

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29th DAY OF MAY, 2012

BEFORE

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

REVIEW PETITION NO.261/2011

IN

WRIT PETITION NO.20338/2010 (GM-ST/RN)

BETWEEN :

1. M.S. Dhana Kumar,
Aged 42 years,
S/o Late M. Shankarappa Shetty
2. S. Mallappa
Aged 36 years,
S/o Late M. Shankrappa Shetty,
3. M.S.Manjunath,
Aged 30 years,
S/o Late M. Shankrappa Shetty,

All are residing at
2nd Main Road,
Vijayapura Extention
Chickmagalur City.

.. Petitioners

(By Sri Ashok Harnahalli, Sr. Counsel)

AND :

1. State of Karnataka,
Rep. by its Secretary
Department of Stamps and registration,
Vikas Soudha, Bangalore.
2. Deputy Commissioner,
Chikkamagalore.
Chikkamagalore District.
3. District Registrar,
Chikkamagalore,
Chikkamagalore District,
4. Smt.Yashodha
Aged about 46 years,
W/o Late Mallappa,
5. C.M.Sumantha
Aged about 31 years,
S/o Late Mailappa,
6. C.M.Deekshith,
Aged about 29 years,
S/o Late Mallappa,

All R/o Gonakalu Village,
Thogarihankal Post,
Chikkamagalore.

.. Respondents

(By Sri K. Krishna, GA., for R-1 to 3;
and Sri M.T. Nanaiah & Associates for R-4 to 6)

This Review Petition is filed under Order 47 Rule 1 of
CPC., praying for review of the order dated 15.6.2011
passed in WP No.20338/2010 (GM-ST/RN).

This Review Petition coming on for admission this day, the Court made the following :

ORDER

The order dated 15.6.2011 passed in WP.No.20338/2010 (GM-ST/RN) is sought to be reviewed by filing this petition.

2. The records reveal that there is an agreement of sale between the petitioners and respondents 4 to 6 herein in respect 12 acres of Coffee Estate in Sy.No.260(Old No.57) of Gonakal Village, Chickmagalur Taluk. However, the disputes arose between the parties. Ultimately, the petitioners herein filed in O.S.No.188/2000 before the Civil Court (Senior Division), Chickmgalur for enforcing the agreement of sale. Before the Trial Court, respondents 4 to 6 raised the question of non-payment of sufficient stamp duty by the petitioners. The Trial Court after hearing the parties, determined

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the duty and penalty to be paid by the petitioners and directed to pay the duty and penalty of Rs.30,77,800/-. So also, the Trial Court has directed the Registry of the said Court to send the sale agreement dated 9.7.1999 to the Deputy Commissioner for taking necessary action. The said order was called in question before this Court in WP.No.7740/2006(GM-CPC). The said writ petition came to be allowed in part and consequently, the Trial Court's order dated 18.4.2006 imposing duty and penalty of Rs.30,77,800/- was set side by the order dated 29.11.2006. While deciding the said writ petition, this Court observed thus:-

"After hearing, this Court is of the opinion that if the petitioners are intending to mark the document in their evidence and if the same is objected by the defendant or by the Court on its own on the ground that the document is insufficiently stamped, in

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order to permit the petitioners to mark such document, the Court can call upon the petitioners to pay the duty and penalty. If the petitioners have produced the document or not willing to rely upon such document in their evidence, the Court would not get a jurisdiction to calculate the duty and penalty and call upon the petitioners to pay the duty and penalty. In such circumstances, the Court has power to impound the document and refer the matter to the Deputy Commissioner to take action in accordance with law under Sections 37 and 39 of the Karnataka Stamp Act. But in the instant case, the Trial Court has calculated the duty and penalty payable by the petitioners and has called upon the petitioners to pay the duty and penalty and the document is also referred to the Deputy Commissioner for taking action. If the duty and penalty is determined by the Court and if the duty and penalty as ordered to be paid by the petitioners, then the question of referring

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the document to the Deputy Commissioner for any further action will not arise at all and action to be taken in respect of insufficiently stamped document by the court itself. Therefore, this Court is of the opinion that the Trial Court has committed an error in collecting the duty and penalty calling upon the petitioners to pay the same and referring the document to the Deputy Commissioner for further action. When the petitioners are not willing to rely upon the document, then the only course open to the Court below was to refer the matter to the Deputy Commissioner for adjudication by impounding the document."

3. Pursuant to the order of this Court dated 29.11.2006 passed in WP.No.7740/2006, the document was referred to the Deputy Commissioner for initiating action under Sections 37 and 39 of the Karnataka Stamp Act (for short hereinafter referred to as the 'Act'), for adjudication. After adjudication, the

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Deputy Commissioner directed respondents 4 to 6 to pay deficit stamp duty of Rs.2,83,800/- and imposed a fine of Rs.5,000/- on respondents 4 to 6. The imposition of fine of Rs.5,000/- was questioned by respondents 4 to 6 herein in WP.No.20388/2010(GM-ST/RN) with a prayer to enhance the penalty to 10 times of the duty to be paid. This Court remitted the matter to the Deputy Commissioner to consider in the light of Section 8(3) of Karnataka Stamp Act and the judgment of this Court in the case of J.S. Paramesh Siddegowda (AIR 2008, Kar 172). The said order passed in WP.No.20338/2010 is sought to be reviewed by filing this review petition by respondents 4 to 6 in the said writ petition.

4. Sri Ashok Harnahalli, learned counsel appearing for review petitioners submits that this Court in WP.No.7740/2006(GM-CPC) has already

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concluded that the action needs to be taken by the Deputy Commissioner under Sections 37 and 39 of the Act, which means no action need be taken under Section 34 of the Act. Under Section 39 of the Act, the Deputy commissioner will have the power to impose reasonable penalty as he may deem fit and it is not mandatory for him to impose 10 times of the duty to be paid.

The review petition is opposed by the learned counsel appearing for respondents 4 to 6 by contending that the petitioners herein are intending to mark the document and hence the Court below would be justified in imposing 10 times of the duty as penalty.

5. This Court has already observed in WP.No.7740/2006 that the petitioners are not intending to mark the sale agreement in the evidence.

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Sri Ashok Harnahalli also submits that the petitioners are not intending to mark the said document in evidence in O.S.No.188/2000. If it is so, as held by this Court in WP.No.7740/2006, the Deputy Commissioner has to deal with the matter as per law under Sections 37 and 39 of the Act.

6. Section 37 of the Act deals with the procedure as to how the impounded instrument should be dealt with under the said provision. The impounded document will have to be sent to the Deputy Commissioner for further action under Section 39 of the Act. Section 39 deals with the procedure to be followed by the Deputy Commissioner after impounding the document. Section 39(1)(b) clarifies that if the Deputy Commissioner is of the opinion that instrument in question is chargeable with duty and is not duly stamped, he shall require the payment of the

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proper duty or the amount required to make up the same, together with a penalty of five rupees, or if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof.

The bare reading of the aforementioned provision makes it amply clear that the discretion is vested with the Deputy Commissioner to impose penalty at the rate of Rs.5/- or more than Rs.5/-. The penalty may rise up to ten times of the duty to be paid. From the above, it is clear that it is not compulsory on the part of the Deputy Commissioner to impose penalty to an extent of 10 times of the amount of proper duty. The Deputy Commissioner at his discretion may levy lesser penalty also under Section 39 of the Act. However, I may hasten to add here itself that procedure to be adopted by the Court

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under Section 34 is entirely different. Under the said provision, the Court will have to impose penalty to an extent of ten times of the amount of proper duty, which means no discretion is left to the Court, if the document is to be marked in the evidence.

7. While deciding WP.No.20338/2010, the order of this Court in WP.No.7740/2006 though was produced, was not brought to the notice of the Court and consequently effect of the same was not considered. More over, the order dated 15.6.2011 passed in WP.No.20338/2010, which is sought to be reviewed relies upon the judgment of the Division Bench of this Court in the case of **J.S.Paramesh Siddegowda vs. Smt.Indramma V.Murthy, reported in AIR 2008 KAR 172** for coming to the conclusion. The said judgment is not applicable to the facts and circumstances of the case, inasmuch as the

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proceedings in the said matter were arising under Section 34 of the Act. But in the matter on hand, the proceedings have arisen under Sections 37 and 39 of the Act, in view of the fact that the petitioners were not intending to mark the document in question in the evidence. Therefore, the order dated 15.6.2011 passed in WP.No.20338/2010 is liable to be set aside by allowing the review petition.

Accordingly, the order dated 15.6.2011 passed in WP.No.20338/2010 is set aside. The order of the Deputy Commissioner dated 11.6.2010 becomes operative.

Review petition is **allowed** accordingly.

Sd/-
JUDGE

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