

ORDER ON I.A. No.3

Counsel for defendant No.3 files this IA praying to dismiss the suit as court fee paid by the plaintiff is not proper the 3rd defendant in his affidavit annexed to the IA No.3 contended that plaintiff filed this suit for relief of declaration and consequential relief of injunction restraining defendant from interfering defendant with peaceful possession and enjoyment of schedule property and paid court fee of Rs.144/- and 25 and contended that schedule property have not been phoded they are still united and further contended that plaintiff built house in schedule property and not paid court fee on it. Defendant contended since schedule property have not been phoded not separately assessed hence plaintiff has to pay court fee in as per Sec.7(d) of Karnataka Court Fee and Suit Valuation Act 1958 and prayed to dismiss the suit.

2. Per contra plaintiff filed detailed objections contending that the suit is one for declaration and injunction and subject matter of suit is agriculture land court fee paid by plaintiff is absolutely correct and proper in view of Sec.7 (2) and 24(b) of Karnataka Court Fee and Suit Valuation Act 1958. Further contended that house properly lies in schedule property and there is no prayer in respect of house property and prayed to reject the IA No.3. and argued that no requirement of paying court fee against house property

3. Heard both plaintiff and defendant on the IA No.3 perused the documents accordingly following point arise for my consideration.

1. Whether defendant No.1 made out grounds to allow this application?

2. What Order ?

4. On hearing the arguments of both counsels and perusal for the documents and affidavit annexed to it and objections to the same I answer the above point as under:

Point No.1: In the Partly Affirmative,

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

:: REASONS ::

5. Point No.1: This is the suit filed by the plaintiff for the relief of declaration and injunction and subject matter of the suit is agriculture land bearing S.No.296/23A of Hettur measuring 1 acre 25 gunta and plaintiff has paid court fee of Rs.165/-(One Hundred and Sixty Five only) for both relief. Further plaintiff contended that subject matter is valued for Rs.4,87,500/-(Four Lakh Eighty Seven Thousand and Five Hundred only) for the purpose of pecuniary jurisdiction of the suit and revenue payable against schedule property is 28.89 for 4 acre 10 gunta and for 1 acre 25 gunta its Rs.11.50(Eleven Rupees Fifty Paice only) and 12.5 times of 11.50 is Rs.143.75 (One Hundred and Forty Three Rupees and Seventy Five

only) and which is for relief of declaration and for relief of injunction Rs.25 in total plaintiff paid Rs.165/- (One Sixty Five only).

6. The core contention of defendant No.3 is that since the schedule property of plaintiff not separately assessed hence plaintiff has to pay court fee on market value of the land in view of Sec.7(d) of Karnataka Court Fee and Suit Valuation Act 1958 for purpose of nicety the Sec.7(d) of Karnataka Court Fee and Suit Valuation Act 1958 is extracted as below;

7. Determination of market value: (1) *Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.*

(2) *The market value of land in suits falling under section 24(a), 24(b), 26(a), 27, 28, 29, 31, 35(1), 35(2), 35(3), 36, 38, 39 or 45 shall be deemed to be-*

(a) *Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue and such revenue is permanently settled-twenty-five times the revenue so payable:*

(b) *Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid, and such revenue is settled, but not permanently-twelve and a half times the revenue so payable;*

(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, fifteen times the net profits if any from the land during the year before the date of presenting the plaint or thirty times the revenue payable on the same extent of similar land in the neighborhood, whichever is lower;

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned or the land is a garden or the land is a house site whether assessed to full revenue or not, or is land not falling within the foregoing description-the market value of the land.

7. In the instant suit plaintiff has claimed declaration against land measuring 1 acre 25 gunta in S.No.296/23A of Hettur Village and RTC has mention the name of plaintiff No.1 against 1 acre 25 gunta hence the court fee shall be payable U/s7(d) of Karnataka Court Fee and Suit Valuation Act 1958 The Sec.7(d) of Karnataka Suit Valuation and Court Fee Act is Cristal clear that when land forms part of on estate paying revenue to Government and if not defenate share and not separately assessed and land not falling within fore going description, fee shall be paid on market value in the instant suit plaintiff has sought declaration of land measuring 1 acre 25 gunta which is the part of land bearing S.No.296/23A measuring 4 acre 10 gunta, hence court fee paid by plaintiff against agriculture land is proper. Further its admitted fact that plaintiff holds residential property wihtin schedule property and its evident in the tax register extract produced by plaintiff itself, on perusal of

the same it is seen that plaintiff Smt.Shobhavati possess dwelling house bearing No.112 and plaintiff pays tax of Rs.268 against the said house. Further Hethur Gramapanchayat Development Officer also certified that plaintiff holds Residential property in A Block of Hethur Village and plaintiff in the prayer para has prayed that plaintiff be declared as owner of schedule property and schedule property includes house property of plaintiff its well settled law that once agriculture property loses its character party can't take the shelter U/s 7(2) to (d). Plaintiff has to pay the court fee on market value of dwelling house located within agriculture land more fully described as schedule property. Hence I answer the point No 1 in the **Partly Affirmative**.

8. Point No.2: In view of discussion and conclusion arrived at Point No. 1 I proceed to pass the following:

ORDER

**I.A.No.3 filed by plaintiff is U/o.7 Rule
11 is hereby allowed in part.**

**Consequently plaintiff is directed to
pay court fee on residential property.**

Call on: 07-09-2021

(Hareesh Jadhav)

**Addl Civil Judge and JMFC.,
Sakaleshpur.**

