

IN THE COURT OF THE SENIOR CIVIL JUDGE, CHITTAPUR

AT: CHITTAPUR

ORIGINAL SUIT No.133/2011

Present: Sri D.P.Nayak,
B.A. LL.B.,(Spl.),
Senior Civil Judge & JMFC.,
Chittapur.

Dated: 5th day of June 2013

1. Jagadeshwar S/o Sharnayya Kalal (Ilger) Age; 51 Years,
Occupation: Agriculture, Resident of Huda-B, Taluka Sedam, Now
residing at Bantal District Ranga Reddy (A.P)

.... Plaintiff.

(By Smt. M.V. Ladda, Advocate)

-Versus-

1. Sabanna S/o Mahadevappa, Age: Major, Occ: Agriculture.
 2. Tippanna S/o Mahadevappa, Age: Major, Occupation:
Agriculture.
 3. Irranna S/o Sabanna, Age: Major, Occupation: Agriculture.
 4. Malshettappa S/o Subashchandra, Age: Major, Occupation:
Agriculture.
- All Residents of Diggaon, Taluka Chittapur.
5. M/s Rajeshree Cement, A Unit of Grasium Industries
Limited, Aditya Nagar, Malkhed Road, Sedam.

.... Defendants.

(D.1 to 4 by Sri T.V.P. Advocate)
(D.5 by Sri B.V.P/M.N. Advocates).

ORDER ON I.A.No.1 and 2

1. The defendant no.5 has filed the I.A.No.1 under Order 14 Rule-5 read
with Section 151 of C.P.C. requesting the court to deletion of Issue No.3
and 4 and framed the proposed Issues as mentioned in the application.

2. The defendant no.5 has also filed the I.A.No.2 Under Section 11 (2) of K.C.F. & S.V. Act read with Order 14 Rule-2 of C.P.C. requesting the court to frame additional issue on the point of court fee.
3. In support of the application, the defendant no.5 has filed his sworn affidavit stating that, the plaintiff who has filed this suit has not stated in his plaint that he has been dispossessed by the defendants no.1 to 4 but, the court has not framed the Issue with regard to the adverse possession. In the sworn affidavit it is also mentioned that the court has framed the Issue No.1 lying the burden on the plaintiff to prove that, he is the absolute owner, if he succeeds in proving the Issue No.1 then the question of proving that, the plaintiff is not the absolute owner and in possession and enjoyment of the suit property do not arise at all for the defendant no.5. Therefore, both the issues are not necessary in deciding the matter. The defendant no.5 has taken specific plea in his written statement Para No.7 of further pleas to the effect that, the vendors of the defendant no.5 has perfected their title to the suit property by way of adverse possession, but the court has not framed the issue on this point and there is also specific plea taken by the defendant no.5 in the written statement with regard to the valuation of the suit and payment of court fee. Therefore, framing of additional Issues are necessary to decide the matter which in controversy between the parties. Hence, requested the court to delete the Issues as prayed in the application.
4. Further, the defendant no.5 in his sworn affidavit accompanied with the I.A.No.2 has stated that, the father of the plaintiff left the village to Andhra Pradesh when the plaintiff was 13 years old boy. This suit is filed

- in the year 2011, therefore it is crystal clear that, the suit filed by the plaintiff is barred by time. Therefore, the law of limitation on which the Issue No.6 is framed is to be treated as preliminary issue and heard first before proceed with the trial of the suit. Hence, requested the court to treat the Issue No.6 as preliminary issue in the interest of justice.
5. On the other hand, the plaintiff has filed his objections contending that, the question of limitation is a mixed question of law and it cannot be decided without recording the evidence. The say of the defendant no.5 that, the plaintiff has admitted and pleaded in the plaint that, his father the village when he was 13 years old boy and it is also admitted that, the suit is filed in the year 2011, the plaintiff has no knowledge of the suit land his father being the owner and possessor of the suit land and taking undue advantage of the absence of the plaintiff's father from the village, the defendants have got mutated their names without valid transfer. Since he came to know about this, he has filed the suit. Hence, the Issue No.6 can be answered only after recording the evidence. Hence, he prayed to reject the application. But, here the plaintiff has not filed specific objections for rejection of the I.A.No.1.
 6. Heard the arguments on both the sides on I.A.No.1 and 2. On perusing the contents of I.A.No.1 and 2, the sworn affidavit filed by the defendant no.5 accompanying to both the applications and objections filed by the plaintiff, the following Points arises for my consideration.

POINTS

1. Whether the I.A.No.1 filed by the defendant no.5 is deserves to be allowed as prayed for?

2. Whether the I.A.No.2 filed by the defendant no.5 is deserves to be allowed for treating the Issue No.6 as preliminary issue?

3. What Order?

7. My answers to the above Points are as under;

Point No.1: Partly in the Affirmative.

Point No.2: Negative.

Point No.3: As per final order, for the following;

REASONS

8. **Point No.1:-** Here, the defendant no.5 has filed the I.A.No.1 for framing of additional issue with regard to the adverse possession and also for framing the issue with regard to the valuation made by the plaintiff and court fee paid by him for the reliefs sought under Section KCF & S.V. Act is insufficient. Here, this suit is filed by the plaintiff for the relief of declaration, recovery of possession and rectification of the record of rights and also declaring the sale deed dated 15-03-2010 as null and void. Here, the defendant no.5 has filed his separate written statement and in Para No.3 of his written statement in further pleas he took a contention that, he has purchased the land from the defendant no.1 to 4 for valuable consideration of Rs.64,13,750/- under a registered sale deed. Under such circumstances it is the bounden duty of the defendant no.5 to prove that, he is a bona-fide purchaser of the suit land from the defendant no.1 to 4. Hence, claiming of adverse possession sought for by the defendant no.5 by filing the I.A.No.1 does not arise.

9. Here, the suit is valued under Section 7 (2) (b) of K.C.F. & S.V. Act and court fee paid is Rs.75/- Here, at initial stage, when the suit is filed the relief sought for declaration and recovery of possession and suit is

valued at Rs.64,13,750/-and court fee paid is Rs.25/- as per Section 24 (a) of K.C.F. & S.V. Act and then the prayer column was amended and another additional relief sought for declaring the sale deed executed by the defendant no.1 to 4 in favour of defendant no.5 as null and void and that relief is valued at Rs.1,000/- and court fee of Rs.25/- is paid under Section 24 (d) of K.C.F. & S.V. Act. Here, in the written statement filed by the defendant no.5 at Para No.10 took a specific contention that, the valuation of the suit and payment of court fee at Rs.25/- by the plaintiff under Section 24 (a) of K.C.F & S.V. Act is not correct and sufficient. Further, the plaintiff has claimed the relief of mesne profits of Rs.50,000/- per annum from the date of suit. Under such circumstances, when the plaintiff himself has determined the mesne profits of Rs.50,000/- per annum then he shall pay the court fee of Rs.3,400/- for the said relief. Hence, requested the court to frame additional issue on court fee which is paid insufficient and same is to be treated as preliminary issue. Here, as per Section 11 of K.C.F. & S.V. Act in every suit instituted in any court, the court shall, before ordering the plaint to be register, decide on the materials. Allegations contended in the plaint and on the materials contended in the statement, if any, filed under Section 10, proper fee payable thereon the decision being however subject to review, further review and correction in the manner satisfied in the succeeding sub-section. As per Section 11 (3) of K.C.F. & S.V. Act in the written statement if the defendant has taken the contention with regard to the subject-matter of the suit which is not been properly valued or the court fee paid is insufficient then all questions arising on

such pleas shall be heard and decide before evidence is recorded. Therefore, if the court finds that, the subject matter of the suit has not been properly valued or court fee paid is not sufficient, the court shall follow the procedure laid in sub-section (2). Here, as per Section 24 (a) suit for declaration and possession of law assessed falls under this section and market value is to be ascertained as per Section 7 (2) (b). So, here accordingly the court fee is paid at Rs.75/- is correct. But, when the plaintiff sought the relief of declaration, declaring that, the sale deed dated 15-03-2010 is null and void then the court fee has to be paid under Section 38 of KCF & SV Act. Therefore, the general provisions of Section 24 (d) of the Act is not applicable with regard to the cancellation or declaring the sale deed as null and void. Under such circumstances, the plaintiff has to pay the court fee on the actual market value of the suit property as on the date of institution of the suit but not on the consideration amount mentioned in the sale deed. Because, as per the contentions of the plaintiff the suit property has been purchased in the year 2010 by the defendant no.5 from the defendant no.1 to 4. Under such circumstances there could have been improvement taken by the defendant no.5. Therefore, the value of the property means including improvement should be basis for determining the court fee. Further, no such issue is framed with regard to the court paid is insufficient.

10. Here, in support of application, the learned counsel for the defendant no.5 has relied on a decision of our own Hon'ble High Court of Karnataka reported in I.L.R.1996 Karnataka Page No.3660. In the reported decision, the Hon'ble High Court of Karnataka held that, the trial court is required

first decide the issue as to, whether the court fee paid is proper or not. Further, held that, the revision preferred is allowed and impugned order of the court below is set aside with a direction to first try the preliminary issue and then proceed with the trial of the suit in the light of its decision on those issues.

11. The learned counsel for the defendant no.5 has also relied on a decision reported in I.L.R.2010 Karnataka Page No.3018 wherein the Hon'ble High Court of Karnataka held that, when the defendant took plea regarding insufficient court paid then the court to try the question regarding the valuation of the subject matter and payment of court fee as preliminary issue. Further observed that, the court cannot skip the issue of court fee and proceed to record the evidence on merits of the case. Therefore, the issue regarding the valuation of the suit and payment of court fee may be tried as preliminary issue, if necessary after recording the evidence before the evidence is recorded on the merits of the case. Further, the Hon'ble High Court of Karnataka has observed as per Section 11 (2) of KCF & SV Act which calls for determination for the court fee payable after filing of the written statement because when the KCF & SV Act is a statutory Act then the court has to give first preference for deciding the court fee which is inadequate. Therefore, observation made in the above reported decisions are rightly applicable because the court fee paid by the plaintiff on the relief of declaration of sale deed as null and void and also mesne profits is insufficient. Hence, I answer the Point No.1 partly in the affirmative and additional issue is framed as under;

"Whether the court fee paid by the plaintiff on the reliefs sought for under Section 24 (a) and (d) of

KCF & SV Act as valued in the valuation slip is insufficient?

12. **Point No.2:-** Here, the defendant no.5 has filed the I.A.No.2 as per the averments made at Para No.9 of further plea of the written statement with regard to adverse possession. But, here as contended in the objections filed by the plaintiff the question of law on limitation is a mixed question of law and facts. Hence, it can be decided only after recording the evidence on merits. Further, when the defendant no.5 himself pleaded in the written statement that, he has purchased the landed property from the defendant no.1 to 4 under a registered sale deed, under such circumstances it is the burden lies on the defendant no.5 as to prove that, he is a bona-fide purchaser of the suit land from the defendant no.1 to 4. Therefore, the question of framing issue on limitation point has to be treated as preliminary issue does not arise for consideration. Therefore, the I.A.No.2 is not sustainable in view of proper objections took by the plaintiff. Hence, I answer the Point No.2 in the Negative.
13. **Point No.3:-** For the foregoing reasons and discussion made on the Point No.1 and 2, I pass the following;

O R D E R

The I.A.No.1 filed by the defendant no.5 is partly allowed.

The I.A.No.2 filed by the defendant for framing additional issue on the point of limitation to be treated as preliminary issue is hereby rejected.

(Dictated to the Stenographer directly on the computer, corrected by me, then pronounced in the open court on 5th day of June 2013)

(D.P. Nayak)
Senior Civil Judge, Chittapur.