

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24TH DAY OF MARCH, 2014

BEFORE

THE HON'BLE MR. JUSTICE N. KUMAR

W.P.NO. 42630/2011(GM-CPC)

BETWEEN:

1. THIMMANNA
S/O LATE CHOWDAPPA
AGED ABOUT 68 YEARS
2. GANGAMMA
W/O THIMMANNA
AGED ABOUT 59 YEARS
3. C.T. MANJUNATHA
S/O THIMMANNA
AGED ABOUT 32 YEARS
4. C.T KUMAR
S/O THIMMANNA
AGED ABOUT 29 YEARS

ALL ARE R/O CHANNAPURA VILLAGE
AJJAMPURA HOBLI,
TARIKERE TALUK,
DISTRICT CHIKMAGALUR.

5. C.T. RENUKAMMA
W/O SIDDARAMAPPA
AGED ABOUT 40 YEARS

R/O SOLLAPURA VILLAGE
 AJJAMPURA HOBLI,
 TARIKERE TALUK,
 DISTRICT CHIKMAGALUR ... PETITIONERS

(BY SRI MAHANTESH.S. HOSMATH, ADV.)

AND:

C.T. SOMASHEKARA,
 S/O THIMMANNA
 AGED ABOUT 39 YEARS
 R/O CHANNAPURA VILLAGE
 AJJAMPURA HOBLI,
 TARIKERE TALUK,
 DISTRICT CHIKMAGALUR ... RESPONDENT

(BY SRI L.M. NAGASHREE, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE CIVIL JUDGE (JD) AND ADLL. JMFC TARIKERE IN O.S. NO. 4/07 DT. 18.10.10 VIDE ANNEX-C AND THE IMPUGNED ORDER OF DISTRICT REGISTRAR DT 21.3.2011 VIDE ANNEX-D AND DIRECT THE COURT TO FOLLOW CORRECT PROCEDURE AS PER DECISIONS OF THIS COURT AND PROVISIONS OF STAMP ACT.

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This is defendants' writ petition challenging the order passed by the trial Court directing payment of duty and

penalty on the instrument of partition which is impounded and then directing the same to be sent to the District Registrar to file a report regarding stamp duty and penalty.

2. The instrument of partition is tendered in evidence in the suit. The Court has received the said evidence. On an objection being raised by the defendants regarding admissibility of the instrument on the ground that it is insufficiently stamped and also is not registered, the Court has to examine the question whether the instrument is duly stamped or not. On such examination if it finds that document is not duly stamped, then obligation is cast under Section 33 of the Karnataka Stamp Act, 1957 to impound the same. After such impounding, Section 34 of the Act provides to determine the duty payable on the said instrument and then find out whether any duty is paid. If any duty is paid, find out what is the insufficiency of the stamp duty on the said instrument and then direct the party to pay such duty and 10 times the duty as penalty. It is

after collecting the said duty and penalty, the Court is under obligation to send the instrument to the District Registrar along with penalty and duty collected. Therefore, the order directing the instrument to be sent to the District Registrar to file a report regarding stamp duty and penalty is contrary to law and as such that portion of the order requires to be set aside.

3. Hence, I pass the following order:

- (i) *The writ petition is partly allowed.*
- (ii) *The trial Court is directed to find out the duty payable on such instrument and then find out what is the duty paid and if there is any insufficiency of duty, direct payment of deficit duty and then impose 10 times the deficit duty as penalty.*
- (iii) *In this regard, the trial Court shall look into the judgment of this Court in **DIGAMBAR WARTY & OTHERS vs DISTRICT REGISTRAR, BANGALORE URBAN***

**DISTRICT & ANOTHER (ILR 2013 KAR
2099)** wherein how document which has
insufficiently stamped after it is being
impounded is dealt with, is clearly set out.

**Sd/-
JUDGE**

*sp