

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF JULY, 2011

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No. 34402/2010 (GM-CPC)

BETWEEN:

1. Smt. Fathima @ Fathima bi
@ Sri. Babjan B.N.
W/o. Sri. Babjan. B.N
Aged about 58 years.
2. Sri. Babjan. B.N.
S/o. Imam Sab,
Aged about 63 years.

Both are R/at Kottureswara Nilaya,
Besides Benaka Refreshments
Opp. Auto Stand,
Behind KTJ Police Station,
Bhagatsingh Nagar,
Davanagere - 577 002.

... PETITIONERS

(By Sri V.B.Siddaramaiah, Adv.)

AND:

Sri. Gangadhar
S/o. Basappa,
Aged about 58 years,
R/at 3rd Main, 1st Cross,
Vidyanagar,
Davanagere - 577 006.

... RESPONDENT

(By Sri Revanna Bellary, Adv.)

This writ petition is filed under Articles 226 & 227 of the Constitution of India, praying to set aside the order dated

21.12.2009 passed on I.A.No.7 filed by the petitioners under Section 34 of the Karnataka Stamp Act read with Section 17 of the Indian Registration Act and under Section 151 of CPC passed by the learned 1st Addl. District and Sessions Judge, Davanagere in O.S.No.276/2009 (old No.382/2002) vide Annexure-F.

This petition coming on for preliminary hearing in 'B' group, this day, the Court made the following:

ORDER

1. This writ petition is filed challenging the order dated 21.12.2009 passed on I.A.No.7 by the defendants.
2. I.A.No.7 was filed under Section 34 of the Karnataka Stamp Act read with Section 17 of the Indian Registration Act by the defendants – petitioners herein requesting the Court below to reject the unregistered mortgage deed dated 25.09.1999 and not to mark the same as exhibit as it was inadmissible in evidence.
3. The Court below has dismissed the said application holding that as the suit was filed for the relief of declaration to declare that the plaintiff was entitled to ₹.4,01,600/- from defendants 1 & 2 and as the suit was not filed for redemption of the mortgage, the document dated 25.09.1999 could be permitted to be marked and that if the document were to be



marked, it would not cause any prejudice to the interest of the defendants.

4. Learned counsel for the petitioners submits that if the document is considered it clearly says that it is in the nature of a mortgage for security of repayment of a sum of ₹.3,00,000/- received from the plaintiff along with interest and if the same was not repaid within the period stipulated, then the terms contained therein make it clear that it should be treated as agreement for sale for consideration of ₹.4,01,100/-. It is his submission that as the possession is alleged to be delivered in favour of the plaintiff pursuant to the said document as per the recitals in the document itself, whether it is construed as a mortgage or as an agreement for sale, in either case, it has to bear proper stamp duty in terms of the provisions contained in the Karnataka Stamp Act and as the document was not typed in the requisite stamp paper paying the necessary stamp duty, application could not have been rejected.

5. Learned counsel for the respondent contends that as the document in question is only an agreement for sale, the same was not compulsorily registrable and therefore the Trial Court was right and justified in holding that the objections raised was

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not tenable. He has placed reliance on the judgment of the Apex Court in the case of **P.S.RANAKRISHNA REDDY VS. M.K.BHAGYALAKSHMI & ANOTHER 2007 (1) SCCR 529** to contend that the document has to be read in its entirety.

6. It is unnecessary for this Court to examine the nature of the document as the Trial Court has not done the said exercise. The Trial Court has only come to the conclusion that as the plaintiff has not filed the suit for redemption of mortgage and as it was only a suit for recovery of money, question of registration did not arise. The question whether a document is compulsorily registrable or not, does not depend on the nature of the relief sought, but it depends on the nature of the document and the nature of the transaction it evidences. If the document is compulsorily registrable and the same is not registered, then as per the provisions contained under Section 17 read with Section 49 of the Indian Registration Act, the said document cannot be relied upon. Even as per the provisions of the Karnataka Stamp Act, if the document is not properly stamped, then the said document cannot be relied upon, unless proper duty and penalty is paid or made good.



7. In view of the above, the impugned order cannot be sustained as it does not examine the nature of the transaction contained in the document and the question whether the document is compulsorily registrable or suffer from insufficiency of the stamp affixed. Hence, the writ petition is allowed. The impugned order is set aside. The Court below is directed to reconsider the matter after giving opportunity to both the parties.

Sd/-
JUDGE

PKS