

IN THE COURT OF THE CIVIL JUDGE AND JMFC,
AT HANGAL

Present: Smt. Fakirawwa.Kelageri, B.A.,LL.B.,
Civil Judge and JMFC., Hangal.

O.S. No.275/2015

Dated this the 17th day of January 2020

Plaintiffs : 1. Smt.Ratnavva W/o Fakkirappa Chataki,
Age: 68 years, Occ: Household work,
R/o Sammasagi, Tq: Hangal, Dist: Haveri
and others.

-VS-

Defendants: 1) Smt.Fakkiravva W/o Basappa Koodlanavar
Age: 55 years, Occ: Agriculturist,
R/o Baichavalli, Tq: Hangal, Dist: Haveri
and others.

INTERLOCUTORY APPLICATION NO.II

Applicant/s: 1) Mailareppa Puttappa Gudikeri and others.
(Pltf.No.2)

-VS-

Opponent/s: 1) Smt.Fakkiravva W/o Basappa Koodlanavar
(Deft.No.1) and others.

ORDERS ON I.A NO.II FILED UNDER ORDER 47 RULE 1(B)
OF C.P.C :

The applicant/plaintiff No.2 has filed this application seeking review of order dated 19.09.2018.

2. In the affidavit, in support of the application, it is requesting the court to review the order passed on

19-09-2018 based on the observation made/opined by the court on 22-10-2016 and prayed to consider that, the court fee paid by them is correct as per Sec.47 of KCF and SV Act., and accordingly he prays to review the said order dated 19.09.2018.

3. To the above application, other side counsel for the defendants submitted same may be allowed.

4. Heard arguments on both sides and perused the records.

5. The following point arises for my consideration.

“Whether applicant has made out grounds to allow the application?”

6. My finding on the above point is in the **Affirmative** for the following.

REASONS

7. I have perused the application, objection and other materials available on record. It is stated in the affidavit filed in support of application that, they have filed suit for fixation of the boundaries of the suit property as per the measurement mentioned in the sale deed, no specific provision is available in KCF and SV Act, to pay the court fee on the relief sought in the plaint. In the instant suit, the value of the suit property is above Rs.10,000/-, as such they paid court as per the provision of Sec.47 of KCF and SV Act, which is proper and correct. Further stated that, no relief of declaration is prayed in the

instant suit, if declaration is sought, Sec.24 of KCF and SV Act, is come into play, but here no declaration decree is sought. Hence prayed to review the order passed on 19-09-2018 based on the observation made/opined by the court on 22-10-2016 and prayed to consider that, the court fee paid by them is correct as per Sec.47 of KCF and SV Act.

8. On perusal of the pleadings, it could be seen that, the plaintiffs have filed this suit seeking the relief of fixation of the boundaries of the suit property as per the measurement mentioned in the sale deed and also prayer of plaint Column indicates that the plaintiffs have paid the court as per Sec.47 and Sec.26(a)(1) of KCF and SV Act., therefore this court has opined that, the plaintiffs have to pay the court fee as per Sec.26(a)(1) of KCF and SV Act. Based on earlier order this court has not opined regarding court fee.

9. Admittedly the plaintiffs have not sought for declaration to declare that, they are the owners of the suit property. In the present suit the plaintiffs have only sought for ancillary reliefs as mentioned in the prayer column, but there is no main relief in the plaint. No doubt there is no specific provision is available in KCF and SV Act to pay the court fee on the relief sought in the plaint. As such the court fee paid by the plaintiffs in this suit is proper and correct. Accordingly I answer the above point in the Affirmative and I proceed to pass the following.

ORDER

I.A.No.II filed by the plaintiff No.2 under Order 47 Rule 1(b) of C.P.C is hereby allowed.

The court fee paid by the plaintiffs is proper and correct as per Sec.47 of KCF and SV Act.

For hearing on maintainability of suit.

Call on 23-01-2020.

(Dictated to the stenographer directly on Computer, corrected and initialed by me and then pronounced by me in the open court on this the 17th day of January, 2020).

(Smt.Fakirawwa Kelageri)
Civil Judge and JMFC., Hangal.