



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10038 OF 2024
[@S.L.P. (CIVIL) NO. 19165 OF 2021]

N.M. THEERTHEGOWDA

... APPELLANT(S)

Versus

Y.M. ASHOK KUMAR AND OTHERS

... RESPONDENT(S)

J U D G E M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. The appellant filed O.S. No. 610 of 2015 for specific performance of the agreement for sale dated 04.11.1996, stated to have been executed by the respondents. The appellant also prayed to set aside the sale deed dated 13.08.2003, which the first and second respondents executed in favour of the third respondent. The appellant claims possession of suit schedule property as part performance under the

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agreement of sale dated 04.11.1996. An agreement of sale coupled with possession is deemed to be a conveyance warranting payment of *ad*

valorem stamp duty. Admittedly, the suit agreement is written on stamp papers worth Rs.200/-. Article 5(e)(i) of the Schedule of the Act, read with amended Stamp Act No. 8 of 1995, prescribes the duty as payable on a conveyance. The appellant has not produced the original agreement in O.S. No. 610 of 2015. The explanation offered by him is that the agreement is filed in a connected matter between the parties. From the order dated 14.08.2015, it appears that the appellant expressed readiness to pay duty and penalty on the certified copy of the agreement of sale dated 04.11.1996, now filed along with the plaint. The trial court, by order dated 14.08.2015, held as follows:

“In respect of penalty on deficit stamp duty is concerned in reported rulings;

ILR 2013 KAR 2099 (DB) – Degambar Warty and others – V/s. District Registrar, Bangalore Urban District and another.

Wherein in the above said rulings it is held;

“No discretion is granted to the Court to impose a lesser penalty. A power is vested in Civil Court to impound the document.”

In view of the above said settled law, the Civil Court has no discretion to impose lesser penalty below ten times. The proper stamp duty payable on the agreement of sale dated 04-11-1996. The ten times penalty on deficit stamp duty comes to Rs.14,38,000/- Plus deficit stamp duty of Rs.1,43,800/-, in all the plaintiff has to pay deficit stamp duty and penalty of Rs.15,81,800/- on the unregistered agreement of sale dated 04-11-1996.

ORDER

The plaintiff is directed to pay duty and penalty totally Rs.15,81,800/-.

The office is directed to collect the duty and penalty as stated above. Thereafter, as per Sec.37 of the Karnataka Stamp Act, send an authenticated copy of the unregistered agreement of sale dated 04-11-1996 to the concerned District Registrar, together with Certificate and the amount collected as a duty and penalty.”

3. The appellant filed Writ Petition No. 36970 of 2015, assailing the trial court's order dated 14.08.2015. The appellant argued that the deficit stamp duty should alone be collected at the time of the passing of the judgment and decree, and the levy of penalty is illegal and erroneous. The High Court, through the order impugned in the appeal, rejected.

4. The instant Civil Appeal has been heard with Civil Appeal Nos. 10039-40 of 2024 (@ S.L.P. (C) No. 7249-50 of 2022). After perusing the record, we are of the view that the circumstances in which the decision to pay stamp duty and penalty is rendered are different from the tagged civil appeals. Advocate for the appellant contends that the document should have been sent to the District Registrar to determine deficit stamp duty and penalty under Section 39 of the Act, instead of the court deciding under Section 34 of the Stamp Act. The argument is untenable to the facts and circumstances of this case.

5. In Civil Appeal Nos. 10039-40 of 2024 (@ S.L.P. (C) Nos. 7249-50 of 2022), the steps under Chapter IV of the Act have been summarised in paragraph 21 of the Judgement, and reads thus –

“21.1. Section 33 of the Act is titled examination and impounding of instruments. The object of the provision is to disable persons from withdrawing the instruments produced by them on being told that proper stamp duty and penalty should be paid.

21.1.1. The person who intend to rely on an insufficiently/improperly stamped instrument has option to submit to the scope of Section 34 of the Act, pay duty and penalty. The party also has the option to directly move an application under Section 39 of the Act before the District Registrar, and have the deficit stamp duty and the penalty as may be imposed collected. In either of the cases, after the deficit stamp duty and the penalty are paid, the impounding effected under Section 35 of the Act is released and the instrument available to the party for relying as evidence. In the event, a party prefers to have the document sent to the deputy commissioner for collecting the deficit stamp duty and penalty, the Court/Every Person has no option except to send the document to the District Registrar. The caveat to the above is that, before the Court/Every Person exercises the jurisdiction under Section 34 of the Act, the option must be exercised by a party.

21.2. Section 34 of the Act is titled instruments not duly stamped inadmissible in evidence. This provision bars the admission of an instrument in evidence unless adequate stamp duty and the penalty are paid. Every person so authorised to collect deficit stamp duty and penalty has no discretion except to levy and collect ten-times the penalty of deficit stamp duty.

21.3. Section 35 of the Act is titled admission of instrument where not to be questioned. Section 35 prohibits questioning the admission of an insufficiently stamped instrument in evidence.

21.4. Section 37 of the Act is titled instruments impounded, how dealt with. This Section arises when the party pays the deficit duty and penalty, the Court is to impound the instrument under Section 33 of the Act and has to forward the instrument to the Deputy Commissioner/District Registrar. Sub-section (2) of Section 37 of the Act deals with cases not falling under Section 34 and 36, and the person impounding an instrument shall send it in original to the Deputy Commissioner. This includes the exigencies set out in paragraph 21.1.1.

21.5. Being a regulatory and remedial statute, a party who follows the regulation, and pays the stamp duty and penalty, as per Sections 34 or 39 of the Act, the legal objection emanating from Section 33 of the Act alone is effaced and the document is admitted in evidence. In other

words, the objection under the Stamp Act is no more available to a contesting party.

21.6. Section 39 of the Act is titled deputy commissioner's power to stamp instruments impounded. This Section provides the procedure to be followed by the Deputy Commissioner/District Registrar while stamping instruments that are impounded under Section 33 of the Act. As per Section 39(1)(b) of the Act, the penalty may extend to ten-times the stamp duty payable; however, ten times is the farthest limit which is meant only for very extreme situations. Therefore, the Deputy Commissioner/District Registrar has discretion to levy and collect commensurate penalty.

21.7. The above steps followed and completed by paying/depositing the deficit duty and penalty would result in the instrument becoming compliant with the checklist of the Act. The finality is subject to the just exceptions envisaged by the Act addressing different contingencies.

21.8. The scheme does not prohibit a party to a document to first invoke directly the jurisdiction of the District Registrar and present the instrument before Court/Every Person after complying with the requirement of duty and penalty. In such an event, the available objection under Sections 33 or 34 of the Act is erased beforehand. The quantum of penalty is primarily between the authority/court and the opposing party has little role to discharge.

6. Having regard to the detailed consideration, the twin points on the collection of deficit stamp duty and the penalty are substantially covered. Before applying the said summary to the case on hand, the circumstances of the case are adverted to.

7. In the accompanying Civil Appeals, by referring to Section 37(2), we have held as follows:

“23. Hence, for the above reasons, the direction to pay ten times the penalty of the deficit stamp duty warrants to be interfered with and accordingly is set aside. The trial court is directed to send the agreement of sale dated 29.06.1999 to the District Registrar to determine the deficit stamp duty and penalty payable. Upon receipt of the compliance certificate from the District Registrar, without reference to an objection

under the Act, the suit document is received in evidence. All objections available to the respondents except the above are left open for consideration.”

8. In the present case, the appellant wanted the suit agreement to be admitted in evidence at the interlocutory stage. The suit was filed on 12.08.2015. On 14.08.2015, the case was posted before the court, and the counsel for the appellant in the trial court agreed to pay proper/sufficient stamp duty and penalty on the certified copy of the agreement to sale. In other words, the appellant invited the court to decide under Section 34(1) of the Act.

9. Being so, when the trial court imposed ten times penalty on the deficit stamp duty, the appellant argued in the High Court that he would pay the stamp duty when the decree of specific performance was granted. In our considered view, the case of appellant is covered by Section 34 of the Act, and rightly ten-times penalty is imposed. Further, the appellant having invited the court, as noted above, cannot now express the willingness to exercise the option under Section 37(2) of the Act. On the contrary, Section 37(1) of the Act would apply in the present case.

10. The High Court, through the impugned order, while relying on the ratio in ***Gangappa and another v. Fakkirappa¹ and Digambar Warty and others v. District Registrar, Bangalore Urban District and another²***, has rightly rejected the prayer of the appellant.

11. For the above reasons, we do not see any ground warranting interference in the order impugned.

12. The Appeal fails and is accordingly dismissed. There is no order as to cost.

.....J.
(HRISHIKESH ROY)

.....J.
(S.V.N BHATTI)

**NEW DELHI;
SEPTEMBER 02, 2024.**

¹ (2019) 3 SCC 788.

² ILR 2013 KAR 2099.