13. The Hon'ble Supreme Court in the case of ***G.M.SHAFUL AHMED,*** referred *supra* at paragraphs 27 to 30 has held as under:

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

14. This Court, considering the aforesaid decision of the Hon'ble Supreme Court in the case of ***G.M.SHAHUL AHMED*** referred *supra* in the case of ***VINCENT D***

ALMEIDA AND ANOTHER V. LAXMI KULATHI AND OTHERS[4] has held that Section 35 of the Act would only come into operation when the document is admitted in the evidence upon "judicial determination" and once the document is admitted upon judicial determination, the same cannot be questioned except as provided under Section 35 of the Act. It is further held that the language of Section 58 of the Act referred to a situation, where an order is passed expressly stating that an instrument is admitted in the evidence as 'duly stamped' or as one 'not required a stamp' and until such a specific order is made, Section 58 of the Act cannot be invoked.

15. In the case on hand, as a ministerial act of marking the document, Ex.P1 was marked and admitted in the evidence without there being any judicial determination of the stamp duty payable and later, upon the objection of the defendant, judicial determination has been undertaken by the Trial Court under the impugned

[4] W.P.No.30428/2019 dt. 08.04.2026

order and based on such direction, the jurisdictional sub-Registrar determined the duty and penalty.

16. With regard to the contention of the petitioner that the authority has incorrectly come to the conclusion as to the duty and penalty, in my considered view, the same needs to be considered by the Trial Court by providing an opportunity to the petitioner to the aforesaid extent. The impugned order of the Trial Court dated 12.11.2019 impounding the document for insufficiency of stamp duty is required to be upheld.

17. For the aforementioned reasons, I proceed to pass the following:

ORDER

(i) The writ petition is ***allowed-in-part***.

(ii) The impugned order dated 12.09.2019 passed in O.S.No.7730/2013 by the XII Additional City Civil and Sessions Judge, Bengaluru, is upheld.

(iii) The petitioner is permitted to file objections to the calculation arrived at by the Sub-Registrar, Gandhinagar, in his order dated 29.11.2019.

(iv) The Trial Court shall consider the objection filed by the petitioner and take a decision with regard to the correctness of the calculation arrived at by the Sub-Registrar, Gandhinagar, in his order dated 29.11.2019.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 2 Sl No.: 6