

**IN THE COURT OF XV ADDITIONAL CITY CIVIL &
SESSIONS: JUDGE AT BENGALURU. (CCH.No.3)**

Dated this the 12th day of April 2019.

O.S No. 8960/2014

Present :- Sri. JAISHANKAR, B.Sc., LL.M.
XV Additional City Civil &
Sessions Judge, Bengaluru

Plaintiff's :- Smt. B.A. Rekha

V/s

Defendant's :- Smt. Anasuya and others.

**ORDERS ON I.A No.2 FILED BY THE DEFENDANT NO.2
UNDER ORDER 7 RULE 11(b) AND (c) READ
WITH SECTION 151 OF CPC**

The defendant No.2 has filed this application praying to reject the plaint on the ground that relief is undervalued and the Court fees paid on the plaint is insufficient.

2. The defendant No.2 has filed his affidavit along with the I.A and has stated as follows:-

That the relief of partition claimed is wrongly valued under section 35(2) of the Karnataka Act. It should have been valued under section 35(1) of the said Act. The Court fees should have been paid on the market value of the plaint schedule properties. The plaintiff has admitted her exclusion/ ouster from the plaint "B" schedule property. The plaintiff has also admitted that her title is denied. The plaintiff has also sought for relief in respect of sale deeds and Gift deed that the said documents are not binding on her. The plaintiff has valued the "A" schedule property at Rs. 13,00,00,000/- and plaint "B" at Rs.1,00,00,000/-. Since proper Court is not paid, the plaint has to be rejected. On all these grounds, he has prayed to reject the application.

3. The plaintiff has filed her objection to this application and has contended as follows:-

That the application is not maintainable in law. As per settled principle of law the plaintiff is continued to be joint possession it is a constructive possession. She has pleaded that the sale deed executed by defendant No.1 to 3 in favour of defendant No.4 and 5 are null and void and not binding on her share. She has not signed the sale deed nor she has agreed to the said transaction. The said sale transaction is fraudulent one

and he took place without her knowledge or consent. She is in joint and constructive possession. It is false that she has admitted her exclusion or ouster. In addition to the relief of partition, she has sought for relief of declaration in respect of sale deed and gift deed that they are not binding on her. As such, the suit cannot be valued under Section 38 of Karnataka Court fees Valuation Act. She has rightly valued the suit under section 35(2) of the Karnataka Court Fees and Valuation Act as well as under Section 24(b). Hence, prayed to dismiss the application.

4. I have heard the arguments of both sides and perused the entire materials of record. Now the points that arise for my consideration are :-

1. Whether the defendant No.2 has made out sufficient grounds to reject the plaint and whether the suit is under valued proper Court Fees is not pay?

2. What Order?

5. Having regard to the arguments heard and the materials on record, I answer the above point as hereunder:-

Point No.1 :- In the negative

Point No.2 :- See final order for the following

R E A S O N S

6. Point No.1:- The plaintiff has filed this suit for partition and separate possession of 1/4th share in the suit schedule property. She has also sought for convenience relief that the sale deed dated 16.02.1995 and Gift deed dated 23.09.2014 executed in favour of defendant Nos. 4 and 5 are not binding on her share. The plaintiff has pleaded that she is the joint owner of the suit schedule properties along with defendant Nos. 1 to 3. After death of her father they have succeeded to the suit schedule property. The suit "A" schedule is a joint family property and it is acquired by her grand father. The "B" schedule property absolute property of her father . As such, the plaintiff has pleaded that the joint family property of defendant No.1 to 3 and she is the joint owner. She is valued the suit under Section 35(2) Court Fees Suits Valuation Act and has paid the Court fees. Since the suit for partition and since the plaintiff is claiming her share by contended that the suit schedule property is joint family properties. It can be said that the Court Fess has to be failed on the market value of the property. At this stage only the averments made in the plaint has to be taken in to consideration. The plaintiff has not award that she has been ouster and exclusion from the suit schedule

property. It is well settled that the possession of a member of the joint family property is the possession of all the members. Since the plaintiff is claiming share in her in denied interest, it can be said that the suit has to be valued under 34(2) of Karnataka Court Fees of Suits Valuation Act. As per as relief of declaration is concern the plaintiff is prayed to declare that he sale deeds and gift deed are null and void. It is the case deed executed by defendant No.1 to 3 in favour of defendant No. 4 and 5. She has not a party to said sale deed. As such, she become a 3rd party to said sale deed. Hence, she did not paid the Court fees under Section 38 of the Karnataka Court Fees and Suits Valuation Act. As such, there are no grounds, to reject the plaintiff as sought to the defendant No.2. Hence, I answer this point in the negative.

7. Point No.2 :- In view of the above findings on point No.1, the following is made:-

ORDER

The application filed by the defendant No. 2 under Order 7 Rule 11(b) and (c) read with Section 151 of CPC is dismissed.
No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this the 12th day of April 2019.)

(Jaishankar)
XV Addl.City Civil & Sessions
Judge, Bengaluru

