

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 17<sup>TH</sup> DAY OF OCTOBER, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE B M SHYAM PRASAD**

**WRIT PETITION NO. 20457 OF 2022 (GM-CPC)**

**BETWEEN:**

1. SRI CHIKKE GOWDA  
S/O LT KALAPPA  
AGED 72 YEARS,
2. SRI LAKSHMANA  
S/O LATE KALAPPA  
AGED 68 YEARS

BOTH ARE PRESENTLY R/AT NO 281  
MS GOWDA LAYOUT  
THANISANDARA VILLAGE  
SRK NAGAR POST  
KBANGALOE 560 077.

...PETITIONERS

(BY SRI. RAGHAVENDRA K.,ADVOCATE)

**AND:**

SRI S JAYABAL  
S/O LT P S P SOUNDU CHETTIAR  
SINCE DEAD BY LRS

1. SRI SANJEEVI KUMAR  
S/O LT S JASYABAL  
AGED 35 YEARS
2. SMT J DEVI KEERTHANA  
D/O LATE S JAYABAL  
AGED 32 YEARS

3. SMT J MAGESHWARI  
W/O LATE S JAYABAL  
AGED 62 YEARS

ALL ARE R/AT NO 5008  
KRSIHNA D WILLINGTON APAREMENTS  
DEVINAGAR MAIN ROAD  
L G HALLI, BANGALOLRE 560094.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS PASSED BY THE LEARNED XXXVII ADDITIONAL CITY CIVIL AND SESSION JUDGE AT BANGALORE (CCH-38) ON THE FILE OF O.S.NO.3358/2013 IN ORDER DATED, 16-09-2022 ANNEXURE-A, IN RESPECT OF IA.NO.1/2022, UNDER SECTIONS 34 AND 58 OF KARNATAKA STAMP ACT-1957 R/W SECTION 151 OF CPC AND CONSEQUENTLY ALLOW THE IA.NO.1/2022 AS PRAYED FOR IN ITS ENTIRETY.

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

### **ORDER**

This petition is by the defendants in O.S. No.3358/2013 on the file of the XXXVII Additional City Civil and Sessions Judge, Bengaluru [for short, '*the civil Court*']. The petitioners have called in question the civil Court's order dated 16.09.2022, and the civil Court by this order has rejected the petitioners' application [I.A. No.1/2022] under Sections 34 and 58 of the Karnataka Stamp Act, 1957 [for short, '*the Stamp Act*'].

2. The petitioners contend that the respondents' Power of Attorney dated 19.04.1991 [Exhibit P2] is drawn on a stamp paper of the value of Rs.100/- and therefore, insufficiently stamped. The civil Court has rejected the petitioners' application for impounding for the following reason:

*"As per article 41[c] of Karnataka Stamp Act 1957 with effect from 01.04.1990 the stamp duty paid in respect of power of attorney, when authorizing not more than 5 persons to act jointly and severally in more than one transaction or generally is Rs.100.*

*Ex.P-2 GPA has been executed on 19.04.1991. In view of the recitals of the said document article 41[c] of Karnataka Stamp Act is applicable and stamp duty of Rs.100/- has to be paid on the said document. On Ex.P-2 stamp duty of Rs.100/- has been paid. Therefore, it is not required to be impounded and no duty and penalty is liable to be paid on the said document."*

3. The learned counsel for the petitioners submits that the Power of Attorney is executed with the authority to sell the subject property and in favour of a person who is not a family member. In that event, the sufficiency of stamp

duty will have to be examined under Article 41[e] of the Stamp Act, but the civil Court has considered the same in the light of the provisions of Article 41[c] of the Stamp Act.

4. The suit is of the year 2013, and it is seen from the impugned order that the civil Court has not considered the sufficiency of the stamp duty paid in the backdrop of the purpose for which it is executed and the applicability of the provisions of Article 41[e] of the Stamp Act because of such purpose. It would therefore be appropriate to dispose of this petition quashing the civil Court's order and restoring the petitioners' application for reconsideration in the light of the two circumstances canvassed before this Court observing that the respondents must be at liberty to controvert each of these two grounds. This recourse would enable a speedier decision on the controversy.

For the foregoing, the following:

**ORDER**

The petition is allowed in part quashing the  
civil Court's order dated 16.09.2022 in O.S.  
No.3358/2013 on the file of the XXXVII

Additional City Civil and Sessions Judge,  
Bengaluru and restoring the petitioners'  
application [I.A. No.1/2022] for reconsideration  
in the light of this Court's observation and  
without prejudice to the respondents' contention.

**Sd/-  
JUDGE**

AN/-