

IN THE COURT OF PRL.CIVIL JUDGE & JMFC KHANAPUR AT:
KHANAPUR

PRESENT : Shri. Mahantesh S. Daragad,
B.Sc.LL.B.(Spl.)
Prl. Civil Judge & JMFC
Khanapur.

O.S.No.223/2013

Dated 21st day of September, 2016

Between:-

1. Smt. Premlata Wd/o Changadev Patil,
Age: 50 Years, Occ: Household work,
R/o Kalmeshwar Galli, Yallur,
Tal:Dist: Belagavi.

...Plaintiff.

(By Shri. Y.G.G., Advocate)

And:

1. Shri. Vidyadhar S/o Vishnu Patil,
Age; 45 Years, Occ: Agriculture,
R/o Iddilhond Village,
Tal: Khanapur, Dist: Belagavi
& Others.

...Defendants.

(D1 & D2 by Shri. C.S.H., Advocate,
D3 by Shri. A.A.N., Advocate)

:ORDER ON PRELIMINARY ADDL.ISSUE NO.1:

The plaintiff has filed present suit against the defendants and seeks declaration and permanent injunction.

2. On the other hand, defendant No.3 has filed his written statement and taken contention that plaintiff has wrongly valued the suit property for the purpose of payment of court fee. This court has framed issues, in which Addl.Issue No.1 is as follows:

“Whether the plaintiff proves that she has paid proper court fees on the suit plaint?”

3. The plaintiffs have adduced oral and documentary evidence. Defendants have not led any evidence. The defendant No.3 taken contention in his written statement that plaintiff has wrongly valued the suit property for the purpose of payment of court fee.

4. Heard arguments of both sides on preliminary additional issue No.1.

5. My findings on above Addl.Issue No.1 is in the **Affirmative** for following stated

: REASONS:

6. The contention of the learned counsel for defendant No.3 is that plaintiff has not paid proper court fees. Further in support of his contention, he has produced synopsis alongwith reported judgments. On the other hand, plaintiff has also filed written argument and reported judgments. The contention of the defendant No.3 is that on the basis of decree, plaintiff has got right, title and interest over the property. The plaintiff has sought declaration with respect to registered sale deed is illegal, not valid and not binding upon plaintiff, it denotes cancellation of sale deed, she ought to pay court fee on the market value on filing of suit as per section 38 of the Karnataka Court Fees and Suit Valuation Act. I have gone through judgments relied by plaintiff and defendants. It is an admitted fact that plaintiff has sought prayer against the defendants stating that 'Declaring that the sale deed dated 25-9-2009 under the register No.1709/2009-2010 before the Sub-Registrar Khanapur, alleged to be executed by the defendant No.1 and 2 in favour of the defendant No.3 vide registration No.1709/2009-2010 dated 25-9-2009 is illegal, not valid and not binding upon plaintiff in any manner.'

7. While perusing the plaint alongwith documents, plaintiff in her plaint averred that suit schedule property is ancestral joint family property of plaintiff, she acquired said property through its propositor Shamrao Laxman Patil, after his death suit schedule property was succeeded by her deceased husband, her husband was died in the year 2005, then name of plaintiff is entered in record of rights as per mutation No.758 as owner thereof. But defendants No.1 and 2 without having right, title and interest over the property, executed registered sale deed in favour of defendant No.3, it is not binding on her. In this circumstance, she paid court fee as per section 24(d) of K.C.F. and S.V. Act.

8. Defendant No.3 relied judgment reported in **ILR 2015 KAR 3554 in the case of Mr. Vikram Ravi Menezes Vs. Mr. Victor Goveas**. While reading above said judgment, it reveals that if a party acquires any right, title and interest over suit schedule property, at the first time and if he sought cancellation of sale deed, he ought to pay court fee as per section 38 of KCF and S.V. Act. In that suit, plaintiff's family was belongs to Christian community, his father acquired property by Will Deed, he was absolute owner of said property, during his life time he alienated said property, same is challenged. In that circumstance, the title of the party was transferred, plaintiff has no right, title and interest over the property,

he ought to file suit for cancellation of sale deed, he has to pay court fee as per section 38 of K.C.F. and S.V.Act. But in the present case on hand, plaintiff has not sought cancellation of sale deed, she sought said sale deed is not binding on her, she is not a party in registered sale deed. The declaration that a particular sale deed is not binding on plaintiff would become necessary only when a person who has interest in the property, who is not signatory to the document and some other persons purporting to convey said title. In the present case, as per plaintiff defendants No.1 and 2 have no right, title and interest over property have conveyed the same to defendant No.3. In this circumstance, plaintiff would in no way bound by document, though registered, when she is not party to said instrument. In such an event, she can seek declaration. If plaintiff title to the property is disputed, if her possession is sought to be disturbed or if she is not in possession and wants forever possession, section 24(a) and (b) provides for valuing such suits and court fee payable. If it is only when the case does not fall under section 24(a) and (b), section 24(d) is attracted. In the instant case, plaintiff seeks declaration that said sale deed is null and void, question of payment of court fee under section 38 of K.C.F. and S.V. Act does not arise.

9. Further learned counsel for plaintiff relied judgments reported in **2009 (3) KCCR 2240 in the case**

of V.S. Balasubramanyam and Another Vs. L.K. Trust, Bangalore and Others and 2007(3) KCCR 1686 in the case of R. Ananda Vs. Nanjundaswamy and Others, in which held that the valuation of subject matter of suit while cancellation of sale deed is valued as per market value on the date of filing of suit. Said proposition of law is not disputed, said decisions are not applicable to the facts of this case, because plaintiff has not seeks cancellation of deed.

10. If the plaintiffs are not parties to the sale deed which is being attacked as sham and nominal or on any other ground, then a suit for declaration without asking for the relief of cancellation of the said deed is maintainable and the suit property can be valued under section 24 (d) of the Act and it is not necessary to value suit property under section 38 of the Act. Admittedly, in the present case, plaintiff has sought for the relief of declaration, there is no prayer for cancellation of sale deed. Further, plaintiff is not a party to said sale deed. As per ratio laid down in the decisions by the Hon'ble High Court of Karnataka, which are relied by both parties itself goes to show that valuation made by the plaintiff is correct. Hence I answer preliminary additional issue No.1 in the **Affirmative** and proceed to pass following.

: O R D E R :

***Addl.Issue No.1 is answered in
the affirmative.***

***The court fees paid by the plaintiff
on suit plaint is proper and correct.***

(Dictated to stenographer, typed by him, corrected by me
and then order signed and pronounced in open court on
21.9.2016.)

(Mahantesh S. Daragad)
Prl.Civil Judge & JMFC.,
Khanapur.

Order pronounced in the open court, vide separate order today

: O R D E R:

Addl.Issue No.1 is answered in the affirmative.

The court fees paid by the plaintiff on suit plaint is proper and correct.

Prl.Civil Judge & JMFC.,
Khanapur