



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 11TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.2065/2024 (GM-CPC)

BETWEEN:

SMT. ANITHA SHANTI VAZ
AGED ABOUT 41 YEARS
D/O LATE JOSEPH MARIAN VAZ AND
W/O ROYAN CALWIN CAMELIO
R/AT. SHANTHINIKETHANA
DAREGUDDE VILLAGE AND
POST, MOODBIDRI TALUK D.K 574197
REPRESENTED BY HER GPA HOLDER
MR. GLANNEL SHAAN VAS
S/O MR. GEORGE STEVEN VAS
AGED 21 YEARS
R/AT. SHANTHI NIKETHAN
DEREGUDDE POST AND VILLAGE
MOODABIDRI TALUK
DAKSHINA KANNADA 574197.

...PETITIONER

(BY SRI. VINAY N, ADV., FOR
SRI. MANMOHAN P.N. ADV.,)

AND:

1. SMT. NOOTHAN SHETTY
AGED ABOUT 38 YEARS
W/O SATHISH SHETTY
RESIDING AT 3-203
KHANA DARKASTH HOUSE
BELVAI VILLAGE AND POST
MOODBIDRI TALUK
DAKSHINA KANNADA - 574199.





2. IMRAN AHAMED
AGED ABOUT 30 YEARS
S/O LATE SHABBIR AHAMED ALIAS SAHEB
RESIDING AT DARKASTH HOUSE
KANDIGA, BELVAI VILLAGE AND POST
MOODBIDRI TALUK
DAKSHINA KANNADA - 574197.
3. MISS. NAZNEEN BANU
AGED ABOUT 32 YEARS
D/O LATE SHABBIR AHAMED ALIAS SAHEB
NEAR GEETHA CLINIC
BELVAI VILLAGE AND POST
MOODBIDRI TALUK
DAKSHINA KANNADA 57497.
4. MRS. ALFIYA BANU
AGED ABOUT 30 YEARS
D/O LATE SHABBIR AHAMED ALIAS SAHEB
NEAR GEETHA CLINIC
BELVAI VILLAGE AND POST
MOODBIDRI TALUK
DAKSHINA KANNADA 574197.

...RESPONDENTS

(BY SRI. SACHIN B.S. ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ALLOW THIS WRIT PETITION AND SET ASIDE THE ORDER DATED 06.12.2023 IN O.S.NO.229/2023 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, MOODBIDRI, D.K. (PRODUCED AS ANNEXURE-H) AND PASS SUCH OTHER AND FURTHER ORDERS AS DEEMED FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 02.03.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed assailing the order dated 06.12.2023 passed in O.S.No.229/2023 by the Senior Civil Judge and JMFC, Moodbidri, Dakshina Kannada District (hereinafter referred to as the 'Trial Court').

2. The brief facts leading to filing of this case are that the respondent No.1 filed a suit in O.S.No.229/2023 against the petitioner and others for the relief of specific performance of the agreement dated 23.06.2018 and other reliefs. The petitioner-defendant No.4 contested the proceedings by denying the assertion of the plaintiff. The Trial Court recorded the evidence of the plaintiff. At that stage, the petitioner-defendant No.4 objected to marking of the agreement of sale dated 23.06.2018 on the ground that the said instrument is insufficiently stamped and is not registered. The plaintiff filed a memo dated 11.08.2023 stating that the possession of the property was with the plaintiff prior to the agreement and she is



only liable to pay the stamp duty as per Article 5(e)(ii) of the Karnataka Stamp Act, 1957 (hereinafter referred to as the Act). The petitioner-defendant No.4 objected to the memo filed by the plaintiff. The Trial Court, under the impugned order upheld the memo. Being aggrieved, this petition is filed.

3. Sri.P.N.Manmohan, learned counsel appearing for the petitioner submits that the agreement in question expressly mentions about the delivery of possession to the plaintiff-respondent No.1 and hence, the plaintiff is liable to pay the stamp duty under Article 5(e)(i) of the Act. It is further submitted that the alleged possession over the suit schedule property of the plaintiff is only to overcome the aspect of payment of stamp duty. It is also submitted that no matter by what mode, the plaintiff claims possession over the suit schedule property, the same comes to an end once the delivery of possession is recognized under the instrument dated 23.06.2018. It is contended that the plaintiff is liable to pay the stamp duty as if it is a



conveyance under Article 20 of the Act along with the penalty and the Court is required to consider as if there was delivery of possession under the instrument. It is further contended that since the agreement in question is unregistered, Section 17 of the Registration Act, 1908, mandates the registration once the instrument indicates delivery of possession. On both the counts, the Trial Court has erred and has passed the impugned order. In support of his contentions, he placed reliance on the following decisions:

- (a) SRI.J.PRAKASH Vs. SMT.M.T.KAMALAMMA AND ANOTHER¹**
- (b) RAMESH MISHRIMAL JAIN Vs. AVINASH VISHWANATH PATNE AND ANOTHER²**
- (c) C.K.RAVI PRASANNA Vs. T.K.GOWRAMMA³**
- (d) K.AMARNATH Vs. SMT.PUTTAMMA⁴**
- (e) J.RAMAPPA Vs. J.VENKATRAMANA SETTY⁵**
- (f) SMT.KRISHNAKUMARI Vs. SRI.K.SURESH KUMAR⁶**

¹ 2007 SCC Online KAR 490

² 2025 SCC Online SC 329

³ ILR 2007 KAR 2807

⁴ 1998 SCC Online KAR 383

⁵ 2023 SCC Online KAR 1381

⁶ ILR 2015 KAR 2335



**(g) RAMEGOWDA @ CHIKKARAMEGOWDA, SINCE
DECEASED BY LRS Vs. SRI.MALLEGOWDA @
KRISHNAPPA⁷**

Hence, he seeks to allow the appeal.

4. *Per contra*, Sri.B.S.Sachin, learned counsel for the respondent No.1-plaintiff supports the impugned order of Trial Court and submits that the plaint averments clearly indicate that the possession of the suit schedule property was delivered to the plaintiff more than two years prior to the agreement of sale and the said aspect is also found in the agreement. It is submitted that the Article 5 of the Act clearly makes a distinction with regard to the payment of stamp duty in the cases of delivery and non-delivery of possession under the agreement of sale. It is further that the petitioner-defendant No.4 raised an objection with regard to the stamp duty and thereafter, the plaintiff filed a memo indicating that the stamp duty paid on the agreement in question was less and hence, the

⁷ W.P.No.11451/2020 dt. 30.08.2023



plaintiff paid the stamp duty and the penalty as per Article 5(e)(ii) of the Act and therefore, asking the plaintiff to pay the stamp duty as per Article 5(e)(i) of the Act, would not arise. In support of his contentions, he placed reliance on the following decisions:

- (a) DANAPPAGOUDA FAKKIRAGOUDA PATIL Vs. KAMALAWWA AND ANOTHER⁸**
- (b) VIJAY KUMAR Vs. S.S.ASHOKA AND ANR.⁹**
- (b) SRI. N.N.MANJAPPA Vs. SRI.NAGAIHAH @ N.N.NAGAIHAH AND ANOTHER¹⁰**
- (c) K.V.VENKATASUBBAIAH Vs. RAJAPPA (DECEASED) BY LRS¹¹**
- (d) MR.N.SRINIVASA V SRI.MURULESH AND OTHERS¹²**
- (e) VIJAY KUMAR GOYAL (DEAD) THROUGH LEGAL REPRESENTATIVE. Vs. NEENA RANI AND OTHERS¹³**

Hence, he seeks to dismiss the appeal.

⁸ (2006) 6 AIR (Kar)(R) 296

⁹ W.P.No.52902/16 dt. 08.10.2021

¹⁰ W.P.No.24862/2023 dt. 15.10.2025

¹¹ W.P.No.17460/2015 dt. 09.10.2020

¹² ILR 2014 KAR 4350

¹³ 2022 SCC Online SC 1237



5. I have heard the arguments of the learned counsel for the petitioner, the learned counsel for respondent No.1 and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

6. The material on record indicates that the petitioner raised an objection in the suit with regard to payment of stamp duty on agreement of sale dated 23.06.2018 during the trial. The respondent No.1 -plaintiff filed a memo indicating that the instrument in question was stamped for a sum of Rs.200/-, which was insufficient and thereafter, the stamp duty along with the ten-times penalty was paid and the deficit stamp duty was made good by paying the stamp duty and penalty of Rs.38,300/. The contention of the petitioner is that the agreement in question recognises delivery of possession in favour of the respondent No.1-plaintiff and hence, he is liable to pay the stamp duty under Article 5(e)(i) of the Act and ten times penalty on the said amount. To appreciate the said



contention, it would be useful to extract the relevant clause of the agreement dated 23.06.2018 as under:

"2. ಸದರಿ ಒಂದನೇ ಪಾರ್ಶಿಯವರು ಈ ಕೆಳಗೆ ಕಾಣಿಸಿದ ಸ್ಥಿರಾಸ್ತಿ ಮತ್ತು ಮನೆಯನ್ನು ಎರಡನೇ ಪಾರ್ಶಿಯವರ ವಶಕ್ಕೆ ಸುಮಾರು 2 ವರ್ಷದ ಹಿಂದೆಯೇ ನೀಡಿರುತ್ತಾರೆ. ಸದರಿ ಸ್ಥಿರಾಸ್ತಿಯಲ್ಲರುವ ಮನೆಯಲ್ಲಿ ಈ ಮೇಲ್ಕಾಣಿಸಿದ ಎರಡನೇ ಪಾರ್ಶಿಯವರು ಈಗಾಗಲೇ ವಾಸವಾಗಿರುತ್ತಾರೆ. ಅದಲ್ಲದೆ ಸದರಿ ಸ್ಥಿರಾಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಮನೆಯ ಟಾಲಿಸ್ಸಿನ್ ಮೇಲ್ಕಾಡೆ ಶೀಟು ಹಾಕಿ ಮನೆ ಮತ್ತು ಬಾಬಿಯ ಲಿಪೇರಿ, ಮನೆ ವೈರಿಂಗ್ ಇತ್ಯಾದಿಗಳನ್ನು ಎರಡನೇ ಪಾರ್ಶಿಯವರು ಸುಮಾರು ರೂ.10,00,000/- (ರೂಪಾಯಿ ಹತ್ತು ಲಕ್ಷ) ಕ್ವಿಂಟಲಾ ಹೆಚ್ಚು ಮೊತ್ತವನ್ನು ಖರ್ಚು ಮಾಡಿ ಲಿಪೇರಿ ಮಾಡಿರುತ್ತಾರೆ. ಸದರಿ ಮೊತ್ತವನ್ನು ಈ ಮೇಲ್ಕಾಣಿಸಿದ ಎರಡನೇ ಪಾರ್ಶಿಯವರೇ ಭರಿಸಿರುತ್ತಾರೆ"

7. The aforesaid clause clearly indicates that the possession of the suit schedule property was delivered to the plaintiff two years prior to the agreement. A perusal of the plaint averment at paragraph 3 makes it further clear as to how the plaintiff was in possession of the suit schedule property and thereafter, an agreement of sale dated 23.06.2018 between the parties came to be executed. It is not in dispute that the transfer of possession of the suit schedule property was effected in favour of the plaintiff much prior to the agreement in



question and there is no transfer of possession in part performance of the said agreement.

8. The relevant article of the Act reads as under:

Article 5 - Agreement or memorandum of agreement

[(e) If relating to sale of immovable property wherein part performance of the contract

<i>(i)</i>	<i>Possession of property is delivered or is agreed to be delivered [before] executing the conveyance.</i>	<i>Same duty as a conveyance (No.20) on the market value of the property: [Provided that, where a deed of cancellation of earlier agreement is executed by and between the same parties in respect of the same property and if proper stamp duty has been paid on such agreement, then the duty on such "deed of cancellation" shall not exceed rupees five hundred.</i>
<i>(ii)</i>	<i>Possession of the property is not delivered</i>	<i>[Fifty paise] for every one hundred rupees or part thereof on the market value equal to the amount of consideration [but not less than rupees Five hundred]</i>

9. The plain language employed in Article 5(e)(i) does not create any ambiguity with regard to the stamp duty payable, when possession is delivered. If the agreement of sale of immovable property is in part performance of the contract and the possession of the property is delivered or is agreed to be delivered before executing the conveyance, then



the stamp duty payable on such an instrument would be the same as conveyance under Article 20 of the Act. The aforesaid Article deals with two situations, firstly, the possession of the property is delivered under the agreement and secondly, the possession is agreed to be delivered before the actual conveyance i.e. before the execution of the absolute sale deed. The contention of the petitioner that prior delivery of possession, which is recognised under the agreement is also covered under Article 5(e)(i), is fallacious.

10. It would be useful to refer to the following decisions of this Court.

a. In the case of **DANAPPAGOUDA FAKKIRAGOUDA** referred supra, this Court held as follows:

"5. Having heard the Learned Counsel for the parties the only point to be considered by this Court in this writ petition is that if the plaintiff was in possession of the property much earlier to the execution of the second agreement and when no possession was delivered to the plaintiff under the second agreement, whether, the plaintiff is required to pay the duty and penalty.



6. The facts if this case are not in dispute. The only point to be considered by this Court is interpretation of the two documents. If the plaintiff has put in possession of the property under the second document, the impugned order has to be sustained, failing which, the impugned order is to be quashed.

7. Under the agreement dated 11.5.91, the defendant has agreed to sell the suit schedule properties for a total sale consideration of Rs. 36,000/-. The entire amount of Rs. 36,000/- has been paid by the plaintiff before the attestor to the document its also recited that possession was with the plaintiff much earlier to the agreement dated 11.5.91 and it is also stated that the plaintiff is cultivating the suit lands. The circumstances it is to be held that even under the first agreement, the possession is no delivered to the plaintiff and that the plaintiff was in possession earlier to the first agreement. The reading of second agreement reveals that except enhancing the sale consideration from Rs. 36,000/- to Rs. 41,000/- and payment of further sum of Rs. 2,000/- out of the enhanced sale consideration of Rs.5,000/- nothing is stated. Therefore, it is clear no possession was delivered to the plaintiff under the second agreement dated 18.7.96. When the possession is not delivered to him



under the second agreement dated 18.7.96, it is difficult to hold that the plaintiff has to pay the duty and penalty contending that he has to pay the duty and penalty on the ground that the possession is delivered to him. The circumstances it has to be held the trial Court has committed an error in directing the plaintiff to pay the duty and penalty."

b. In the case of **VIJAY KUMAR** referred *supra*, it was held as follows:

"10.2. A document is required to be stamped on the basis of what the document contains and conveys. The said document having been executed on 03.06.1995 ought to be considered on the date on which it is executed W.P.NO.52902/2016 i.e. 03.06.1995. The future covenant may happen or may not happen. Such an event cannot be taken into consideration for the purpose of determining the stamping a document executed on 03.06.1995.

10.3. A perusal of the covenants in the agreement of sale deed dated 03.06.1995 would indicate that it is only upon certain permission being issued and the compound wall being constructed, the said possession would be handed over. If the permission had not been received and the compound wall had not been constructed, the possession could not have been handed over.



10.4. *The interpretation now sought to be given is that by virtue of the agreement of sale, the possession was agreed to be handed over on the contingent event occurring in future and therefore, the possession was handed over on 18.07.1995, hence, the document executed on 03.06.1995 is required to be stamped as if possession was handed over on such document W.P.NO.52902/2016 in terms of Article 5(e)(i) of the Act by invoking Article 20 of the Act cannot be sustained.*

10.5. *The document as stated above would have to be regarded in the context and at the time at which the said document was executed. There being no possession which has been handed over under the agreement of sale dated 03.06.1995, it cannot be said that article 5(e)(i) of the Act would be applicable, let alone invoke Article 20 of the Act."*

c. In the case of **SRI. N.N.MANJAPPA** referred *supra*, it was held as under:

"8. *A reading of the agreement for sale dated 15.04.2010 would go to show that, the petitioner was already in possession of item no.2 of the suit schedule property which is also item no.2 in the schedule to the agreement for sale dated 15.04.2010 and he was running a business in the*



said property in the name of 'N.M.Timber'. Therefore, it is apparent that the petitioner was not put in possession of item no.2 of the suit schedule property in part performance of the agreement for sale dated 15.04.2010 nor it is agreed under the said agreement that in part performance of the said agreement the petitioner will be put in possession of the property. This aspect of the matter has not been properly appreciated by the Trial Court and it had erred in holding vide its order dated 14.12.2021 that the petitioner / plaintiff was liable to pay stamp duty on the aforesaid agreement for sale as provided under Article 5(e)(i) of the Act.

11. *In my considered opinion since the possession of item no.2 of the suit schedule property was handed over to the petitioner much prior to the date of execution of the agreement for sale and since the possession of property was not delivered under the agreement nor it was agreed to be delivered before executing the agreement in part performance of the contract, the Trial Court was not justified in holding vide the orders impugned in this petition that the petitioner is liable to pay stamp duty on the instrument as provided under Article 5(e)(i) of the Act. Since possession of the property is not delivered in part performance of the contract nor is not agreed to be delivered before executing*



conveyance in part performance of the contract, the petitioner is liable to pay stamp duty only as provided under Article 5(e)(ii) of the Act."

d. In the case of **K.V.VENKATASUBBAIAH**

referred *supra* it was held as under:

"25. Viewed from this angle, it becomes clear that the possession of the purchaser prior to the execution of the Agreement of Sale would be of no relevance at all for the purposes of applying Article 5(e)(i) of the Schedule to the Act. All that would be required for attracting Article 5 (e)(i) of the Schedule to the Act is that the Agreement contains a recital that, in part performance of the agreement of sale, the prospective purchaser is either WP.17460/2015 being put in possession or is agreed to be put in possession.

26. Thus, in this case, as a necessary consequence of the above discussion, it would emerge that the prior possession of the defendants over the lands as recited in the agreement would be of no relevance for the purpose of determining the stamp duty payable on the execution of the agreement of sale and the singularly key ingredient to be considered is the recital that possession was being delivered under the agreement in part performance of the contract."



e. In the case of **MR.N.SRINIVASA V SRI.MURULESH** referred *supra*, it was held as follows:

"5. To attract the said provision there should be a recital in the agreement of sale to the effect that under the agreement the possession is delivered. Whether possession is actually delivered under the agreement or not is immaterial. Similarly, if possession is delivered earlier to the agreement or subsequent to the agreement is also immaterial. The recital that the possession would be delivered after five months would not amount to delivering possession under the agreement. Similarly, the recital that the possession is agreed to be delivered is not sufficient to attract the liability to pay stamp duty. There should be express recital that "without executing the conveyance", the possession is agreed to be delivered. Admittedly, there is no recital in the agreement of sale to the effect that possession is delivered in part performance of the agreement. Nor is there any recital that such possession is agreed to be delivered without executing the conveyance. On the other hand, the recital in the agreement is to the effect that 'the possession is being delivered after five months' and that 'on payment of the consideration, the seller shall execute the registered sale deed'. Therefore, Article 5(e)(i) of the Schedule



to the Act is not attracted. There is no merit in this writ petition. Accordingly, it is dismissed."

f. In the case of **Vijay Kumar Goyal (Dead)** **represented by LRs**, referred supra the Hon'ble Supreme Court has held as under:

"6. Having gone through the said agreements, it can be seen that the possession has not been delivered under the said agreements. In these agreements, it is specifically mentioned that the possession of the disputed land in question was already with the appellant - Vijay Kumar. In the Memorandum of Agreement dated 24.02.1996, it is mentioned that "the above said land is already with my brother Vijay Kumar and after today, my brother, Vijay Kumar has become the owner in possession of the above land like me". In the agreement to sell dated 14.05.2011, in paragraph 2, it is stated that "that the possession of the above land is already with party No. 2 and the party No. 2 is having possession of the same today also". Thus, it cannot be said that the possession of the land in question was delivered through under the said agreements of which the specific performance is sought. In that view of the matter, Entry No. 5 of Schedule 1-A of the Indian Stamp Act as amended by the State of Punjab shall not be applicable. As per Entry No. 5 (cc) of



Schedule 1-A applicable under the State of Punjab, "in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold", the stamp duty is leviable under Column No. 2 of Entry No. 23 of Schedule 1-A. As observed hereinabove, the plaintiff was already in possession prior to the execution of the aforesaid agreements as per the recitals in the aforesaid two agreements. It is to be noted that even the plaintiff has also not sought the possession in the suit filed by him and has in fact sought the permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff and from dispossessing or causing to dispossess the plaintiff from the suit property.

7. In view of the above and for the reasons stated above, the order passed by the High Court and that of the Trial Court directing the appellant - original plaintiff to pay the deficient stamp duty with penalty applying Sub-column No. 2 of Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab is unsustainable and the same deserves to be quashed and set aside."

11. The aforesaid enunciation of law laid down by this Court and the Hon'ble Supreme Court clarify the



legislative intent of Article 5 of the Act. The delivery of possession ought to be determined upon the recital of the agreement to satisfy the condition that the said delivery of possession is being undertaken in the agreement or being agreed to be delivered before the deed of conveyance in part performance of a contract. The actual possession of the property before the agreement is immaterial, as long as, the said possession isn't being delivered under the agreement itself in part performance. In the case on hand, the agreement does not indicate the 'delivery of possession' or 'agreement to deliver possession before conveyance' in part performance of the contract, but only refers to the existing physical possession of the plaintiff over the suit schedule property. Hence, the duty and penalty paid by the plaintiff under Article 5(e)(ii) is appropriate.

12. The decision relied on by the learned counsel for the petitioner in the case of **SRI.J.PRAKASH** referred *supra* is distinguishable on the facts of the said case and



the case on hand. The facts in the case on hand clearly reveal that the plaintiff was in possession prior to the agreement. However, the clause in the agreement in the aforesaid case clearly states that the possession is handed over to the plaintiff in part performance of the contract. In such circumstances, the Court recorded the finding that the nature of possession earlier to the agreement is distinct from the possession after agreement. In the said case, the Court has taken note of the decision of **DANAPPAGOUDA FAKKIRAGOUDA PATIL** referred *supra*, and approved the reasoning of the said case.

13. The decision of the Hon'ble Supreme Court in the case of **RAMESH MISHRIMAL JAIN** referred *supra*, has no application to the case on hand as the Maharashtra Stamp Act specifically covers the situation of transfer of possession of the property prior to the agreement. However, the language employed under Article 5(e)(i) and 5(e)(ii) of the Act makes it clear that if possession of the property is delivered or agreed to be delivered before



executing the conveyance in part performance of the agreement, then the stamp duty is liable to be levied as per Article 20 of the Act. Whereas, in case of non-delivery of possession under the agreement, the stamp duty leviable is not as per Article 20 of the Act. The Act does not cover a situation of transfer of possession prior to the agreement in part performance. The Court is required to consider the clauses of the agreement and based on such clauses, ascertain the aspect of possession as to whether delivery of possession is under the agreement or not. In the case on hand, the clauses of the agreement clearly indicates that the plaintiff is in possession of the property more than two years prior to the agreement of sale and the agreement of sale recognises the earlier transfer of possession in favour of the plaintiff. It is not otherwise, that the agreement of sale contains transfer of possession in part performance of the contract.

14. In the case of **C.K.RAVI PRASANNA** referred *supra*, paragraphs 6 and 7 clearly indicate that the



transfer of possession of the property therein prior to the agreement and under the agreement are held to be on different footing, which clearly demonstrates that even under the agreement, the possession was transferred. Therefore, the Court held that the stamp duty payable would be as per Article 20 of the Act.

15. In the case of **RAMEGOWDA @ CHIKKARAMEGOWDA, SINCE DECEASED BY LRS** referred *supra*, the Court has extracted the clause of the agreement which clearly indicates that the possession is handed over in part performance. The Court held that the stamp duty is required to be paid as per Article 5(e)(i) of the Act.

16. Therefore, in the instant case, it is clear that the possession was delivered much prior to the agreement and there was neither a transfer of possession nor an agreement to transfer possession at a later point before the deed of conveyance under the agreement.



Furthermore, the agreement does not contain any clauses to the effect that the possession is being transferred under the agreement or is being agreed to be transferred. Hence, the stamp duty payable on the agreement of sale in the said case cannot be considered to be payable under Article 5(e)(i) of the Act. The Trial Court, taking note of the material on record and the law on the said point has rightly come to the conclusion that the stamp payable is under Article 5(e)(ii), which does not call for any interference.

17. For the aforementioned reasons, the petition is devoid of merits and is accordingly, **rejected**.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 2 Sl No.: 1