



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

**DATED THIS THE 13<sup>TH</sup> DAY OF OCTOBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY**

**WRIT PETITION NO. 2383 OF 2023 (GM-CPC)**

**BETWEEN:**

SRI C.P. SELVARAJ  
AGED ABOUT 72 YEARS  
S/O SRI COIL PILLAI  
R/AT NO.718, 'IMMANUEL HOUSE'  
EX-SERVICE MEN BOLONY  
BANASWADI, BENGALURU - 560 043.

...PETITIONER

(BY SRI LOKESH R, ADV.)

**AND:**

SRI K.M. RAJENDRAN  
S/O SRI M. KRISHNAMURTHY  
AGED ABOUT 63 YEARS  
RESIDING AT NO.3  
1ST MAIN, C K C GARDEN  
BENGALURU - 560 027.

...RESPONDENT

(BY SRI RAJADITHYA SADASIVAN, ADV.)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 02.01.2023 VIDE ANNEX-A PASSED ON MEMO FILED BY THE RESPONDENT IN O.S.NO.8000/2012 PASSED BY THE XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH 10), BENGALURU VIDE ANNEX-A.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY





**ORAL ORDER**

1. This writ petition under Articles 226 and 227 of the Constitution of India is filed by defendant no.1 with a prayer to quash the order dated 01.09.2022 and the order dated 02.01.2023 passed by the Court of XVIII Addl. City Civil and Sessions Judge, Bengaluru in O.S.No.8000/2012.

2. Heard the learned counsel appearing for the parties.

3. The respondent herein had filed O.S.No.8000/2012 before the jurisdictional civil Court seeking the relief of declaration, possession and injunction. In the said suit, defendant no.1, who is the petitioner herein had filed written statement contending that the original owners of the suit schedule property namely Smt. C. Papamma, Smt. Theresamma, Sri J. Mariyappa and Sri J. Rayappa, who were in joint possession and enjoyment of suit schedule property had executed agreement for sale dated 26.08.1987 in his favour after having received the entire sale consideration and also had thereafter executed registered General Power of Attorneys dated 17.02.1988 and 09.05.1988 respectively in his favour.



4. The aforesaid registered General Power of Attorneys dated 17.08.1988 and 09.05.1988 were marked as Ex.D31 and Ex.D32 during the course of evidence of defendant no.1(DW.1). Subsequently, a memo was filed by the plaintiff raising objection for marking Ex.D31 and Ex.D.32 on the ground that the said documents were not properly stamped. The said memo was rejected by the Trial Court, which was challenged by the plaintiff before this Court in W.P.No.14887/2021. This Court vide order dated 13.04.2022 had allowed the said writ petition and the matter was remanded to the Trial Court to consider the objections raised by the plaintiff afresh in the background of relevant provisions of the Karnataka Stamp Act, 1957 (for short, the 'Act'). Thereafter, vide order dated 01.09.2022, the Trial Court had directed defendant no.1 to produce the original of General Power of Attorneys dated 17.02.1988 and 09.05.1988. In spite of such an order, defendant no.1 failed to produce the original of the aforesaid General Power of Attorneys and therefore vide the order impugned, the Trial Court has expunged Ex.D.31 and Ex.D.32 General Power of Attorneys dated 17.02.1988 and 09.05.1988 respectively and being aggrieved by the aforesaid orders dated 01.09.2022 and



02.01.2023 passed by the Trial Court, the petitioner is before this Court.

5. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that, since Ex.D.31 and Ex.D.32 are marked before the Trial Court without objections, the plaintiff could not have raised any objection subsequently, with regard to admissibility of the said documents on the ground that the documents were insufficiently stamped and he has placed reliance on Section 35 of the Act in support of his arguments. He submits that reading of General Power of Attorneys would go to show that, no consideration has been paid under the said documents and therefore stamp duty as provided under Article 41(e) of the Act would not get attracted. Accordingly, he prays to allow the petition.

6. Per contra, learned counsel for respondent submits that the Hon'ble Supreme Court in the case of **G.M. SHAHUL HAMEED V. JAYANTHI R. HEGDE** reported in **2024 INSC 493** has held that, notwithstanding Section 35 of the Act, if it is



found that instrument is insufficiently stamped, the Court, in exercise of its inherent power under Section 151 of CPC can still direct the party to pay the deficiency of stamp duty and penalty as provided under Sections 33 and 34 of the Act. He submits that the Coordinate Bench of this Court in the case **SURESH BHATIA V. GULLAMMA in W.P.No.45100/2011 DISPOSED OF ON 05.03.2014** in almost identical circumstances has held that when a General Power of Attorney is executed in favour of the party for consideration received under agreement for sale executed by the very same party, then such a power of attorney is required to be stamped as provided under Article 41(e) of the Act. Accordingly, he prays to dismiss the petition.

7. According to defendant no.1, who is the petitioner herein the original owners of the suit schedule property had executed an agreement for sale in his favour on 26.08.1987 after receiving the entire sale consideration and subsequently on 17.02.1988 and 09.05.1988 had executed two separate registered General Power of Attorneys in his favour. The said General Power of Attorneys dated 17.02.1988 and 09.05.1988



are marked as Ex.D.31 and Ex.D.32 respectively without there being any objection raised for marking the said document on behalf of the plaintiff. Subsequently, the plaintiff had raised an objection stating that since consideration was paid under the agreement for sale, General Power of Attorneys which were executed for consideration received under agreement for sale in favour of defendant no.1 were required to be stamped as provided under Article 41(e) of the Act and considering the said objection, since the petitioner had got marked the certified copy of the aforesaid General Power of Attorneys as Ex.D.31 and Ex.D.32, the Trial Court vide its order dated 01.09.2022 had called upon the petitioner to produce the original of Ex.D.31 and Ex.D.32. In spite of granting sufficient time to the petitioner, he had failed to produce the original of Ex.D.31 and Ex.D.32 and it is under these circumstances, the Trial Court has passed the order dated 02.01.2023 placing reliance on the judgment of the Hon'ble Supreme Court in the case of **HARIOM AGARWAL V. PRAKASH CHAND MALVIYA** reported in **AIR 2008 SC 166**, and has expunged the aforesaid two General Power of Attorneys, which were marked as Ex.D.31 and Ex.D.32.



8. The Coordinate Bench of this Court in the case of **SURESH BHATIA** (supra) wherein the defendants had executed agreement for sale and also the General Power of Attorneys in favour of the plaintiff in respect of the property which was subject matter of the agreement for sale, which was executed for consideration, in paragraph No.10 has observed as follows:

*"10. The power of Attorney, agreement of sale, affidavit, confirmation deed, receipts have all come into existence simultaneously at the same point of time and as a part of same transaction. They have come into existence contemporaneously. Therefore the Power of attorney cannot be read in isolation. On a combined reading of all these documents, it can be safely said that the power of attorney is executed by the defendants in favour of the plaintiff's brother for consideration received under the agreement of sale from the plaintiff. Therefore, the order of the Trial Court cannot be found fault with".*

9. In the present case agreement for sale dated 26.08.1987 was executed after having received the entire sale consideration and thereafter the General Power of Attorneys dated 17.02.1988 and 09.05.1988, which are marked as



Ex.D.31 and Ex.D.32 were executed in favour of petitioner. Therefore, it is apparent that General Power of Attorneys Ex.D31 and Ex.D32 were executed in favour of the petitioner for consideration received by the original owners of the suit schedule property under the agreement for sale dated 26.08.1987. In view of law laid down by this Court in the case of **SURESH BHATIYA** (supra), the aforesaid General Power of Attorneys Ex.D.31 and Ex.D.32 therefore becomes liable to be stamped as provided under Article 41(e) of the Act. Under these circumstances, the arguments addressed on behalf of the petitioner that since no consideration was paid under the General Power of Attorneys, the said instruments are not liable to be stamped as provided under Article 41(e) of the Act is liable to be rejected.

10. Learned counsel for the petitioner has raised further contention that since the documents are already marked as Ex.D.31 and Ex.D32, in view of Section 35 of the Act, the respondent - plaintiff could not have raised a objection before the Trial Court about admissibility of the documents on the ground that they are not properly stamped.



11. Section 35 of the Act provides that, where an instrument has been admitted in evidence such admission shall not, except as provided in Section 58, be called in question at any stage of the same suit or proceedings on the ground that the instrument has not been duly stamped. The power to impound an instrument which is not duly stamped is provided under Section 33 of the Act.

12. A reading of Section 33 of the Act makes it very clear that whenever a instrument is produced or comes before a person in charge of a public office, he shall examine the said instrument and if the said instrument is not duly stamped impound the same. A reading of Section 33(2) of the Act makes it very clear that, such an examination is necessary in order to ascertain whether the instrument is stamped of the value and description required by the law in force in the State when such instrument was executed or first executed.

13. Section 34 of the Act provides that instruments not duly stamped are inadmissible in evidence. Therefore, application of mind at the time of marking the document with regard to sufficiency of stamp duty by the Court becomes very



necessary and merely for the reason that parties have not objected for marking of an instrument duly stamped cannot takeaway the right of the Court to subsequently call upon the parties to pay the deficit stamp duty and penalty in the event such an instrument is found to be not properly stamped.

14. The Hon'ble Supreme Court in the case of **G.M. SHAHUL HAMEED** (supra), under similar circumstances had raised a substantial question of law for consideration, which reads as follows:

*Whether upon admission of an instrument in evidence and its marking as an exhibit by a court (despite the instrument being chargeable to duty but is insufficiently stamped), such a process can be recalled by the Court in exercise of inherent powers saved by Section 151 of the Code of Civil Procedure for the ends of justice or to prevent abuse of the process of the Court?*

15. In the said judgment after having referred to Sections, 33, 34, 35 and 58 of the Act, in paragraph Nos.18 to 22, the Hon'ble Supreme Court has observed as follows:-

*"18. On the face of such an order, it does not leave any scope for doubt that on the date the GPA was*



*admitted in evidence and marked as an exhibit, the Trial Court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a 'decision' on the question of admissibility or, in other words, the Trial Court not having 'decided' whether the GPA was sufficiently stamped, Section 35 of the 1957 Act cannot be called in aid by the Respondent. For Section 35 to come into operation, the instrument must have been "admitted in evidence upon a judicial determination. The words "judicial determination" have to be read into Section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by Section 35. However, in a case of "no judicial determination", Section 35 is not attracted.*

*19. In the light of the aforesaid reasoning of the Trial Court of admitted failure on its part to apply judicial mind coupled with the absence of the counsel for the Appellant before it when the GPA was admitted in evidence and marked exhibit, a factor which weighed with the Trial Court, we have no hesitation to hold that for all purposes and intents the Trial Court passed the order dated 19th October, 2010 in exercise of its inherent power saved by Section 151, Code of Civil Procedure, to do justice as well as to prevent abuse of the process of court, to which inadvertently it became a party by not applying judicial mind as required in terms of Sections 33 and 34 of the 1857 Act. We appreciate*



*the approach of the Trial Court in its judicious exercise of inherent power.*

*20. Reference to Section 58 of the 1957 Act by learned Counsel for the Respondent is without substance. The clear language of Section 58 refers to a situation, where an order is passed admitting an instrument in evidence as duly stamped or as one not requiring a stamp, for its attraction. As evident from a bare reading of the order dated 19th October, 2010, the Trial Court did neither hold the GPA as duly stamped or as not requiring a stamp and, therefore, its applicability was not attracted.*

*21. We may not turn a blind eye to the fact that the revenue would stand the risk of suffering huge loss if the courts fail to discharge the duty placed on it per provisions like Section 33 of the 1957 Act. Such provision has been inserted in the statute with a definite purpose. The legislature has reposed responsibility on the courts and trusted them to ensure that requisite stamp duty, along with penalty, is duly paid if an unstamped or insufficiently stamped instrument is placed before it for admission in support of the case of a party. It is incumbent upon the courts to uphold the sanctity of the legal framework governing stamp duty, as the same are crucial for the authenticity and enforceability of instruments. Allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the state.*



*The courts ought to ensure that compliance with all substantive and procedural requirements of a statute akin to the 1957 Act are adhered to by the interested parties. This duty of the court is paramount, and any deviation would set a detrimental precedent, eroding the integrity of the legal system. Thus, the court must vigilantly prevent any circumvention of these legal obligations, ensuring due compliance and strict adherence for upholding the Rule of law.*

*22. Having regard to the aforesaid discussion, we answer the substantial question in the affirmative. Finding no error in the order of the Trial Court dated 19th October 2010, we set aside the impugned order of the High Court dated 26th September, 2011, meaning thereby that the order of the Trial Court is restored. Since proceedings of the civil suit remained stalled because of pendency of this appeal, we expect the Trial Court to proceed expeditiously and in accordance with law."*

16. In the case on hand, learned trial Judge while marking Ex.D.31 and Ex.D32 has not applied its mind with regard to payment of stamp duty on the said documents and therefore there was no judicial determination about sufficiency of stamp duty paid on the documents. If only a document is admitted in evidence upon a judicial determination, Section 35



of the Act gets attracted. Therefore, the contention urged on behalf of the petitioner that in view of Section 35 of the Act, since the documents were already admitted in evidence as Ex.D.31 and Ex.D32, the respondent - plaintiff cannot raise objection with regard to admissibility of the said documents on the ground that the said documents are insufficiently stamped is also liable to be rejected. The inherent powers of a Court are powers not explicitly provided under the Code but are necessary for a Court to achieve justice and to prevent abuse of its process. This power allows the Court to address unforeseen circumstances, when no specific provision exists in the Code to do so. Under these circumstances, I do not find any illegality or infirmity in the order impugned passed by the Trial Court.

17. Accordingly, the writ petition is dismissed.

**Sd/-  
(S VISHWAJITH SHETTY)  
JUDGE**