



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 07th day of July, 2022

O.S.No.415/2020

Plaintiff: Kanykumari W/o. Manjunath Naikar,
Age: 20 years, Occ: Household & Agri,
R/o: Hiruru village, Savadatti taluk.

(By Sri. YLD., Advocate)

V/s

Defendants: 1. Manjula W/o. Appasaheb Naik,
Age: 39 years, Occ: Agriculture,
R/o: Munyal village, Mudalagi taluk,
Now at Hiruru village, Savadatti taluk.
2. Vikramraj S/o. Annasaheb Naik,
Age: 71 years, Occ: Agriculture,
R/o: H.No.3348, Hosapet Galli,
Gokak, Gokak taluk.

(D1 By Sri. PBN., Advocate)

(D2 By Sri. RHI., Advocate)

I.A. No.7

Applicant : Vikramraj
V/s

Opponent : Kanyakumari



ORDERS ON IA No.7 FILED UNDER ORDER 14 RULE 2 (2) READ
WITH SECTION 11 OF THE KARNATAKA COURT FEES AND SUITS
VALUATION ACT, 1958

The 2nd defendant has made the instant application and sought for framing of an additional issue as mentioned in the application and to treat the same as preliminary issue and disposed off as contemplated Under Section 11(2) of the Karnataka Court Fees and Suits Valuation Act, 1958, on the grounds that the plaintiff has filed this suit for the relief of partition and she further sought that the gift deed dated 27.11.2019 and the relinquishment deed dated 07.03.2008 are false and that they are not binding on her. The suit is valued Rs.75,00,000/- and has paid the court fee of Rs.15/- only for the relief of partition and Rs.25/- on the relief of declaration that the said two documents are not binding on her. Hence, the plaintiff has paid in all a sum of Rs.40/- as court fee to claim relief on the valuation of Rs.75,00,000/-. The defendant has filed his written statement and has taken up a contention that the plaintiff neither coparcener nor a joint owner and that she is not in possession of the suit properties prima facie on the records produced by her and that therefore she has to pay the court fee on the market value as per section 35(1) of the Karnataka Court



Fees and Suits Valuation Act. Further, in the para No.5 of the written statement the 2nd defendant has urged that the relief of declaration that the gift deed and relinquishment deed are not binding on her have to be valued on the market value of the suit properties and that therefore the valuation made and the court fee paid is insufficient. As such, the issue of court fee has to be determined as preliminary issue in terms of Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958. Accordingly, the court has framed the additional issue No.5 in the suit. By paying paltry court fee of Rs.40/-, the plaintiff cannot be permitted to seek a decree of the property valued at Rs.75,00,000/- as per the contents of the plaint. Therefore, the issue regarding the valuation and payment of court fee needs to be treated as preliminary issue before deciding the suit on its merits. If the application is allowed no loss or hardship would be caused to the plaintiff. On the contrary, if the application is not allowed the 2nd defendant will be put to untold hardship.

2. This application is resisted by the plaintiff contending that it is groundless and averments made therein are false and has contended that the plaintiff has valued the suit properly and



paid sufficient court fee. Accordingly, it is prayed for dismissal of the application with cost.

3. I have heard the learned counsel appearing for the plaintiff and 2nd defendant and perused the material on record.

4. Points that arise for consideration of the court are;

1. Whether the 2nd defendant has made out grounds to allow the application?

2. What Order?

5. Findings of the court on the above points are as under:

Point No.1: in negative and

Point No.2: as per the final order for the following:

R E A S O N S

6. Point No.1; as contemplated under section 11(2) of the Karnataka Court Fees and Suits Valuation Act, 1958, any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been



properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit.

7. The material on record goes to show that the suit is filed for the relief of partition and declaration that the so called relinquishment deed and gift deed are not binding on the plaintiff asserting that the suit properties are ancestral joint family properties of 1st defendant and plaintiff and they are in joint possession of the same and the alleged relinquishment deed and gift deed are got created by the defendants. Hence, they are not binding on the plaintiff.

8. At the out set, the plaintiff is not a party to the said deeds. Hence, no need to seek for declaration that they are void



and no need to pay court fee on the market value of the properties of the said documents. Further, the plaintiff is claiming share asserting that she is in joint possession of the suit properties. The point whether or not she is in such joint possession has to be decided only after full fledged evidence and now it cannot be decided. In the circumstances, no need to treat the additional issue No.5 as preliminary issue and it requires to be decided along with other issues. Accordingly, the application is devoid of merits and deserves to be dismissed with cost and the point No.1 is answered in the negative.

9. Point No.2; in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

IA-7 filed under Order 14 Rule 2(2) of the Karnataka Court Fees and Suits Valuation Act, 1958, is hereby dismissed on cost of Rs.500/-.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 07th day of July, 2022)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak