



*Somanna Kalappa*  
*Principal Associate*

## STAMP DUTY ON AGREEMENT OF SALE

The Karnataka High Court (“**HC**”), in *Smt. Nagamma* case,<sup>1</sup> held that the agreement of sale merges into the sale deed and therefore should not be subject to impoundment *vis-à-vis* payment of stamp duty under the Karnataka Stamp Act, 1957 (“**Stamp Act**”).

### Brief Facts

Partition suit was filed by Nagamma and others (“**Nagamma**”) against Rudrayya and others (“**Rudrayya**”) before the trial court seeking partition of suit schedule properties contending that they were joint family ancestral properties and no partition had occurred. Agreement of sale dated December 11, 2002 (“**AOS**”) was relied upon to demonstrate that the family members were in possession of the specific portions of lands and to show that there was no partition.

AOS was tendered in evidence by Nagamma before the trial court. Rudrayya objected on the grounds that it was insufficiently stamped. The trial court held that the AOA must be impounded and directed that Nagamma to pay the deficit stamp duty along with penalty.

Nagamma challenged the order before the Karnataka High Court (“**HC**”) by writ petition<sup>2</sup> seeking the quashing of the order (“**Writ Petition**”).

### Nagamma’s Contentions

The AOS should not independently attract stamp duty given that the sale deed was subsequently executed. The sale deed was duly stamped and registered and it supersedes the AOS. Thus, the AOS should not be subject to separate stamp duty or impoundment.

### HC’s Judgement and Reasoning

The Stamp Act specifies that if possession of the property is delivered or agreed to be delivered before execution of sale deed, such document is liable for stamp duty equivalent to conveyance.

Since the sale deed is executed in 2005, that is, on a date preceding the date of AOS in 2002, such agreement stands superseded by the sale deed.

---

<sup>1</sup> Order of the Karnataka High Court, Dharwad Bench rendered in *Smt. Nagamma and Others v. Rudrayya and Others* (“**Judgement**”).

<sup>2</sup> Writ Petition No. 105278 of 2018 under Articles 226 and 227 of the Constitution of India.

It held that: “Thus, the [AOS], once a sale deed has been duly executed and stamped, should no longer be independently subject to stamp duty as it has merged into the sale deed.”<sup>3</sup>

The Writ Petition was allowed.

\*\*\*\*

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For any clarifications, please contact us at: [info@counselence.com](mailto:info@counselence.com). Past issues of *Counselence Connect* are available at the ‘Newsletters’ page of our website ([www.counselence.com](http://www.counselence.com)).

---

<sup>3</sup> Para. 19 of the Judgement.  
© 2024 Counselence