

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 02ND DAY OF AUGUST 2011.

BEFORE

THE HON'BLE MR. JUSTICE K. SREEDHAR RAO

Writ Petition No.5515/2009 (GM-CPC)

BETWEEN:

ABDULLA KHAN
S/O FAZALULLA KHAN
AGED ABOUT 34 YEARS,
R/O HEGGERE VILLAGE
KASABA HOBLI
TUMKUR TALUK
TUMKUR DISTRICT

... PETITIONER

(By Sri S.R. HEGDE HUDLAMANE, Adv.)

AND:

1. OBALAIH
S/O MUDDAIAH
AGED ABOUT 61 YEARS,
R/O ALASINAGARE BEEDHI
CHIKKAPET
TUMKUR TOWN
TUMKUR DISTRICT



1. MANJUNATH @ MANJANNA
S/O MUDDAIAH
SINCE DECEASED BY HIS LRS:
- 2a) KIRAN S/O LATE MANJUNATH
AGED ABOUT 26 YEARS.
- 2b) RAGHU S/O LATE MANJUNATH
AGED ABOUT 24 YEARS.
- 2c) SUMITHA D/O LATE MANJUNATH
AGED ABOUT 22 YEARS.

BOTH ARE R/A NARASIPURA,
NELAMANQALA TALUK
BANGALORE RURAL DISTRICT

... RESPONDENTS

(By Sri VIGHNESHVAR S SHASTRI, Adv., FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER ANN-J, DT.17.10.08, IN PASSED BY THE PRL. CIVIL JUDGE [JR.DN], TUMKUR MADE IN OS.NO.591/03, IN THE MEMO DT.16.7.08, BY THE ISSUE OF WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER AS THE CASE MAY BE.

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



ORDER

Petitioner is the plaintiff. Respondent No.1 is the defendant. Plaintiff filed a suit for specific performance based on the agreement executed by father of Respondent No.1. In the said agreement, the averment shows that possession of the property was delivered much prior to the written agreement. The father of Respondent No.1 is expired. Respondents 1 & 2 executed another agreement reiterating the commitment to execute the sale deed. In the said agreement also, there are recitals to show that there is delivery of possession by their father. In both the agreements, there are averments to show that there is delivery of possession and the possession is delivered much prior to the execution of the sale deed.

2. The Trial Court in the first instance found that the stamp duty is deficit to the extent of Rs.50/- and



directed to pay the deficit stamp duty with penalty of 10 times the deficit stamp duty. In the second instance, the Court found that the deficit stamp duty is Rs.35,000/-.

3. The defendant raised an objection that the deficit of the stamp duty is Rs.35,000/-. Hence, requested the Court to collect the duty and penalty accordingly. The Trial Court has allowed the application. The plaintiff aggrieved by the said order has filed this petition.

4. The question of collecting duty and penalty does not arise in this case since under both the agreements set up by the plaintiffs, the possession is delivered much prior to the agreements in question. Hence, collecting of duty and penalty is bad in law. Accordingly, writ petition is allowed.

Sd/-
JUDGE

dh*