



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 24th day of June, 2022

O.S.No.436/2020

Plaintiff: Manjula W/o. Appasaheb Naik,
Age: 39 years, Occ: Agriculture,
R/o: Munyal village, Mudalagi taluk,
Now at Hiruru village, Savadatti taluk.

(By Sri. PBN., Advocate)

V/s

Defendant: Vikramraj S/o. Annasaheb Naik,
Age: 71 years, Occ: Agriculture,
R/o: H.No.3344, Hosapet Galli,
Gokak, Gokak taluk.

(By Sri. RHI., Advocate)

I.A. No.4

Applicant : Manjula
V/s
Opponent : Vikramraj

I.A. No.5

Applicant : Vikramraj



V/s

Opponent : Manjula

ORDERS ON IA No.4 AND 5 FILED UNDER SECTION 151 OF CPC
AND UNDER ORDER 14 RULE 1 READ WITH ORDER 14 RULE 2(2)
OF CPC

The plaintiff has made the IA.No.4 and sought permission to file a rejoinder on the grounds that she has filed the suit for the relief of declaration of ownership and the suit properties are ancestral properties. During the lifetime of the father of the plaintiff, the defendant influenced to execute a registered relinquishment deed in his favour in respect of the suit property item No.2 by playing fraud. The plaintiff never visited the Sub-Registrar office and executed the alleged gift deed in respect of the suit property item No.1 in favour of the defendant. In this regard, the plaintiff averred in her plaint that, by obtaining her signature on a white paper the alleged gift deed was created saying that he is going to avail loan in the bank in the name of the plaintiff. Defendant filed his written statement and has contended so many false allegations, which are not in the knowledge of the plaintiff. After filing the written statement, instead of amending the plaint the plaintiff wants to file rejoinder to the new defense of the defendant.



2. This application is resisted by the defendant contending that it is groundless and averments made therein are false and has contended that Section 151 of CPC does not enable the plaintiff to seek permission to file rejoinder when a specific provision is available under the Code of Civil Procedure. The relief claimed in the suit is for declaration that the defendant has illegally got his name entered to the suit land and for a declaration that she is the owner of the suit properties. Therefore, there is no question of the plaintiff seeking any permission to file rejoinder. At the most the plaintiff if felt necessary can seek amendment to the plaint. The plaintiff does not state in her affidavit as to why she failed to make such pleadings in the plaint. Therefore, subsequent pleadings Under Order 8 Rule 9 of CPC cannot be allowed as there is no plausible explanation offered in the affidavit for such lapses. A valuable right therefore accrued to the defendant, which cannot be taken away by allowing the IA and only to defeat the defence taken by the defendant in his written statement, this application is filed. Accordingly, it is prayed for the dismissal of the application with cost.



3. The defendant has made the IA.No.5 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 of the Karnataka Court Fees and Suits Valuation Act, 1958, on the grounds that the plaintiff has filed this suit for the relief of declaration of her title and valued the suit at Rs.43 lakhs and paid the court fee of Rs.50/- on the plaint. The defendant has filed his written statement and has taken up a contention that the valuation made and court fee paid in respect of the suit property is inadequate, insufficient and that the plaintiff cannot be permitted to pay paltry court fee of Rs.50/- and seek declaration of a property worth Rs.43 lakhs and an issue to that effect may be framed and determined as preliminary issue in compliance of Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958. There is no issue framed by this court in the matter of valuation of the plaint and payment of the court fee which arises in view of the pleadings of the plaintiff and contention in the written statement. Therefore, it is just and proper to frame an additional issue and treat the same as preliminary issue. 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 defendant will be put to untold hardship.

4. This application is resisted by the plaintiff contending that it is groundless and averments made therein are false and the suit schedule properties comprises two landed properties and by playing fraud and mis-representation, in absence of the plaintiff, defendant got registered a gift deed in his name in respect of the suit item No.1 and it is a forged document and the plaintiff filed a P.C.No.84/2022 before the II Additional Civil Judge and JMFC, Gokak. The defendant entered his name in the revenue records of the suit item No.2 on the basis of the registered relinquishment deed, said to have been executed by the father of the plaintiff in favour of the defendant. The properties are ancestral joint family properties of the plaintiff, in which she has her own legitimate share in the schedule 2 property, the relinquishment deed in question is not at all binding upon her.

5. The first deed is a gift deed, it is forged deed and second deed is a relinquishment deed to which the plaintiff is not a party. The deeds in question are void ab-initio. They are



void from the very beginning itself. Hence, the question of their cancellation does not arise. Moreover, by filing this suit the plaintiff has not sought a relief of cancellation of the alleged two deeds. Though the property records are illegally standing in the name of the defendant he is not possession of the schedule properties. The defendant by grossly misusing the trust and confidence reposed in him by the plaintiff, had obtained her two signatures on a white paper and created the alleged gift deed by way of forgery. When the plaintiff is alleging forgery, definitely she is not a party to the deed in question. Hence, there is no need to pay court fee on the valuation of property. The court fee paid is Rs.1000/- and for the purpose of jurisdiction the valuation of the suit properties is made at Rs.43 lakhs. This own estimation is only for the purpose of jurisdiction. The relief sought is valued at Rs.1000/-. Hence, the court fee paid is correct.

6. That for determining the court fee on a plaint, the terminology used or the label given by the plaintiff is not of much significance. What is important is to find out the substance of the claim made in the plaint for adjudication. The adjudication of the matter does not depend upon the valuation



of the properties. The suit is not to set aside the deeds in question. In order to call a deed as a valid deed the plaintiff has to participate in the registration process also. Important thing is the gift deed in question was registered behind the back and in absence of the plaintiff. It is not called as a document executed. Further, the deed of gift should be executed in between family members. The defendant is not the family member of the plaintiff and any transaction between strangers must be through a deed of sale. The plaintiff, under the deed not received any amount. The defendant is not brother of the plaintiff. Hence, though the deed was registered, it is an invalid document. Hence, payment of court fee on market value does not arise at all. Thus, the alleged gift deed is no deed in the eye of law. A forged document is no document in the eye of law. It is apparent on the face of the record that, the alleged gift deed was a forged one. A serious question is raised in this case about validity of the deed. It requires a full fledged trial. Hence, treating of court fee as preliminary issue is not required. In the disputed alleged gift deed no value is mentioned. The plaintiff valued the suit for the purpose of declaration at Rs.1000/- and the payment of court fee has no relevance for the purpose of determining the pecuniary jurisdiction of the courts. For the purpose of the



pecuniary jurisdiction the suit is valued at Rs.43 lakhs. The payment of court fee cannot be confused with the valuation of property for the purpose of the pecuniary jurisdiction. If a question relates to the jurisdiction of the court then only the court is having power to decide any try the court fee issue as a preliminary issue, otherwise not. Accordingly, it is prayed for dismissal of the application with cost.

7. I have heard the learned counsel appearing for the parties and perused the material on record.

8. Plaintiff has relied upon the decisions reported in 2011 (2) Civ.C.R. 188 (M.P.) [Sunil and others Vs. Awadh Narayan and others] and 2018 (2) Kar.L.R. 714 (FB) [Venkatesh R. Desai Vs. Smt. Pushpa Hosmani and others].

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

1. Whether the plaintiff has made out grounds to allow the IA.No.4?
2. Whether the defendant has made out grounds to allow the IA.No.5?
3. What Order?



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

Point No.1: in the affirmative

Point No.2: partly in the affirmative and

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

R E A S O N S

11. Point No.1; as rightly contended by the defendant in his objections the IA.No.4 is filed under a wrong provision though there is a specific provision under the CPC to seek permission to file a rejoinder. But, it is well settled that mere mentioning of wrong provision is not a ground to refuse the relief. Hence, the said contention cannot be accepted. Further, it is contended and also argued by the defendant that there is no reason as to why the plaintiff wants to file rejoinder and she can file better particulars by amendment. As could be seen from the assertions made in the accompanying affidavit of the IA-4, it is asserted by the plaintiff that in the written statement the defendant has made several false allegations, which are not within her knowledge. This can be gathered from the written statement. When the defendant has made some allegations, in order to defend the same, the plaintiff has two options i.e., to file rejoinder or to get her plaint amended. Here the plaintiff has chosen the first option i.e., filing



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of rejoinder. Therefore, the objections raised by the defendant in relation to the IA.No.4 do not hold water and it needs to be allowed and accordingly the point No.1 is answered in the affirmative.

12. Point No.2; as rightly asserted by the defendant, an additional issue regarding payment of court fee and valuation of the suit needs to be framed as he has taken up a specific contention that the suit is not valued properly and court fee paid is insufficient. However, now the question that arise for consideration is whether or not such issue be treated as a preliminary issue. As could be seen from the averments of the plaint, the plaintiff has asserted that by playing fraud and misrepresentation, in her absence, the defendant got registered a gift deed in his name in respect of the suit item No.1 and it is a forged document. The plaintiff is not a party to the relinquishment deed. Hence, the said deeds are void. In the circumstances, in order to decide as to whether or not the alleged gift deed is forged by the defendant and the plaintiff has relinquished her right over the suit property through the alleged relinquishment deed full fledged evidence is required. Therefore, the additional issue cannot be treated as preliminary issue and the contention



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raised by the defendant in relation to treating of the additional issue as a preliminary issue do not hold water and accordingly the point No.2 is answered partly in the affirmative.

13. Point No.3; in view of the findings arrived on the point No.1 and 2, I proceed to pass the following:

O R D E R

IA-4 filed Under Section 151 of CPC, is hereby allowed.

IA-5 filed under Order 14 Rule 1 R/W Order 14 Rule 2(2) of CPC, is hereby allowed in part and an additional issue is framed.

There shall be no order as to cost.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 24th day of June, 2022)

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