

**IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.**

**: PRESENT:**

**MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M**  
CIVIL JUDGE & JMFC., SHIGGAON.

**ORIGINAL SUIT No.179/2016**

**DATED ON THIS THE 3<sup>rd</sup> DAY OF NOVEMBER-2022**

- Plaintiffs :**
1. Smt.Basavantevva @ Ningavva  
w/o Paramanna Goudoor  
Aged about 47 years, Occ: Agriculture  
& Household,  
R/o Chandapur, Now Camp  
At House No.EWS-72, Gandhi Nagar  
Gokul road, Hubli,  
Dist: Dharwad
  2. Ku. Abhishek  
s/o Prakash Galemmanavar  
Aged about 10 years, Since Minor,  
rep. By his N/M and M/G: Plaintiff No.4
  - 3.Ku. Akash s/o Prakash Galemmanavar  
Aged about 07 years, Since Minor,  
rep. By his N/M and M/G: Plaintiff No.4
  4. Smt.Nirmala  
w/o Prakash Galemmanavar  
Aged about 33 years, Occ: Agriculture  
R/o Chandapur, Tq: Shiggaon,  
Dist: Haveri

***[By Sri.N.N.P., Advocate]***

**V/s**

**Defendants:** 1.Sri. Gadigeppa  
s/o Gurushantappa Galemmanavar  
(Since deceased, rep. By his Lrs)

1(A)Smt. Vijay w/o Gadigeppa  
Galemmanavar  
Aged about 55 years,  
Occ: Household work,  
R/o Chandapur, Tq: Shiggaon,  
Dist: Haveri

1(B) Naveen s/o Gadigeppa  
Galemmanavar  
Aged about 28 years,  
Occ: Private work,  
R/o Chandapur, Tq: Shiggaon  
Dist: Haveri

***[By Sri. R.N.H/M.G.N., Advocates]***

**PARTIES TO I.A.No.VII**

**Applicants :** 1.Sri. Gadigeppa  
(Defendants) s/o Gurushantappa Galemmanavar  
(Since deceased, rep. By his Lrs)

1(A)Smt. Vijay w/o Gadigeppa  
Galemmanavar  
Aged about 55 years,  
Occ: Household work,

R/o Chandapur, Tq: Shiggaon,  
Dist: Haveri

1(B) Naveen s/o Gadigeppa  
Galemmanavar  
Aged about 28 years,  
Occ: Private work,  
R/o Chandapur, Tq: Shiggaon  
Dist: Haveri

**V/s**

- Opponents :** 1. Smt.Basavantevva @ Ningavva  
(Plaintiffs) w/o Paramanna Goudoor  
Aged about 47 years, Occ: Agriculture  
& Household,  
R/o Chandapur, Now Camp  
At House No.EWS-72, Gandhi Nagar  
Gokul road, Hubli,  
Dist: Dharwad
2. Ku. Abhishek  
s/o Prakash Galemmanavar  
Aged about 10 years, Since Minor,  
rep. By his N/M and M/G: Plaintiff No.4
- 3.Ku. Akash s/o Prakash Galemmanavar  
Aged about 07 years, Since Minor,  
rep. By his N/M and M/G: Plaintiff No.4
4. Smt.Nirmala  
w/o Prakash Galemmanavar  
Aged about 33 years, Occ: Agriculture  
R/o Chandapur, Tq: Shiggaon,  
Dist: Haveri

**ORDER ON I. A. No.VII**

Defendants counsel has filed IA.No.VII under Order XIV Rule 5 and 2(2) r/w Section 151 of CPC praying this Court to frame additional issue and to hear as preliminary issue.

**2.** Defendant has filed an affidavit accompanying the said IA averring that, this Court has framed 7 issues and the plaintiff suit is hit by pecuniary jurisdiction and the valuation made at para no.13 of the plaint is completely wrong as the suit property is having value of more than Rs.80 lakh and each of the suit property is worth of more than Rs.10 lakh and therefore the valuation made by the plaintiff is wrong and not proper and same has been contended at para no.13 and 14 of the written statement. If the application is allowed no prejudice will be caused to the other side moreover, it will help in adjudicating the matter completely and if the application is not allowed then, he will be put to great hardship and said contention is raised in para no. 13 and 14 of his written statement and thereby, it is necessary to frame additional issue and hence pray to allow IA.VII.

**3.** Plaintiff has filed objection to IA.No.VII interalia denying the defendants averment and contends that, though the defendant has sought for framing of additional issue on pecuniary jurisdiction of this Court stating that the market

value of the suit property is more than Rs.80 lakh they have failed to furnish the necessary documents and further the market value and the jurisdiction of the Court has to be determined on the basis of plaint averments and not on the defense set up by the defendants. Previously upon service of notice the defendant Gadigeppa has been placed *exparte* and accordingly after the trial the matter has been disposed off by decreeing suit and thereby, got allotted 1/3 share to the plaintiff Basavantevva on 18.04.2017 and then, he preferred an application before the Hon'ble Senior Civil Judge and JMFC, Shiggaon in RA.120/2017 which came to be disposed off on 03.09.2019 and then, the present application is filed on 17.01.2020 only one defendant is on record as such ,the conduct of the party establish that ,he is intending to protract the matter on one or the other ground by taking disadvantage of the procedure and hence, pray the Court to reject the said IA.

**4.** Heard both and perused the materials on record.

**5.** On perusal the following points arise for my consideration.

**POINTS**

1. Whether the defendants have made out the ground to allow IA.No.VII?
2. What order ?

6. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are here under:-

*Points No.1 : In the Affirmative*

*Points No.2 : As per final order  
for the following:*

### **REASONS**

7. **Points No.1:-** Plaintiff has filed this suit against the defendants seeking relief of partition and separate possession and the defendants have filed the present application praying this Court to frame additional issue on pecuniary jurisdiction of this Court. On perusal of the written statement of the defendant it appears that, at para no.14 the defendant has taken up the contention that, the valuation of the suit property is more than Rs.80 lakh and as the plaintiff is claiming 1/3rd share in the suit property it will be up to 26.66 lakh and thereby, this Court has no pecuniary jurisdiction to entertain this suit and thereby it can be seen that, the defendant has questioned the pecuniary jurisdiction of this Court in the written statement itself and according to Order XIV of CPC., as the issues ought to be based on the

pleadings of the parties it is necessary in the present suit to frame issue on the pecuniary jurisdiction. Whether the valuation of the suit is more than Rs.80 lakh and 1/3rd share of the plaintiff is 26.66 lakh is the matter that can be decided during the evidence and only after framing issue on it. Hence, considering the discussion made above Point No.1 is answered in Affirmative.

**8. Point No.2 :-** In view of the discussion made above, I proceed to pass the following:

**ORDER**

*IA.No.VII filed by the defendants under  
Order 14 Rule 5 and 2(2) r/w Section 151 of CPC.,  
is hereby allowed with cost of Rs.200/-.*

**(NASRAT MUKHTAR AHMED KHAN)  
CIVIL JUDGE & JMFC.,  
SHIGGAON.**