

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.3476 of 2026

Krishnavathi Sharma

....Appellant

Versus

Bhagwandas Sharma and Ors.

....Respondents

ORDER

1. A suit for partition and recovery of mesne profits filed in the year 2008 stands unresolved due to the issue of insufficient stamp duty on two documents produced in evidence. The Trial Court rejected two applications filed by the 1st defendant to reject certain documents as inadmissible in evidence and impound those as per the Karnataka Stamp Act, 1957 (for short, 'the Act'). The High Court in a petition under Article 227 reversed the order and issued directions to pay the deficient stamp duty and exempted penalty. The 1st defendant is in appeal on the ground of the High Court having travelled beyond its

jurisdiction and asserting the mandatory nature of penalty imposition, which power is on the Deputy Commissioner under the Act.

2. The plaintiffs are the two sons of the first wife, and the second wife of a businessman. The 1st defendant is the first wife of the deceased businessman and defendant Nos.2 and 3 are also her sons. The 1st plaintiff produced a number of documents which were sought to be marked when the defendants objected to it on the ground *inter alia* of the documents being compulsorily registrable and insufficiency of stamp duty. The order of the Trial Court which declined impounding of the documents was challenged before the High Court. The High Court permitted the stamp duty to be paid in accordance with the Act on the lease deed dated 19.01.2008 and the lease agreement dated 15.02.2008; exempting the penalty under the Act. The plaintiff was also permitted to recover the stamp duty from the lessee in accordance with law.

3. Mr.Nachiketa Joshi, learned Senior Counsel appearing for the appellant, the first defendant, argued that

the High Court has completely misread the provisions of the Act. The High Court cannot by itself direct payment of the stamp duty and absolve a penalty which is mandatory under the Act. It is the competent authority under the Act which has to take a decision on the valuation to determine the deficient stamp duty and also decide on the penalty payable.

4. Mr.Balaji Srinivasan, learned Counsel appearing for the plaintiffs submits that the plaintiffs/ respondents herein are entitled to the protection under Section 35. Though the documents were produced earlier there was no objection raised. It is also lamented that the suit of 2008 is kept pending only for reason of insufficiency of stamp duty and the consequent plea is that the suit may be expedited while the proceeding under the Act be independently taken up.

5. Mr.Ravi Prakash, learned Senior Counsel appearing for the Indian Overseas Bank, the lessee as per the deed of 19.01.2008, through an impleading application allowed by us, joins issue on the recovery directed of the stamp duty.

6. We are not called upon to look into the *inter se* disputes as raised in the suit. The only question arising is of the insufficiency of stamp duty with respect to two documents of lease dated 19.01.2008 and 15.02.2008. Any document insufficiently stamped which is produced before any person in charge of a public office or an authority competent to receive evidence, has to be impounded mandatorily, as per Section 33 of the Act. The second proviso to Section 33 provides that in case of a Judge of the High Court, the duty of examining and impounding an instrument under this provision may be delegated to such officer as the Court may appoint in this behalf. In the present case, the learned Judge has found the documents to be insufficiently stamped and impounded it himself; which is permissible since the second proviso only enables and does not *per se* disable. The further direction issued to pay the stamp duty absolving the payment of penalty is alleged to be beyond the powers conferred on the High Court, dealing with the question of insufficiency of stamp duty. The

Deputy Commissioner under the Act, alone can determine the deficient stamp duty and the penalty is the contention.

7. The contention under Section 35, of a prohibition to object on the ground of undervaluation in the same suit after the document is admitted in evidence, has been dealt with rightly by the learned Single Judge. The admission in evidence, as has been found by the learned Single Judge relying on the judgment in ***G.M. Shahul Hameed v. Jayanthi R. Hegde***¹, occurs only upon a judicial determination. The plaintiff while filing the affidavit of examination-in-chief produced the documents on 02.12.2023 and the defendant's counsel prayed time for objection, based on which applications were filed on 08.12.2013, as produced at Annexure P7 on the very next date of hearing. Hence, even before the documents were admitted in evidence, the objection was taken and Section 35 is not applicable.

8. The respondent has relied on a number of decisions to buttress the contention regarding Section 35. ***Javer Chand***

¹ (2024) 7 SCC 719

v. Pukhraj Surana² dealt with two unstamped *hundis*, alleged to be inadmissible, which were produced paying the stamp duty and penalty at the time of filing of the suit as authorized under the Marwar Stamp Act, 1914. The defendant himself marked the *hundis* as Exts. P-1 & P-2 and claimed the same to have been issued for a different transaction than that asserted in the plaint. The issue regarding admissibility was found in favour of the plaintiff since both the instruments were admitted in evidence without any objection. The High Court found the stamping improper since the Marwar Stamp Act, 1914 stood amended in 1947, prior to the suit, disabling the Court from determination of stamp duty. This Court relied on Section 36 of the Stamp Act to find that after the *hundis* were admitted in evidence, under the signature of the Court, and marked as Exts. P-1 & P-2, Section 36 of the Indian Stamp Act, 1899, which is in *pari materia* to Section 35 of the Act comes into operation. It was found: “*once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court*

² 1961 SCC OnLine SC 22

or to a court of appeal or revision to go behind that order” (sic para 4).

9. ***Ram Rattan v. Bajrang Lal***³ dealt with the controversy as to whether a document is a will or a gift, by which, the right to worship by turn, inherited by the executant, was transferred to the plaintiff. The recitals of the document indicated that the right was conveyed *in praesenti* which makes it a gift and not a will, requiring stamping. The document was admitted in evidence subject to an objection raised. Later, the trial court took recourse to Section 36 to find that since it was already admitted in evidence, there could be no challenge raised in the same suit regarding the undervaluation. This Court found that the document was marked subject to objection and since, the objection was not judicially determined, Section 36 of the Indian Stamp Act was inapplicable.

10. ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple***⁴ was concerned with the

³ (1978) 3 SCC 236

⁴ (2003) 8 SCC 752

admissibility of two photocopies: one of a certified copy of the decision of the Charity Commissioner and the other a rent note. Photocopies were admitted in evidence without any objection and later it was argued that both of these were not admissible in evidence. It was held that objection as to admissibility of documents are of two types: (i) an objection that it is inadmissible *per se* and (ii) regarding the mode of proof. In that case, the objection was found to be of the second type since the original was produced in another legal proceeding. If it was objected to before admission, then definitely the plaintiff could have taken steps to tender a freshly obtained certified copy or bring forth the other proceedings wherein the certified copy was available. Insofar as the rent note was concerned the defendant had admitted his signature on the document which was admitted in evidence without any objection. The certified copies in original and the rent note, undoubtedly, were admissible in evidence and the objection was only with respect to the mode of proof which had to be taken at the first instance, was the finding.

11. ***Shyamal Kumar Roy v. Sushil Kumar Agarwal***⁵ dealt with the document which was admitted in evidence on 17.02.2003 without any objection and later, by an application, the order was sought to be recalled with a consequential prayer for impounding the same. This Court relied on ***Javer Chand***² to find that objection as regards admissibility of the document is required to be taken at the time it is admitted in evidence. ***Ram Rattan***³ was also noticed, where an objection raised was not judicially determined resulting in a tentative marking, which was held to be not an application of judicial mind. If no objection had been made with regard to the admissibility of the document at the first instance, a party cannot be permitted to turn round and contend later that it is inadmissible. If objection is raised, it had to be judicially determined. In the present case the objection was raised at the time the documents were attempted to be marked in evidence, and Section 35 has no application.

⁵ (2006) 11 SCC 331

12. In so far as the contention of the Bank, we find from Section 30 (b) of the Act that in the case of a lease or agreement to lease, the liability to pay the stamp duty is on the lessee or the intended lessee and so would the liability of penalty fall on the lessee. The bank cannot have a contention that it is not liable to pay the deficient stamp duty and the penalty, if imposed and the liberty to recover, directed by the High Court cannot be faulted.

13. On the procedure by which insufficiently stamped instruments can be admitted in evidence, two decisions with reference to the Karnataka Act itself was relied on. In **Gangappa v. Fakkirappa**⁶, the plaintiff claimed specific performance of an agreement, insufficiently stamped. The trial court impounded it and accepted it on payment of deficit duty and penalty at two times the deficit duty. The High Court found imposition of ten times the deficit duty as penalty to be mandatory. This Court found Section 34 makes inadmissible the instruments not duly stamped. Any authority empowered by law or by consent of parties to

⁶ (2019) 3 SCC 788

receive evidence, on such an instrument coming before it, has to necessarily impound the same. It was also found that the first proviso to Section 34 provides for the Court to take in evidence the instrument on payment of deficit duty and ten times that as penalty after which the instrument has to be referred under Section 37(1) of the Act to the Deputy Commissioner, to decide on the valuation, who can even refund the penalty paid in excess of rupees five. Otherwise, it has to be sent directly to the Deputy Commissioner under sub-section (2) of Section 37 of the Act for valuation, realization of deficient duty and imposition of penalty, which action is taken under Section 39. The Deputy Commissioner in imposing the penalty has the discretion to impose a penalty not exceeding ten times the deficit duty if the deficit portion or ten times, that exceeds rupees five. Though the order of the High Court was upheld, considering the order of the trial court which took note of the fact that the plaintiffs were farmers and the agreement was prepared by local villagers not experienced in documentation, this Court

confirmed the order of the trial court directing payment of deficit duty and two times the penalty.

14. In *Seetharama Shetty v. Monappa Shetty*⁷ an agreement for sale which gave possession to the vendee; a deemed conveyance and hence insufficiently stamped, was the bone of contention. The trial court transmitted it to the District Registrar for determination of requisite stamp duty which was sent back with a valuation when the trial court imposed ten times the deficient duty as penalty. This Court noticed *Gangappa*⁶ and found that when the document is sent to the Deputy Commissioner then the court cannot impose penalty; the jurisdiction under Section 34 of the Act possible of invocation only if such an option is exercised by the party. On the facts of that case, it was found that the objection as to the inadmissibility of the instrument was raised at the stage of admitting it in evidence and a prayer was made that the document be impounded and sent to the Deputy Registrar upon which the trial court called for a report from the District Registrar. The deficit duty and

⁷ 2024 SCC OnLine SC 2320

penalty then necessarily would have to be decided by the Deputy Registrar which option cannot be denied to the appellant who produced the document, was the finding.

15. Seemingly there is a divergence in opinion, but we do not see any conflict in the two decisions. In both the decisions, this Court unequivocally found that if an instrument is not duly stamped, it is inadmissible under Section 34 and if it is brought before any person or authority empowered to receive evidence, then, it shall be impounded. It was also recognized that on such impounding; for expedition of the suit, the party who produces the document can seek for determination of the insufficient duty by the court itself in which circumstance, the instrument can be taken in evidence on payment of the deficit duty as also ten times the deficit duty determined as penalty. There is no discretion insofar as the quantum of penalty is concerned when the instrument is sought to be admitted in evidence before court without transmitting it to the District Commissioner. However, if the deficit and the penalty at ten times is paid, after admission in evidence, a

copy of the instrument has to be transmitted to the Deputy Commissioner under Section 37(1). The Deputy Commissioner on receipt of a copy of the instrument under Section 37(1) has the discretion to refund any portion of the penalty in excess of five rupees under Section 38.

16. On the other hand, if the party seeks before the trial court, transmission of the instrument to the Deputy Commissioner then it shall be done under sub-section (2) of Section 37 and further action taken under Section 39 which compulsorily mandates the payment of deficit duty and rupees five as penalty. Section 39 also confers on the Deputy Commissioner a discretion to impose a penalty in excess of rupees five, but not exceeding ten times the deficit duty.

17. In *Gangappa*⁶ this Court found that the High Court correctly found that the trial court under the proviso to Section 34 does not have a discretion to reduce the penalty, but still permitted the trial courts order to stand, enabling acceptance of the document in evidence on payment of deficient duty and double the penalty in equity. *Seetharama Shetty*⁷ held that when the insufficiently

stamped instrument was referred to the Deputy Commissioner for valuation, proper stamping and imposition of penalty, the party cannot be directed to pay ten times penalty by the court, which quantum is within the discretion of the Deputy Commissioner. Both the decisions strive to mitigate hardship to the litigant, while ensuring that valid evidence is not shut out.

18. What comes out from the above decisions and the plain reading of the provisions is that the non-payment of stamp duty is a curable defect as held by a Constitution Bench in ***In Re: Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899***⁸.

Inadmissibility of insufficiently stamped instruments and impounding thereof; when it is brought before a person or authority empowered to take evidence, is a statutory mandate. The payment of deficit duty and a penalty of rupees five also is a statutory mandate which does not fall for any discretion. However, if the party producing the instrument opts under the first proviso to Section 34, there

⁸ In re, (2024) 6 SCC 1

lies no discretion on the Court in imposing a penalty less than ten times the deficit duty. But when the copy of the duly stamped instrument, with penalty paid at ten times, is sent to the Deputy Commissioner under Section 37(1), the Deputy Commissioner has the discretion to refund the penalty above five rupees fully or partially under Section 38. On the other hand, if the insufficiently stamped instrument is transmitted to the Deputy Commissioner under Section 37(2) then the discretion on the question of penalty kicks in under Section 39.

19. The law being so stated since the matter is pending before the trial court for long, we give the plaintiff, who has produced the document, the option to either approach the court under Section 34 or seek that the document be made over to the Deputy Registrar for determination of deficit duty and imposition of penalty, at his discretion. If the document is made over to the Deputy Commissioner, we make it clear that the Deputy Commissioner shall issue notice to the lessees, who have the liability, before carrying out the exercise provided under Section 39. The imposition

of penalty is the discretion of the Deputy Commissioner but on imposing such penalty; the payment of deficit duty and the penalty would be on the lessee as is provided under the Act.

20. Obviously, the document can be produced in evidence only after it is stamped properly and penalty, if any imposed by the Deputy Commissioner paid in accordance with the Act. There is no question of the suit being expedited, pending proceedings pursuant to the impounding of the document since if the document is to be admitted in evidence, it has to be properly stamped. The plaintiff would be entitled to produce a certified copy of this order before the trial court, which would act in accordance with the impounding as carried out by the High Court and invoke the proviso to Section 34 or transmit the documents under Section 37(2) of the Act, at the option of the plaintiffs. The plaintiffs would be entitled to seek expeditious consideration under Section 39 of the Act before the Deputy Commissioner once the document is transmitted to the said authority.

21. With the above directions the appeal stands disposed of setting aside the impugned judgment to the extent we found herein above, without any observation on the issues in the suit.

22. There is another question as to whether the lease deeds were compulsorily registrable, which the trial court will consider in accordance with law.

23. Pending application(s), if any, shall stand disposed of.

..... J.
(SANJAY KUMAR)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
MARCH 23, 2026.**