

(2018) 10 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition Nos. 44078 of 44079 of 2016 (GM-CPC)

C.S.Mahesh

APPELLANT

Vs

Nagaprasad Srinivasan

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Karnataka Stamp Act, 1957 — Section 33, 33(1), 33(2)

Citation : (2018) 10 KAR CK 0004

Hon'ble Judges : H.G.Ramesh, J

Bench : Single Bench

Final Decision : Disposed of

Judgement

1. Whether a Judge, other than a Judge of the High Court, is empowered to delegate the duty of examining and impounding any instrument under

Section 33 of the Karnataka Stamp Act, 1957 to any other officer? This is the question that requires determination in this case.

The question is answered in the negative.

2. These writ petitions are by the defendant and are directed against an interlocutory order dated 02.08.2016 passed by the Court of the Additional

City Civil Judge, Bangalore in the suit in OS No.5999/2012; the order reads as follows:

â??Deft has not deposited the stamp duty calculated by the office. Hence memo is hereby disposed off.

Parties are hereby directed to proceed with the case. Case posted for further chief of DW.1 if any. Call on 10/8.â??

3. Learned Counsel for the petitioner submits that the calculation of stamp duty and penalty made by the office of the trial Court is not in accordance

with the provisions of the Karnataka Stamp Act, 1957 (the Act), and hence, the impugned order dated 02.08.2016 is liable to be set aside and the matter requires to be reconsidered by the trial Court in accordance with law.

4. In the context of the question raised, it is relevant to refer to the order of the trial Court dated 23.11.2015 whereby it had impounded the document

in question namely, the lease deed dated 01.07.2009 with an endorsement of agreement to mortgage. The order reads as follows:

23.11.2015

IA 6 u/o XVIII rule 17 CPC filed.

IA No.7 u/s 151 CPC filed. Heard and allowed on cost of Rs.150/- each in all Rs.300/-. case reopened. Deft recalled. Deft present. filed his affidavit

evidence on oath which is taken on record as DW1. Lease Deed with endorsement of agreement to mortgage is hereby impounded. Office to

compute the duty and penalty.

For fur. chief DW1.

Call on 14/12.

(Emphasis supplied)

In the aforesaid order, the trial court has also directed the office to compute the duty and penalty payable on the document. Accordingly, the office

has calculated the deficit stamp duty payable on the document as Rs.11,000/- and the penalty payable as Rs.1,10,000/-.

5. To examine the question raised, it is relevant to refer to Section 33 of the Act; it reads as follows:

33. Examination and impounding of instruments.(1) Every person having by law or consent of parties authority to receive evidence, and every

person in-charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes

in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain

whether it is stamped with a stamp of the value and description required by the law in force in the State of Karnataka when such instrument was

executed or first executed:

Provided that,

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so

to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code

of Criminal Procedure, 1898;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer

as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, the Government may determine,

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in-charge of public offices.â??

6. As per Section 33 of the Act, impounding of an instrument by the person referred to in Section 33(1) of the Act shall be preceded by a reasoned

order stating as to how the instrument is not duly stamped, failing which impounding of the document is unsustainable in law.

7. As per Clause (b) of the proviso to sub-section (2) of Section 33 of the Act, if any instrument chargeable with duty is produced before a Judge of

the High Court, the duty of examining and impounding such an instrument under Section 33 of the Act may be delegated to such officer as the Court

appoints in this behalf. There is no similar provision for a Judge other than a Judge of the High Court. Therefore, no Judge other than a Judge of the

High Court is empowered to delegate the duty of examining and impounding any instrument under Section 33 of the Act to any other person or officer.

8. In view of the above, the order of the trial Court dated 23.11.2015 impounding the document, and its direction to the office to compute the duty and

penalty payable on the document is contrary to Section 33 of the Act. Hence, the impugned order dated 02.08.2016 is set aside. The trial Court is

directed to compute the duty and penalty payable on the aforesaid document by a reasoned order without delegating that function to any of its officers

as it is not permissible under Section 33 of the Act. This shall be done within one month from the date of receipt of a copy of this order. Thereafter,

the trial Court shall proceed in the matter in accordance with law.

9. At this stage, learned Counsel appearing for the respondents prays for a direction to the trial Court to dispose of the suit expeditiously. As the suit is of the year 2012, the trial Court is directed to dispose of the suit expeditiously by strictly avoiding unnecessary adjournments and in any event within four months from the date of receipt of a copy of this order. The writ petitions are disposed of in the above terms. In view of disposal of the writ petitions, IA.Nos.1 & 2 of 2018 do not survive for consideration; they stand disposed of accordingly.