

IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C, KOLLEGAL

Present : **Sri. UMESHA. H.K**, B.A., LL.B,
Prl. Civil Judge and J.M.F.C.
Kollegal.

Date : This the **16th day of August 2016**

O.S NO. 204/2011

- 1) Sri. Shivalankarappa & Another
S/o Late H. Gurumallappa,
Age: 70 yrs.,
R/a Thotada mane,
G.K. Hosuru village,
Kollegal Taluk,
Chamarajanagar district.

... Plaintiffs

V/s

- 1) Smt. Shivamma & Others
W/o Late Shivappa,
Age: 68 yrs.,
Uganiya village, Kollegal taluk.

...Defendants

I.A No. 7

- 1) Sri. Shivalankarappa & Another

...Applicants

V/s

- 1) Smt.Shivamma & Others

.....Opponents

Sri. S.R.A, Adv. for plaintiffs
Sri. M.R.K, Adv. for D1, 3-7, 11 & D2(a)(b)
Sri. M.P.G, Adv. for D8
Sri. A.M.M, Adv. for D9
Sri. M.R, Adv. for D10

**Orders on I.A No. 7 U/s 11 of Karnataka Court Fee and
Suit Valuation Act R/w 151 of CPC**

Defendants No. 5 to 7 have filed this application praying this court to determine the correctness of valuation and payment of court fee to be paid in the above case.

2. It is stated in the affidavit that plaintiffs filed the present suit against the defendants for partition and also for general declaration pertaining to sale transactions of plaint schedule properties. As the plaintiffs are out of possession of plaint schedule properties and as the joint status is not in existence the plaintiffs ought to pay court fee upon the market value of the properties in the dispute that too in tune with sec. 35(1) of KCF and SV Act. It is mandate to determine the said application by framing the preliminary issue or otherwise plaintiffs may escape from their duty of payment of proper court fee. In other wards the plaintiffs may cause loss to the ex-chequer to the government. Hence it is prayed to allow the accompanying application. If the application is not allowed defendants will be put to lot of hardship and inconvenience in all aspect. Per contra nothing will be caused to the other side. Hence prays to allow the application.

3. On the other hand plaintiff filed detailed objection opposing the application contending that application is not maintainable either in law or on facts and same is liable to

be dismissed in limine. Applicant has sworn to false affidavit. Plaintiffs have paid proper court fee and there is no need to frame preliminary issue in respect of payment of court fee, as such application is liable to be dismissed. Defendants have filed this application only with an intention to drag on the proceedings and plaintiffs have not violated any law or rules as stated in the application and defendants have not filed any documents supporting their application. As such the application is not maintainable and prays to dismiss the same with cost.

4. Heard arguments. Perused the records carefully.

5. The following points arises for my consideration are:

- 1) Whether applicants have made out good grounds to allow the application?
- 2) What order?

6. My answer to the above points are as follows,

Point No. 1: In the “Negative”

Point No. 2: As per the final order for the following,

REASONS

7. **Point No. 1:** Plaintiffs have filed the present suit for partition and separate possession of plaintiffs 1/8th share in the suit schedule properties.

8. Defendants appeared through their counsel and filed written statement denying the averments of plaint and share in the suit properties. When the case was set down for cross examination of PW1, the present application came to be filed by the defendants praying this court to frame preliminary issue with regard to payment of court fee and their specific contention is that plaintiffs are out of possession of joint family properties, plaintiffs ought to have paid court fee on the market value of subject matter as per sec. 35(1) of KCF and SV Act etc. On the other hand plaintiffs contended they are in joint family and there is no division in the joint family and they have paid proper court fee for their share as per 35(2) of KCF and SV Act.

9. I have perused the entire averments of plaint and written statement. The averments of plaint discloses plaintiffs have claimed their 1/8th share in the suit schedule properties and they contended plaintiffs and defendants No. 1 to 7 are in joint possession of suit properties and there is no division in the suit properties and they further claimed the alienation made in favour of other defendants is not binding on their share etc. Defendants contended plaintiffs are not in possession of suit properties and they taken the plea of ouster. Admittedly the case is set down for evidence and at this stage court cannot come to conclusion regarding plea of defendants i.e, ouster and this not the stage of looking into

the averments of written statement and the court has to consider the averments of plaint only. Claim of plaintiffs is that they are in possession of suit schedule properties and they are entitle to share in the undivided joint family properties. In such a case the possession of one in law is possession of all, unless ouster or exclusion is proved to continue to be in joint possession in law and it is not necessary that plaintiffs should be in actual possession of the whole or part thereof, unless it is shown that plaintiffs are excluded from such possession. Therefore the contention of defendants that the plaintiffs have to pay court fee U/s 35(1) of Karnataka Court Fee and Suit Valuation Act is not acceptable one. As already stated above only on the basis of averments made in written statement the court cannot come to the conclusion, at this stage regarding ouster of possession of plaintiffs from the joint family properties and defendants have not produced documents in support of their contention at this stage.

10. Learned counsel for defendants in support of their arguments has relied upon a decision reported in 2003(4) Karnataka Law General 289 G. Baramappa v/s Kenchappa and others. I have gone through the said decision, but with great respect to the said decision, the facts and circumstances of said decision is not applicable to the case on hand. Because in the said decision the Hon'ble court has come to the conclusion that there was a notional

partition between the parties and any pursuance of said notional partition relevant revenue entries were entered. In view of that the court has held plaintiffs are liable to pay court fee U/s 35(1) of KCF and SV Act. But herein in this case that is not the situation and the plaintiffs have not claimed their share on previous partition or reopening of partition etc. Therefore the said decision will not help the defendants.

11. As per the sec. 11 of Karnataka Court Fee and Suit Valuation Act if any plea regarding court fee and insufficient court fee, all questions arising on such plea shall be heard and decided before the evidence is recorded. Admittedly in this case, the evidence is already commenced and there is no issue is framed regarding insufficiency of court fee. Sec. 11(2) of Act, does not require a court to decide a question relating to valuation and court fee on the objection by the defendants, first before the evidence is recorded on merits. Therefore at this stage this court is of the opinion application is not maintainable. As already stated above the averments of plaint, clearly discloses plaintiffs claimed their share in the undivided suit properties and they have paid court fee as per the sec. 35(2) of KCF and SV Act and it is sufficient. Hence there is no need to frame preliminary issue regarding court fee. There is no good grounds to allow the application. Hence I answer point No. 1 in the negative.

12. **Point No. 2:** In view of the above said reasons, I proceed to pass the following,

ORDER

The application filed U/s 11 of
Karnataka Court Fee and Suit Valuation Act
R/w 151 of CPC is hereby dismissed with
cost of Rs.250/-

No orders as to cost.

*(Dictated to the Stenographer, transcribed and computerized by
her, corrected and then pronounced by me in the open court on
this the **16th** Day of **August-2016**)*

(UMESHA. H.K)
Prl. Civil Judge and JMFC.,
Kollegal.