(2006) 06 KAR CK 0110

In the Karnataka High Court

Case No : Writ Appeal No. 84 of 2006

Sri M. Muniswamy	APPELLANT
Vs	
B.P. Krishnappa Mudaliar and Others	RESPONDENT

Date of Decision : 07-06-2006

Acts Referred:
Karnataka Stamp Act, 1957 — Section 33 (1)

Citation : AIR 2008 Kar 281 : (2007) ILR (Kar) 3721 : (2007) 6 KarLJ 670

Hon'ble Judges : Cyriac Joseph, C.J;N. Kumar, J

Bench : Division Bench

Advocate : K.S. Nagaraja Rao, for the Appellant; S. Rajashekhar and Associates for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—This writ appeal is filed against the judgment dated 14-9-2005 in W.P. No. 19007/2005. The appellant is the petitioner in the writ petition.

2. The challenge in the writ petition is against Annexure-''D1 order dated 20-6-2005 passed by an Arbitrator in CMP. No. 97/2003. The said order reads as follows:

Thus in my considered opinion and view of the relevant clear provisions of law I hold that Ex. P. 2 is not properly stamped and it deserved to be impounded and necessary stamp duty to be calculated and recovered with permissible penalty.

Clearly the said orders is an order passed u/s 33(1) of the Karnataka Stamp Act 1957 which 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.

3. It is not disputed that Ex. P. 2 agreement of sale was produced by the appellant before the Arbitrator as documentary evidence in support of his case. The appellant does not dispute that the Arbitrator is a person having by law and consent of parties the authority to receive evidence. It is also not disputed that Ex. P. 2 instrument is chargeable with duty. In Annexure-''D'' order the Arbitrator has taken the view that the instrument is not duly stamped. Accordingly he has impounded the same. In our view, all the requirements of Section 33(1) of the Karnataka Stamp Act 1957 have been satisfied in this case and therefore the Arbitrator was right and justified in passing Annexure-''D'' order. In this view of the matter the learned single Judge was right in dismissing the writ petition. Hence there is no merit in the writ appeal. The writ appeal is dismissed.

