

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 4th DAY OF AUGUST 2011

BEFORE

THE HON'BLE MR.JUSTICE K. SREEDHAR RAO

W.P.No.35692 OF 2009(GM-CPC)

BETWEEN

J.Chandrashekaraiiah, 65 years  
S/o.L. Jawarayachar,  
R/at Door No.94/F,  
Upstairs, Medar Block  
I Main, Bamboo Bazar  
Mysore


... PETITIONER

(Shri.Mannachan P.H., Advocate)

AND:

- 1.Subchana, Major  
w/o. late J.Vishweshwaraiah
- 2.Reehna, Major  
D/o.late Vishweshwaraiah
- 3.Shivakumar, Major  
s/o. late J.Vishweshwaraiah
- 4.Srinivas, Major  
s/o. late J.Vishweshwaraiah
- 5.Rajesh, Major  
s/o. late J.Vishweshwaraiah

Respondents 1 to 5 are  
R/at D.No.480(F-17)



Chawdi Road(Mahathma Road)  
Kille Mohalla, Mysore.

G.J.Gowrishankar, Major,  
S/o.L.Jawarayachar,  
R/at No.280, K.R.Hospital Road  
Mysore.

... RESPONDENTS

(By Shri.T.N.Raghupathy, Advocate for R-1 to R-6)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 31.10.2009 passed on I.A.No.8 in O.S.No.640/04 passed by the Judge, Court of Small Causes & CJ(Sr.Dn), Mysore, vide annexure-A and consequently allow I.A.No.8.

This petition coming on for hearing this day, the Court made the following:-

**ORDER**

The petitioner who is the plaintiff filed the suit in effect for the relief of possession and declaration that the decree passed in O.S.No.93/93 is not binding on him. The plaintiff along with the documents has produced a photocopy of a partition deed, which is insufficiently stamped. The defendants have raised an objection that the document produced is inadmissible at the time of marking in evidence. The Court has held that the document is inadmissible and refused to mark

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the document. The plaintiff aggrieved by the said order has filed this writ petition.

2. The counsel for the petitioner submitted that the original document although insufficiently stamped and unregistered yet the plaintiff is entitled to produce the same as a secondary evidence and can also use the same under Section 49 of the Registration Act for collateral purpose and therefore, argued that the order of the trial Court is bad in law.

3. The provisions of the Karnataka Stamp Act which is in paramateria with the Indian Stamp Act debar an insufficiently stamped document as inadmissible in evidence. Section 36 however provides an exemption that when the document insufficiently stamped is marked in evidence without an objection from the other side, the admissibility of the document cannot be raised as a ground thereafter at any stage. In other words, the party against whom the document is produced, if he does not object its marking, it estops the



party from taking the plea that the document is admissible at any other stage of the proceedings.

4. The question in the facts and circumstances of the case would be whether the photocopy of the document in question could be used as secondary evidence and whether it could be used under Section 49 of the Registration Act for collateral purpose?

5. The Supreme Court in **JUPUDI KESAVA RAO .VS. PULAVARTHI VENKATA SUBBARAO AND OTHERS** (AIR 1971 SC 1070) in para 24 has made the following observations:-

"24. As we have expressed our view already Section 35 imposed a bar on the reception of any but the original instrument and forbade the reception of secondary evidence. Section 36 only lifted that bar in the case of an original unstamped or insufficiently stamped document to which no exception as to admissibility was taken at the first stage. It did not create any exemption in the case of secondary evidence which a copy would undoubtedly be. In the case before the Judicial Committee the copy was one other than the final draft of the original document

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which had been lost through no fault on the part of the person intending to prove it and yet it was held that the Stamp Act ruled out its admissibility in evidence."

The ratio laid down by the Supreme Court clearly discloses that an insufficiently stamped document is not admissible in evidence under Section 35 and the bar equally applies with regard to secondary evidence also. The Supreme Court in THE STATE OF BIHAR .VS. M/S. KARAM CHAND THAPAR AND BROTHERS LIMITED (1962 SC 110) has made the following observations:-

"The copy of the award which was sent to the respondents is said to have been seized by the police along with other papers and is not now available. When the third copy was received in Court, the respondents paid the requisite stamp duty under Section 35 of the Stamp Act and had it validated. Now the contention of the appellant is that the instrument actually before the Court, is, what it purports to be, "a certified copy", and that under Section 35 of the Stamp Act there can be validation only of the original, when it is unstamped or insufficiently stamped, that the document in Court which is a copy cannot be validated and "acted upon" and that in consequence no





copy" appearing thereon are a mis-description and cannot have the effect of altering the true character of the instrument. There is no substance in this contention of the appellant either. In the result, the appeal fails and is dismissed with cost."

In the instant case, the objection as to the admissibility of the document is raised at the earlier stage and the trial Court has also ruled that the document is insufficiently stamped and not admissible. The order of the trial Court, in the light of the above observations of the Supreme Court, is sound and proper.

However, the trial court can collect deficit duty and penalty as per Sec.34 of the Karnataka Stamp Act and thereafter, can receive document in evidence with regard to non-registration. The trial court can consider the admissibility for collateral purpose U/s.49 of the Registration Act. In the above terms, the writ petition is disposed of.

Sd/-  
JUDGE

\*alb/-.