

At the time of further chief of PW-1 learned counsel for the defendants objected to marking of signature on Ex.P.1 will dated 23.12.1983 through PW-1. Further the defendants failed to explain why they are objecting the marking of document. The PW-1 is identifying only the signature of Patel Siddaramegowda. Though the signature of said Siddaramegowda marked through PW-1 that will not exempt the plaintiff to prove his case as per Sec 68 of Indian Evidence Act. Thus mere marking of signature through PW-1 with no effect. Hence the plaintiff is permitted to identify the signature of Patel Siddaramegowda in Ex.P.1.

(Smt.Deepa)
Addl. Civil Judge & J.M.F.C,
Arasikere.

∴ ORDERS ON IA No.10 ∴

This is the application filed by the plaintiff praying for issue hand summons to witness, who is scribe of will.

2. In the memorandum of facts learned counsel for the plaintiff has stated that, the plaintiff filed the above suit based on registered will executed by Patel Siddaramegowda

in favour of plaintiff. The said will was written by document writer Sri B.V.Chandrshekar. The scribe is aged about 80 years and suffering from many ailments. As such it is necessary issue to hand summon to the scribe to give evidence on the said will. Thus prayed to allow the application.

3. On receipt of application learned counsel for the defendants has filed objection where in he has stated that the application is not maintainable either in law or facts also. The cross of PW-1 is not yet completed and it is the stage to here on the identification of marking of signature. Then only further plaintiff evidence will be in progress as per the procedure of law, such being the case summoning further issue is premature and the same is not maintainable. Thus prayed to reject the application.

4. Heard both side. Perused material on record.

5. On perusal, the plaintiff filed the suit for declaration of his ownership on the basis of will dated 23.12.1982 and also permanent injunction. On the other hand the defendants taken contention that the will dated 23.12.1982 is created document. When the case is posted for further chief of PW-1 learned counsel for the plaintiff filed this application praying for issue hand summons to scribe of said will. It is the contention of the defendants that the said application is premature. However there is no bar in CPC or in civil rules of practice regarding examination of witness before cross-examination of PW-1. Admittedly burden lies upon the plaintiff to prove the will as per Sec 68 of Indian

Evidence Act, hence he is having right to examine the scribe of will at any point of time. If any grievance against the said alleged will the defendants always at liberty to cross-examine the said witness. In the application the learned counsel for the plaintiff submitted that scribe is aged about 80 years and suffering from several ailments. Hence liberty has to be given to plaintiff to prove his case. Further looking into the age of the said witness, the defendants are directed to cross-examine the said witness on the same day.

Issue hand summons accordingly.

Call on:

(Smt.Deepa)
Addl. Civil Judge & J.M.F.C,
Arasikere.

∴ ORDERS ON IA No.25 ∴

This is the application filed by defendant praying for reject the plaint since this court has no peculiar jurisdiction to entertain the suit.

2. In the affidavit annexed to the application the defendant has sworned that suit schedule property was vacant site which is situated behind mini vidhana soudha within the jurisdiction of Town municipality. Since the said property is in the Arasikere town as per sub-registrar value Rs.720/- per square feet. Hence the property of the plaintiff is about 12,740 square feet Hence, the market value of the said property of more than 85, 00,000/- but the plaintiff intentionally not valued the suit schedule property properly. Thus, prayed to reject the application.

3. On the other hand learned counsel for the plaintiff has filed objection wherein he has stated that the application is not maintainable either in law or facts also. The jurisdiction point raised by the defendant is not purely point of law but it is mixed point of law and fact as such the application is not maintainable and the application filed by the defendant is pre-matured. Without peruse in the prayer and schedule of the plaint the defendant have filed this application to drag the proceedings. Thus prayed to dismiss the application.

4. Heard, Both sides. Perused material on record. On perusal following points arise for my consideration:-

-.POINTS:-

1. Whether the defendant is made out sufficient ground reject the plaint as prayed?
2. What order?

5. My answer to the above points are as follows:-

Point No.1:- In the ***Partly Affirmative***

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

-.REASONS:-

6. Point No.1:-

The plaintiff has filed the suit praying for grant of declaration mandatory injunction and also for permanent injunction in respect of suit schedule property. Suit schedule property is a site situated behind mini vidhana soudha, Arasikere Taluk.

It is vehemently argued by the learned counsel for the defendant that the market value of the suit schedule property is more than 1 crore the plaintiff ought have valued the suit schedule property on the present market value without doing so he has valued at Rs.75,000/- for jurisdiction. On the basis of sub registrar value the market value of the suit property is 85 lakhs. Hence, this court peculiar jurisdiction to entertain the suit. Further argued

that the same contention has been taken in the written statement also and the defendant has filed memo with one document of sub registrar office, Arasikere to show that present market value of the properties situated behind Mini vidhana soudha. On the other hand learned counsel for the plaintiff strenuously argued that the said point is mixed facts and law and same is to be considered on merits only. At this juncture it cannot held that this court has not having peculiar jurisdiction. Value of the sub registrar office cannot be considered of real valuation. Hence, prayed to dismiss of the application.

In view of rival contention I have careful perused plaint written statement application and objection. On perusal of written statement same contention has been taken by defendant and my learned predecessor has framed issue in this regard. Further I have perused plaint where in the plaintiff has stated that stating in para no.8 that "The defendants said to have been purchased site no.38, measuring east and west 38 feet, north south 40 feet and same is shown as the suit schedule property. Further I have perused document issued by sub-registrar, Arasikere which is produced by the defendant. On perusal, it appears that during the year 2015-16 the market value of the property which is situated behind Mini vidhana soudha in Highway 1248 Rupees per square meter, main road 740 per square meter, cross road 522 per square meter. On perusal of schedule of plaint and also documents produced by the

plaintiff there is no rectal regarding main road or cross road but it is mentioned as behind Mini Vidhana Soudha. Hence, if we considered as the said property is situated in the cross of behind Mini vidhana soudha then the market value of the suit schedule property is Rs.522 per square meter as on the date of suit.

On perusal, it appears that, the plaintiff has stated in the application that even though in the entire pleadings he has mentioned the measurement but by over site measurement in the schedule has not been mentioned. Such being the case it is necessary to amend the plaint as prayed. I have perused the plaint wherein para no.5 it is specifically mentioned that site number is 38 and measurement E-W 30 feet, N-S 40 feet and same is shown in the suit schedule property. Even though in the written statement the defendant has taken contention that suit property is not belongs to plaintiff and it is not existed as stated by the plaintiff. If really the suit property is not existed and plaintiff is not having any right over the said property same is to be decided on merits. The proposed amendment very much necessary to adjudicate the matter. The said mistake is only typographical mistake it can be corrected by way of amendment. Even though evidence of plaintiff side is already completed but the proposed amendment neither change the nature of suit nor rise new cause of action. Hence, the plaintiff has made out sufficient ground to allow the application. To avoid the multiplicity of

proceedings and in the interest of justice. I find no impediment to allow the application. Hence I proceed to pass the following:-

Hence, my answer to the above point no.1 to 3 are in the ***Negative***.

7. Point No.2:- In view of above said reasons while answering point No.1 to 3, I proceed to pass the following;

// ORDER //

Application U/o 8 rule 1(a) of CPC filed by the plaintiff is hereby allowed on payment of cost of Rs.250/-Plaintiff is permitted amend the plaint schedule as prayed with the condition that the plaintiff shall amend his plaint and to furnish amendment plaint with in 14 days from this order in the office.

For additional written statement if any.

Call on:

(Smt.Deepa)
Addl. Civil Judge & J.M.F.C,
Arasikere.

-:: ORDERS ON PRELIMINARY ISSUE

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Learned counsel for the defendant submitted that this court has not got pecuniary jurisdiction to entertain the suit. Further argued that even though in this point issue has been framed but the same is not considered as preliminary issue. and filed document of sub-registrar to show the value of the property as on date of suit. Hence, prayed to consider the Issue No. 7 as preliminary issue and prayed to pass an order in this regard.

2. On the other hand learned counsel the plaintiff argued that the documents filed by the defendant is only calculation of sub-registrar and not present market value. The defendant is not produced any sale deeds of adjacent site of the suit schedule property. The jurisdiction point raised by the defendant is not purely point of law but it is mixed point of law and fact. Hence on the basis of sub-registrar valuation, the court cannot come to conclusion on pecuniary jurisdiction.

On the other hand learned counsel for the defendant argued that suit schedule property is vacant site which is situated behind mini vidhana soudha within the jurisdiction of Town municipality. Since the said property is in the Arasikere town as per sub-registrar value the market value of the suit property is Rs.720/- per square feet. Hence the property of the plaintiff is about 12,740 square feet. Hence,

the market value of the said property of more than 85,00,000/- but the plaintiff intentionally not valued the suit schedule property properly. Thus, prayed to reject the application.

4. Heard, Both sides. Perused material on record. On perusal following points arise for my consideration:-

-.POINTS:-

3. Whether the defendant is made out sufficient ground that this court is not having pecuniary jurisdiction to entertain the suit?

4. What order?

5. My answer to the above points are as follows:-

Point No.1:- In the ***Affirmative***

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

-.REASONS:-

7. Point No.1:-

The plaintiff has filed the suit praying for grant of declaration, mandatory injunction and also for permanent injunction in respect of suit schedule property. Suit schedule property is a site situated behind mini vidhana soudha, Arasikere Taluk.

It is vehemently argued by the learned counsel for the defendant that the market value of the suit schedule property is more than 1 crore. The plaintiff ought have valued the suit schedule property on the present market value without doing so he has valued at Rs.75,000/- for

jurisdiction. On the basis of sub registrar value the market value of the suit property is 85 lakhs. Hence, this court is not having pecuniary jurisdiction to entertain the suit. Further argued that the same contention has been taken in the written statement also and the defendant has filed memo with one document of sub registrar office, Arasikere to show that market value of the suit property situated behind Mini vidhana soudha as on date of suit. On the other hand learned counsel for the plaintiff strenuously argued that the said point is mixed possession of facts and law and same is to be considered on merits only. At this juncture it cannot held that this court has not having pecuniary jurisdiction. Value of the sub registrar office cannot be considered of real valuation. Hence, prayed to dismiss of the application.

In view of rival contention I have careful perused plaint written statement application and objection. On perusal of written statement same contention has been taken by defendant and my learned predecessor has framed issue in this regard. Further I have perused plaint where in the plaintiff has stated that stating in para no.8 that "The defendants said to have been purchased site no.38, measuring east and west 30 feet, north south 40 feet and same is shown as the suit schedule property. Further I have perused document issued by sub-registrar, Arasikere which is produced by the defendant. On perusal, it appears that during the year 2015-16 the market value of the property

which is situated behind Mini vidhana soudha in Highway Rs.1,248/- per square meter, main road Rs.740/- per square meter, cross road Rs.522/- per square meter. On perusal of schedule of plaint and also documents produced by the plaintiff there is no recital regarding main road or cross road but it is mentioned as behind Mini Vidhana Soudha. Hence, if we considered as the said property is situated in the cross of behind Mini vidhana soudha then the market value of the suit schedule property is Rs.522/- per square meter as on the date of suit. The plaintiff claiming delectation of 30x40 feet vacant site. $30 \times 40 = 1,200$.

$1,200 \times 522 = 6,26,400$. Hence at the time of filing suit market value of suit property is Rs.6,26,400/- which is exceeding to the pecuniary jurisdiction of this court. As per sec 9 A of CPC is made clear that an objection to the jurisdiction to court to entertain the suit is taken by a party to the suit, the court has to proceed to determine the issue of jurisdiction to hear the same as a preliminary issue. The issue of pecuniary jurisdiction purely question of law and it is not mixed question of law and facts as stated by the plaintiff. It is mandatory for the court to deal with the issue of the jurisdiction framed by the court as preliminary issue. Even though in the above suit the evidence of plaintiff side is already completed but it is open to the court to decide the same at any stage of suit when it prima facia appears that this court as not having pecuniary jurisdiction to entertain the suit. On perusal of documents produced by the plaintiff it clear that this court has not having pecuniary jurisdiction

to decide the suit. Accordingly I proceed to pass the following:-

// ORDER //

Acting Under order 7 rule 10 of CPC the plaintiff is return to plaintiff to file proper jurisdiction to court since this court has not got jurisdiction entertain the suit .

The plaintiff hereby by directed to take the plaint in the office within 7 days from the order and present the same before jurisdictional court within 30 days from this order.

(Smt.Deepa)
Addl. Civil Judge & J.M.F.C,
Arasikere.