

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 25TH DAY OF JULY, 2024
BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM
WRIT PETITION NO. 105278 OF 2018 (GM-CPC)

R

BETWEEN

1. SMT. NAGAMMA W/O. FAKKIRAYYA SUTTURMATH,
AGE: 63 YEARS, OCC: AGRICULTURE &
HOUSEHOLD WORK,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.
2. VEERAYYA S/O. FAKKIRAYYA SUTTURMATH,
AGE: 45 YEARS, OCC: EMPLOYEE,
R/O: M.G. TIMMAPUR,
TQ & DIST: HAVERI.
3. MALLIKARJUNAYYA S/O. FAKKIRAYYA SUTTURMATH,
AGE: 39 YEARS, OCC: EMPLOYEE,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.

(DIED ON 22-07-22 HIS L.R'S ARE BROUGHT
ON RECORD AS PER ORDER 15-2-23)
- 3A. SMT. GEETA W/O. MALLIKARJUN SUTTURMATH,
AGE: 34 YEARS, OCC: EMPLOYEE,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.
- 3B. SAMARTH S/O. MALLIKARJUN SUTTURMATH,
AGE: 08 YEARS, OCC: NIL,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.
- 3C. SHRINIDHI D/O. MALLIKARJUN SUTTURMATH,
AGE: 06 YEARS, OCC: NIL,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.

THE APPLICANTS 2 AND 3 ARE MINORS REP. BY
THEIR MOTHER APPLICANT NO.3,
SMT. GEETA W/O. MALLIKARJUN SUTTURMATH.
SMT. NEELAMMA W/O. FAKKIRAYYA ODISOMATH,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.
(DIED HER LRS ARE R9 TO R11)

4. SMT. SAVITRAMMA W/O. GAVISIDDAYYA HIREMATH,
AGE: 41 YEARS, OCC: HOUSEHOLD WORK,
R/O: POLICE QUARTERS A-7,
GAVISIDDESHWAR HIGH SCHOOL ROAD,
KUKANUR, TQ: YLABURGA, DIST: KOPPAL.

(PETITIONERS NO. 2,3 & 5 BY THEIR
P.A. HOLDER SMT.NAGAMMA
W/O. FAKKIRAYYA SUTTURMATH,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI,
PETITIONER NO.1)

...PETITIONERS

(BY SRI. N.P. VIVEKMEHTA, ADVOCATE)

AND:

1. RUDRAYYA S/O. SANGAYYA SASHIMATH,
AGE: 84 YEARS, OCC: RTD. L.I.C.
DEVELOPMENT OFFICER, R/O: NEGALUR,
NOW R/AT: NEAR HUKKERIMATH,
SHEELAVANT ONI, HAVERI.
2. MRUTYNJAYA S/O. RUDRAYYA SASHIMATH,
AGE: 54 YEARS, OCC: BUSINESS,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.
3. CHANNBASAYYA S/O. RUDRAYYA SASHIMATH,
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O: M.G. TIMMAPUR, TQ & DIST: HAVERI.
4. SMT. JAYASHREE
W/O. RUDRAGOUDA GURUBASANAGOUDAR,
AGE: 50 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHEELAVANTAR ONI,
NEAR HIKKERIMATH, HAVERI.
5. SMT. GIRIJAVVA
W/O. CHANNABASAYYA HASAVIMATH,
AGE: 66 YEARS, OCC: HOUSEHOLD WORK,
R/O: BIJJUR, TQ: SHIRAHATTI, DIST: GADAG.
6. SMT. SHARADAVVA
W/O. CHANDRASHEKARAYYA RITTIMATH,
AGE: 63 YEARS, OCC: HOUSEHOLD WORK,
R/O: M.G. RIMMAPUR, TQ & DIST: HAVERI.

7. SMT. TAYAVVA
W/O. CHANNAVEERAYYASWAMI AJJAVADIMATH,
AGE: 62 YEARS, OCC: HOUSEHOLD WORK,
R/O: HARAVI, TQ: HUVINAHADAGALI,
DIST: BALLARI.
8. SMT. SHAKUNTALA
W/O. GURUPADAYYA HIREMATH,
AGE: 56 YEARS, OCC: HOUSEHOLD WORK,
R/O: SASAVIHALLI, TQ: NAVALGUND,
DIST: DHARWAD.
9. FAKKIRAYYA
S/O. CHANNAVEERAYYA ODISOMATH,
AGE: 48 YEARS, OCC: PRIVATE JOB,
10. ARIVANDSWAMI
S/O. FAKKIRAYYA ODISOMATH,
AGE: 17 YEARS, OCC: NIL,
11. KUMARI. LAXMI D/O. FAKKIRAYYA ODISOMATH,
AGE: 14 YEARS, OCC: STUDENT,

(RESP. NO.9 TO 11 R/O: GUTTAL, NOT AT
OPPOSITE TO DISTRICT COURT,
P.B. ROAD, DHARWAD)

(THE RESPONDENTS 10 AND 11 ARE
REPRESENTED BY THEIR GUARDIAN
RESP.NO.9 WHO ARE ALL LR'S OF
PLF. 4 NEELAMMA)

...RESPONDENTS

(BY SRI. A.B. PATIL, ADV. FOR R2-R4;
R2-R4 ARE TREATED AS LR'S OF DECEASED R1;
R5-R9 ARE SERVED;
R10 & R11 ARE MINORS R/BY R9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO
ISSUE A WRIT OF CERTIORARI TO QUASH THE ORDER OF
ADDITIONAL SENIOR CIVIL JUDGE HAVERI DATED:23.07.2018
PASSED IN PASSED IN O.S.NO.175/2018 VIDE ANNEXURE-G AND
HOLD THE AGREEMENT OF SALE DATED:11.12.2002 VIDE
ANNEXURE-E IS ADMISSIBLE IN EVIDENCE AS IT IS SUFFICIENTLY
STAMPED.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.07.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The present writ petition challenges the order dated 23.07.2018, passed by the Additional Senior Civil Judge, Haveri, in O.S.No.175/2018. The impugned order was passed in the context of a partition suit filed by the plaintiffs. The learned Judge, while addressing objections raised by the defendants regarding the admissibility of the agreement of sale dated 11.12.2002, which was accompanied by possession, directed the petitioners to pay the deficit stamp duty along with penalty. The petitioners are contesting this order, asserting that it improperly addresses the stamp duty requirements for the agreement of sale.

2. The facts leading to the case are as under:

The case arises from a partition suit where the plaintiffs contend that the suit schedule properties are joint family ancestral properties, with no partition having occurred. They rely on the agreement of sale dated

11.12.2002 to demonstrate that the mother-in-law of the first plaintiff, and grandmother of plaintiffs 2 to 5, had offered to sell the land in question to P.W.2. This agreement, which includes possession, was executed with the intent to transfer property. Plaintiffs intends to use this document to demonstrate that family members are in possession of specific portion of lands and there is no severance and they wish to place reliance on the document executed by mother-in-law of plaintiff No.1.

3. During the proceedings, the agreement of sale was tendered in evidence through P.W.2. The defendants raised objections, claiming that the agreement was insufficiently stamped. The learned Judge, upon reviewing the objections, impounded the document and directed the petitioners to pay the deficit stamp duty along with penalty, arguing that the document did not meet the necessary stamping requirements.

4. The plaintiffs argue that since the agreement of sale is coupled with possession, the document should not

independently attract stamp duty given that a sale deed was executed subsequently. The sale deed, dated 29.08.2005, was duly stamped and registered, and it confers title upon P.W.2. The plaintiffs assert that this sale deed supersedes the earlier agreement of sale, and therefore, the agreement of sale should not be subject to separate stamp duty or impoundment.

5. Heard the learned counsels on record. Perused the order under challenge.

6. The sale deed, which was marked as Ex.D1, is an essential document produced by the petitioners. Article 5(i) of the Karnataka Stamp Act, 1957 (hereinafter referred to as 'the Act'), specifies that if possession of the property is delivered or agreed to be delivered before executing a conveyance, such a document is liable for stamp duty as a conveyance. However, once a sale deed is executed, it absorbs the terms and conditions of the earlier agreement of sale, making the sale deed the governing document of the transaction. In the present

case, the agreement of sale dated 11.12.2002 was followed by the execution of sale deed on 29.08.2005. The sale deed, which was duly stamped and registered, effectively supersedes the agreement of sale. Since the sale deed has been properly executed and bears the appropriate stamp duty, it becomes the operative document governing the transfer of title. Consequently, Article 5(e)(i) does not apply to the agreement of sale once a sale deed has been executed, as the agreement of sale merges into the sale deed and ceases to function as an independent document for the purposes of stamp duty. Therefore, the imposition of stamp duty under Article 5(e)(i) of the Act, on the agreement of sale in this context is not applicable, as the sale deed is the primary legal instrument reflecting the property transaction.

7. Thus, the agreement of sale, once a sale deed has been duly executed and stamped, should no longer be independently subject to stamp duty as it has merged into the sale deed.

8. The impugned order fails to account for the principle of merger, which dictates that the sale deed, executed on 29.08.2005, effectively renders the earlier agreement of sale redundant. Since the sale deed was executed with appropriate stamp duty and registration charges paid, it becomes the primary legal document evidencing the property transfer. The decision of the learned Judge to impound the agreement of sale does not consider that the agreement's legal significance has been superseded by the sale deed.

9. Given the execution of the sale deed on 29.08.2005, which encompasses the terms of the agreement of sale, the former document is rendered redundant in terms of legal significance. The agreement of sale dated 11.12.2002, having merged into the sale deed, should not be subject to independent impoundment. The records in the present case reveal that the entire stamp duty is paid on the sale deed and sale deed is registered. Therefore, though sale agreement still remains valid, but

the sale deed will supersede the terms and conditions mentioned in the sale agreement and therefore, the sale deed has to be treated as a final ownership document. The impugned order disregards this principle and the legal precedent that governs the transaction.

10. For the forgoing reasons, this Court proceeds to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 23.07.2018 passed in O.S.No.175/2018, which impounded the agreement of sale dated 11.12.2002 under Article 5(i) of the Act, is set aside.
- (iii) The sale deed executed on 29.08.2005, having been duly stamped, remains valid and operative as the document evidencing the transfer of title.
- (iv) The plaintiffs' reliance on the agreement of sale in the partition suit is acknowledged. However, it must be understood that the agreement of sale has merged with the sale deed. Therefore, while the document may be used only for

collateral purposes, it cannot be subject to impounding.

**Sd/-
JUDGE**

*alb/-.