Call on for orders by 20.11.2021

Senior Civil Judge & JMFC,
Belur

Call on for orders by 01.12.2021

Senior Civil Judge & JMFC,
Belur

ORDER ON IA No.IV

This is an application filed by the defendant No.4 by placing reliance on the provision under Order VII Rule 11(B) CPC seeking rejection of plaint. It is contended that the suit property has been purchased on 27.01.2007 for a sum of Rs.4,11,000/-. The plaintiff has challenged the said sale deed, but sufficient court fee is not paid on the said prayer. The plaintiff has not valued the suit property properly and not paid correct court fee thereon. The plaintiff has assessed the market value of suit property for a sum of Rs.9,52,000/-, but she has not paid proper court fee. Accordingly it is prayer to reject the plaint.

On the other hand, the plaintiff filed objection and prayed to reject the application as not sustainable. It is contended that the applicant has come up with present application with intention to drag on the proceeding. The her share value assessed more than 5,00,000/- and thereby this court got jurisdiction to entertain the suit. The market value of the subject matter more than value compare to sale transaction and she has filed necessary court fee by following the provision as contemplated under Section 35 (2) of Karnatka Court Fee and Suit Valuation Act. They sought declaration that the sale deed dated:21.07.2007 is not binding on them. Then the provision under section 24(D) of Karnataka Court Fee and Suit Valuation Act is not applicable to present context. Most importantly the prayer made is not attract with any adveleram court fee. Accordingly it is prayed to dismiss the application on cost.

Heard both side towards present contingency and perused the materials on record. The plaintiffs have field the present suit for the relief of partition in separate possession by seeking 2/3rd share in the subject matter of the suit and further sought declaratory relief against the sale deed dated:27.01.2007 as not null and void and not binding on them and also sought permanent injunction and mesne profit. For the present context it is necessary to considered that the plaintiffs have impleaded land in Sy.No.158 measuring 3 acre 20 gunta of Battnalli Village as subject matter of the suit and they have supplied the valuation slip, therein they have contended that for the purpose of jurisdiction the relief No.1 valued at 9,50,000/- and paid court fee of Rs.200/- by placing reliance on the provision under Section 35(2) of Karnatka Court Fee and Suit Valuation Act. In further the plaintiffs have assessed the suit in respect of relief No.2 declaration under Section 24(D) of Karnatka Court Fee and Suit Valuation Act and relief value shown at 1,000/- and paid court fee of Rs.25/- thereon. In further the plaintiffs have assessed the suit towards permanent injunction sought under Section 26(C) of Karnatka Court Fee and Suit Valuation Act and paid an amount of Rs.25/- by assessing relief value at Rs.1,000/-. In totally the plaintiffs have paid an amount of Rs.250/- as court fee. The plaintiffs have questioned the legitimacy of sale deed date:27.01.2007 as the same is not binding on them. The style of relief sought is not equated with cancellation of instrument which attractable with different mode of court fee. The plaintiffs have sought partition and separate possession as main relief and they sought declaration on the sale deed as not binding on their share in ancillary column. It is contention of the defendants that the market value of the subject matter as assessed in sale deed dated:27.01.2007 was Rs.4,11,000/-. The present suit was filed in the year 2019 after lapse of 12 years and assessed the market value of subject matter at more than 4,11,000/- and the share value of plaintiffs assessed at 9,52,000/-. Thereby it shows that at no stretch of imagination, the plaintiffs have under valued the relief sought and market value of their share claimed. On careful considered the contingency raised by the defendant No.4 on harmonious constructions of law enumerated under Section 11 CPC with under Order VII Rule 11(B) CPC, it is very clear that the court fee aspect cannot be considered as preliminary issue. Since the expression used in provision under Section 11 of Karnatka Court Fee and Suit Valuation Act is only directory and not mandatory. For the present context it is benefit to rely decision reported in AIR 2019 KAR 47 ::2018 (4) AKR 818 , Karnataka High Court (**Venkatesh R Desai vs Smt.Pushpa Hosmani)** wherein it was held that;

> Karnataka Court-fees and Suits Valuation Act (16 of 1958) , S.11(2), S.11(5)— Civil P. C. (5 of 1908) , O.14 R.2 — Decision as to proper fee in Courts - Expression 'shall' as used in S. 11(2) and (5) - Is required to be construed as directory and not mandatory - Issue concerning valuation and/or Court-fees raised by defendant - Same is not required to be tried as preliminary issue before taking evidence on other issues - But could be tried as preliminary issue if it relates to jurisdiction. Interpretation of Statues - Use of word 'shall' - Directory or mandatory.ILR 2009 Kar 887, 2015 (3) AIR Kar R 706, 2015 (4) Kar LJ 256, Overruled. The expression 'shall' as used in sub-sections (2) and (5) of S. 11 of the Act of 1958 is required to be construed as directory in nature and not mandatory. In other words, the determination of the questions envisaged by sub-sections (2) and (5) of S.

> 11 of the Act of 1958 may be undertaken by the Court before the evidence is recorded on the merits of the claim in its discretion; and such a discretion would obviously be conditioned by the requirements of R. 2 of O. 14, CPC if the Court finds that the question of valuation and/or court fees as raised by the defendant relates to the jurisdiction of the Court, it may try such an issue first and before the evidence is recorded on the merits of the claim;

In view of guideline laid down in the aforesaid principles of law the court fee aspect to be considered on merit of suit by framing necessary in this regard and after receiving materials on full-fledged trial. Therefore the prayer made by the applicant through the present application is not sustainable in the eye of law. I proceed to pass the following.

ORDER

The IA No.IV filed by the defendant No.4 under Order VII Rule 11(B) CPC is hereby dismissed.

The parties are directed to bear their own cost and as such no order as to cost.

Posted for Issues.

Call on by 23-12-2021.

Senior Civil Judge & JMFC,

Belur