

Judicata and estoppel — Applicability — Suit for partition — Previous suit filed by one of co-owners on same cause of action, dismissed — Fresh suit by co-owner, not barred — Right to sue for partition is continuing right so long as property remains joint — Merely because plaintiff co-owner has been enjoying the property does not mean that he is in exclusive possession as absolute owner of the joint property — Absence of legal amicable settlement giving suit properties to share of plaintiff co-owner — Plaintiff not estopped from seeking relief of partition.

AIR 1958 Assam 67, Rel. on.

Smt. Asha Kumbaragirimath for I. G. Gachchinamath, for Appellant; M/s. L. G. Associates, (for Nos. 1 to 3) for Respondents.

HW/GW/Ka332/2005/BNG/RTT/13581/2005

AIR 2005 NOC (KANT.) 536

= 2005 AIR — Kant. H. C. R. 2127

ANAND BYRAREDDY, J.

Tukaram Ganu Pawar, Appellant v. Chandra Atma Pawar, Respondent.

Misc. F. A. No. 7903 of 2002 (CPC).
D/- 8-7-2005.

Karnataka Stamp Act (34 of 1957), Ss. 34, 33 — Insufficiently stamped document — Admissibility in evidence — Suit seeking specific performance of sale agreement and injunction — Agreement of under which possession was delivered set up in support of application for temporary injunction, not sufficiently stamped — Agreement acted upon by trial Court overlooking fact that it was not sufficiently stamped — Document cannot be treated as admitted in evidence but only acted upon — Plaintiff can be directed to pay duty and penalty when document is actually sought to be admitted in evidence and marked as an exhibit.

V. P. Kulkarni, for Appellant; R. K. Desai for K. B. Adyapak, for Respondent.

HW/HW/Ka383/2005/BNG/RTT/15913/2005

2005 AIR NOC/14 XI

18/04/09

To, SHERI KANTIBHAI

From, Jyoti Kulkarni

AIR 2005 NOC (KANT.) 537

= 2005 AIR — Kant. H. C. R. 2140

D. V. SHYLENDRA KUMAR, J.

Mahesh C. Gandhi, Petitioner v. Deputy Commissioner for Transport, Belgaum and another, Respondents.

Writ Petn. No. 39752 of 2004 (T-MVT),
D/- 15-7-2005.

Karnataka Motor Vehicles Taxation Act (35 of 1957), S. 3 (1) — Motor Vehicles Act (59 of 1988), S. 47 — Life time tax — Liability for payment of — Private vehicle registered outside State of Karnataka but used on roads in State of Karnataka for period of less than 12 months — No liability can be fastened on owner to pay life time tax in respect of such vehicle — Levy of life time tax is linked to registration of vehicle.

Where the vehicle of the petitioner was registered outside the State of Karnataka and was within the State for a duration not exceeding 12 months, it cannot be said that the charging section comes into play for levying lifetime tax on such vehicle. Under the charging Section, S. 3 (1) of the Act read with Part A5 of the Schedule, there is no scope for levying of lifetime tax in the State of Karnataka in respect of the vehicles already registered outside this State and paying or having paid tax therein, unless such vehicle is found in the State of Karnataka for a period exceeding 12 months. If the vehicle itself is voluntarily got registered in the State of Karnataka, in the sense the owner of the vehicle applies for registration in the State of Karnataka, automatically the liability for payment of lifetime tax becomes operative and such tax can be collected on such vehicles. 1999 AIHC 4775 (Kant), Disting.

On a plain and proper understanding of Part A5 read with S. 3 (1) of the Act, it becomes obvious that lifetime tax is collected at the time of registration and at the point of registration and even assuming that a vehicle which is liable to be registered is not so registered, the charging section can be construed as one applicable to a situation where registration is not sought for, but it had become liable for registration from that point of time. If under the law, a vehicle

Re: Case of Motor Car

turning in another State

which is already registered in some other State is brought into this State and there is no obligation or compulsion under the law on the part of the owner of such vehicle to get the vehicle registered in the State of Karnataka, then the question of levy of lifetime tax on such a vehicle under Part A5 of the schedule to the Act does not arise. If any other provision of the Act enables levy and collection, it may be done, but definitely not where it is not so provided, particularly, under Part A5 of the Schedule to the Act. While the State Govt. has undoubtedly the competence to levy tax on vehicles suitable for use on roads so long as such vehicles are using the roads within the State, in terms of Entry 57 of List II of Seventh Schedule to the Constitution of India and the levy of lifetime tax of the vehicle has also been upheld by the Supreme Court, such levy can only be in accordance with the provisions of the Act and not independent or at variance of the provisions of the Act. It is here the charging Section assumes importance. Unless the charging Section provides for levy of any tax in particular situation of the nature, as in the present case, the levy and demand is not made good.

So far as the registration of the motor vehicles is concerned, it is governed by the MV Act, 1988, and S. 47 of the MV Act deals with the situation where the vehicles registered in one State are taken to another State and are stationed or remained in the other State for a period exceeding 12 months. In such a situation, the registration in the other State becomes compulsory. This is a Central Act and the source of power can be traced to Entry 35 of the Concurrent List. Therefore, in so far as the registration of motor vehicles is concerned, it is an aspect regulated by the Central Act viz., MV Act, and a vehicle registered in one State, if it has to be compulsorily registered in another State, it should be within the other State for a period of exceeding 12 months. Significance of such registration is due to the reason that levy of lifetime tax under the Act on such vehicles, as one owned by the petitioner herein, is linked to the registration of the vehicles. Part A5 of the Schedule to the Act indicates that levy is at the time of registration of new vehicle. Though in category B of Part A5, even vehicles already registered are also roped in for levy of life-

time tax, it should be understood only as in respect of vehicles mentioned in category A, in the sense at the time of registration of new vehicles and vehicles already registered. The registration in both situations should be necessarily within the State, as otherwise, if the registration is outside the State, the question of levy of tax under the Act does not arise in respect of such vehicles, unless there is an express provision under the Act to charge lifetime tax for such vehicles also. The registration of motor vehicles being an aspect regulated by the Central Act and which cannot be regulated by the State Act, the scheme of the Taxation Act is made as to subject to levy of lifetime tax only on such vehicles which are registered in the State of Karnataka.

D.L.N. Rao and Smt. S. R. Anuradha, for Petitioner; Ms. Niloufer Akbar, AGA, for Respondents.

HW/HW/Ka373/2005/BNG/CSL/15890/2005

AIR 2005 NOC (KANT.) 538

= 2005 AIR — Kant. H. C. R. 2201

N. K. SODHI, C.J. AND K. L. MANJUNATH, J.

K. T. Rajashekar and another etc., Appellants v. State of Karnataka and others, Respondents.

Writ Appeal Nos. 2327-28 of 1999, 2329, 3376, 4331, 5550 of 1999 and Writ Petition Nos. 28589-615 of 1999, D/- 25-5-2005.

Karnataka Motor Vehicles Taxation Act (35 of 1957), Ss. 2(cc), 3 and Sch. Part A, Item Nos. 5(a) and 8 — Private Service Vehicle or contract carriage — Contractor plying buses on basis of agreement with Company and paying hire charges in terms of agreement to carry employees of Company to and from factory — No other passenger carried for hire or reward — Held Vehicles are Private Service Vehicles and not contract carriages and liable to be taxed on basis of their floor area as envisaged in Sch. Part A, Item No. 8 — Fact that vehicles were registered in name of company not relevant.

W. P. Nos. 7364-65/1999 D/- 17-3-1999; W. P. No. 29294/1998 D/- 17-3-1999; W. P. No. 27467/1998, D/- 17-3-1999; W. P. No. 13175/1999, D/- 1-6-