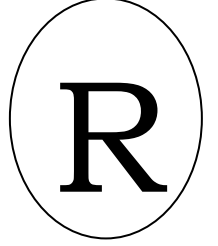


IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 3RD DAY OF MARCH 2017****BEFORE****THE HON'BLE MR. JUSTICE H.G.RAMESH****WRIT PETITION NO.41750/2013 (GM-CPC)****BETWEEN:**

VINOD SEQUEIRA
AGED ABOUT 51 YEARS
S/O LATE S.J.SEQUEIRA
RESIDING AT 'SALMA VILLA'
BARKUR POST
UDUPI DISTRICT

... PETITIONER

(BY SRI H.N.MANJUNATH PRASAD, ADVOCATE)

AND:

1. MRS. RITA F. MONTEIRO
AGED ABOUT 34 YEARS
D/O MR.BAPTIST MONTEIRO
RESIDING AT
KODMAN HOUSE
POST - KODMAN
BANTWAL TALUK
MANGALORE DISTRICT
2. STATE OF KARNATAKA
REPRESENTED BY ITS
INSPECTOR GENERAL OF
REGISTRATION AND COMMISSIONER
OF STAMPS, NO.720
SHIMSHA BHAVAN
JAYANAGAR
BANGALORE-560 082

... RESPONDENTS

(BY SRI VIJAY KRISHNA BHAT.M, ADVOCATE FOR R1;
R2-GA SERVED & UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 29.08.2013 PASSED BY THE COURT OF II ADDITIONAL SENIOR CIVIL JUDGE, DAKSHINA KANNADA, MANGALORE, IN O.S.NO.50/2004 VIDE ANNEXURE-A AND CONSEQUENTLY HOLD THAT THE STAMP DUTY PAID IN RESPECT OF THE AGREEMENT OF SALE DATED 25.11.2003 IS SUFFICIENT.

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

ORDER

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

How to determine the correct stamp duty payable on documents? This is the short question that requires to be examined in this case.

2. This writ petition is by a plaintiff and is directed against an interlocutory order dated 29.08.2013 passed by the trial Court, whereby it has impounded an agreement of sale dated 25.11.2003 and has directed the petitioner-plaintiff to pay a deficit stamp duty of Rs.31,800/- and a penalty of Rs.3,18,000/- on the said agreement.

3. I have heard learned counsel appearing for the petitioner and respondent No.1 and perused the record.

4. The question for consideration in this petition is as to whether the aforesaid agreement of sale dated 25.11.2003 was chargeable with stamp duty as per Article 5(e)(i) of the Schedule to the Karnataka Stamp Act, 1957 ('the Act' for short) as it stood on the date of the agreement of sale i.e. 25.11.2003; Article 5(e) as on that date was as follows:

"5. Agreement or its records or or Memorandum of an agreement,-

(a)

(e) If relating to sale of immovable property, where, in part performance of the contract,-

(i) possession of the property is delivered or is agreed to be delivered without executing the conveyance	The same duty as a Conveyance (No.20) on the market value of the property
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(ii) possession of the property is not delivered,-

(a) where the value of the property

(i) does not exceed Rs.5,000	Ten rupees
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(ii) exceeds Rs.5,000 but does not exceed Rs.20,000	Twenty rupees
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(iii) exceeds Rs.20,000 but does not exceed Rs.50,000	One hundred rupees
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(iv) exceeds Rs.50,000	Two hundred rupees
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(b) where such agreement or memorandum of an agreement does not relate to monetary transactions or transactions not susceptible to valuation in terms of money"	Fifty rupees
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(Emphasis supplied)

5. An agreement for sale of immovable property, to fall within the ambit of Article 5(e)(i) extracted above, either possession of the property was stated to have been delivered under the agreement or was agreed to be delivered without executing the conveyance, in part performance of the contract.

6. As rightly submitted by the learned counsel on both sides, whether the aforesaid agreement of sale dated 25.11.2003 was chargeable under Article 5(e)(i) or not has to be determined on the basis of the recitals at para 4 of the agreement; they read as follows:

"4. Since the purchaser has paid sale consideration as aforesaid, vendor shall execute irrevocable power of attorney in favour of the purchaser. On the strength of the power of attorney, purchaser shall be entitled to possess or sell the schedule property, to receive consideration in his name and exercise all such powers as mentioned in the said power of attorney. Purchaser specifically undertakes that she will not cancel or revoke the power of attorney and she shall have no right to cancel or revoke the power of attorney since power of attorney is coupled with interest."

(Underlining supplied)

7. Submission of learned counsel for respondent No.1 that para 4 of the agreement provides for delivery of possession of the property without executing the conveyance is not correct as it only states that the

purchaser shall be entitled to possess or sell the property on the strength of a power of attorney which shall be executed by the vendor in favour of the purchaser. As the recitals at para 4 of the agreement do not fall within the ambit of Article 5(e)(i), the agreement was not chargeable with stamp duty under the said Article but was chargeable under Article 5(e)(ii)(a)(iv), and accordingly, a stamp duty of Rs.200/- was rightly paid thereon. The decision of this Court in Sri J.Prakash vs Smt M.T.Kamamma [ILR 2007 KAR 4752] referred to by the counsel has no application to the facts of this case as in the said case, the agreement provided for delivery of possession of the property without executing the conveyance.

8. The stamp duty chargeable on a document has to be determined only on the basis of the recitals made in the document and by referring to the provision of law under which the document was chargeable to duty as on the date of its execution and not by referring to the pleadings of the parties or the prayer made in the plaint. The document has to be construed as it stands for determining the proper stamp duty, although the name given to the document may

not be decisive of its character. It is not permissible to go behind the document and to hold an enquiry as to the true nature of the transaction to determine the duty payable on the document.

9. The reasoning of the trial Court in the impugned order is wholly erroneous as it has taken into consideration the averments and the prayer made in the plaint to determine the stamp duty chargeable on the document.

10. It is relevant to state that *Explanation-I* to Article 5(e) of the Schedule to the Act has no bearing on the agreement of sale dated 25.11.2003. *Explanation-I* was inserted subsequent to the agreement. It is only prospective and not retrospective as it is really not explanatory in nature but is substantive. *Explanation-I* reads as follows:

“Explanation-I.—When a reference, of a Power of Attorney granted separately by the seller to the purchaser in respect of the property which is the subject matter of such agreement, is made in the agreement, then the possession of the property is deemed to have been delivered for the purpose of this clause.”

Explanation-I will apply to an agreement, if it refers to a power of attorney already granted separately by the seller

to the purchaser in respect of the property which is the subject matter of the agreement. As stated above, *Explanation-I* will not apply to the agreement herein as the *Explanation* is prospective. However, the agreement in question does not refer to any power of attorney already granted to the purchaser.

11. In view of the above, the impugned order dated 29.08.2013 is liable to be set aside and is accordingly set aside. If the petitioner-plaintiff has paid the duty and penalty as per the impugned order, he is entitled for refund of the same. The writ petition is accordingly disposed of. As the suit is of the year 2004, the trial Court is directed to dispose of the suit expeditiously and in any event within nine months from the date of receipt of a copy of this order. In view of disposal of the writ petition, no order is necessary on I.A.No.1/2015; it stands disposed of accordingly.

Petition disposed of.

**Sd/-
JUDGE**

LB