

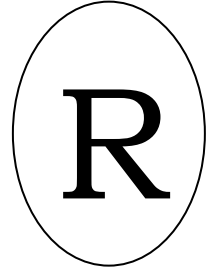
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH 2017

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

WRIT PETITION NO.56179/2013 (GM-CPC)



BETWEEN:

MADIREDDY
S/O BAYAPPA
AGED ABOUT 37 YEARS
R/AT GUMMAVANDLAPALLI
PATHAPALYA HOBLI
BAGEPALLI TALUK - 561 207
CHICKBALLAPUR DISTRICT

... PETITIONER

(BY SRI DEEPAK.J, ADVOCATE FOR
M/S. Y.R.SADASIVA REDDY AND ASSOCIATES, ADVOCATES)

AND:

1. CHOWDAREDDY
S/O LATE NARAYANAPPA
AGED ABOUT 37 YEARS
R/O GUMMAVANDLAPALLI
PATHAPALYA HOBLI
BAGEPALLI TALUK - 561 207
CHICKABALLAPUR DISTRICT
2. LAKSHMIDEVAMMA
W/O LATE ADINARAYANA REDDY
AGED ABOUT 64 YEARS
R/O KONDAREDDYPALLI
PATHAPALYA HOBLI
BAGEPALLI TALUK - 561 207
CHICKABALLAPUR DISTRICT
3. MANJUNATH REDDY
S/O LATE ADINARAYANA REDDY
AGED ABOUT 25 YEARS
R/O KONDAREDDYPALLI
PATHAPALYA HOBLI

BAGEPALLI TALUK – 561 207
CHICKABALLAPUR DISTRICT

... RESPONDENTS

(BY SRI G.BALAKRISHNA SHASTRY, ADVOCATE FOR R1;
R2 SERVED; SRI SANTHOSH, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 21.11.2013 VIDE ANNEXURE-D IN O.S.NO.08/2010 ON THE FILE OF THE CIVIL JUDGE & JMFC, BAGEPALLI.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

H.G.RAMESH, J. (Oral):

Who could be directed to pay the stamp duty and penalty under Section 34 of the Karnataka Stamp Act, 1957? This is the short question that calls for an answer in this case.

2. This writ petition is by defendant No.3 and is directed against an interlocutory order dated 21.11.2013 passed by the trial Court in the suit in O.S.No.8/2010. By the impugned order, the trial Court has directed defendant Nos.1 and 3 to pay the deficit stamp duty and penalty on the agreement of sale dated 10.04.2006 as per Section 34 of the Karnataka Stamp Act, 1957.

3. I have heard the learned counsel for the parties and perused the record. Learned Counsel appearing for the petitioner submitted that defendant Nos.1 and 3 did not tender the aforesaid agreement of sale dated 10.04.2006 to be admitted in evidence, and hence, the direction given to them by the trial Court to pay the stamp duty and penalty is not warranted in law. The submission is rightly not disputed by the learned counsel for respondent No.1-plaintiff.

4. In my opinion, direction to pay the stamp duty and penalty as contemplated under Section 34 of the Karnataka Stamp Act, 1957 ('the Act' for short) could be given only to the person who wants to tender an insufficiently stamped document to be admitted in evidence and if he is entitled to recover the duty and penalty so paid by him from any other person as per Section 43 of the Act, he may recover the same from the other person as provided in the said section. In the present case, as defendant Nos.1 and 3 did not tender the aforesaid agreement of sale dated 10.04.2006 to be admitted in evidence, the trial Court's direction to them

to pay the duty and penalty on the said document is unsustainable in law.

5. As the trial Court has not examined the matter in the light of the relevant provisions of the Act, the impugned order dated 21.11.2013 is liable to be set aside and it is accordingly set aside. The matter is remitted to the trial Court for reconsideration in accordance with law. All contentions of both the parties are kept open.

Petition disposed of.

**Sd/-
JUDGE**

LB