

IN THE COURT OF THE SENIOR CIVIL JUDGE, CHITTAPUR

AT: CHITTAPUR

ORIGINAL SUIT No.133/2011

Present: Sri M.D. Talwar, B.A.LL.B.,(Spl.),
Senior Civil Judge, Chittapur.

Dated: 25th day of October 2016

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

... Plaintiff.

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

-Versus-

1. Sabanna S/o Mahadevappa, Age: Major, Occupation: Agriculture.
2. Tippanna S/o Mahadevappa, Age: Major, Occupation: Agriculture.
3. Iranna S/o Sabanna, Age: Major, Occupation: Agriculture.
4. Malshettappa S/o Subashchandra, Age: Major, Occupation: Agriculture.

All Residents of Diggaon, Taluka Chittapur, District Gulbarga.

5. M/s Rajeshree Cement, A unit of Grasim Industries Limited, Aditya Nagar, Malkhed Road, Sedam Taluka, District Gulbarga.

... Defendants.

(D.1 to 3 by Sri T.V.P. Advocate)

(D.4 – Ex-parte)

(D.5 by Sri M.N. Advocate)

ORDERS ON ON NON-CORRECTION OF VALUATION AND PAYMENT OF DEFICIT COURT FEE AS REQUIRED UNDER ORDER VII RULE-11 (b) OF C.P.C.

1. This court passed an order on 21-10-2016 on Preliminary Issue No.7 and Additional Issue No.1 as under:
2. The Issue No.7 and Additional Issue No.1 read as under:

Issue No.7:-

Whether the defendant no.5 proves that, the valuation made by the plaintiff in respect of suit property is not in accordance with Karnataka Court Fees and Suit Valuation Act and same is insufficient?

Addl. Issue No.1:-

Whether the court fee paid by the plaintiff on the reliefs sought for under Section 24 (a) and (d) of K.C.F. & S.V. Act as valued in the valuation slip is insufficient?

3. This is a suit filed by the plaintiff against the defendants for the relief of declaration, declaring that, the sale deed dated 10-03-2010 in favour of the defendant no.5 is null and void and not binding upon the plaintiff.
4. On the other hand, the defendant no.5 in his written statement, who contended that, the valuation as made by the plaintiff for the purpose of court fee and jurisdiction is incorrect.
5. I heard both the side arguments on Preliminary Issue No.7 and Additional Issue No.1 and perused the documents placed on record.
6. My findings on the above Issue No.7 and Additional Issue No.1 are as under:

Issue No.7: Affirmative.

Addl.Issue No.1: Negative, for the following;

REASONS

7. **Issue No.7 and Additional Issue No.1**:- In order to avoid the repetition of facts and evidence, the Issue No.7 and Additional Issue No.1 are taken together for my common discussion.
8. The plaintiff in his plaint at Para No.8, who contended that, now since the defendants are in possession of the suit land without the knowledge of plaintiff taking the benefit of the absence of the plaintiff or his father from the village and without any valid transfer was made by the plaintiff or his father, it is necessary to file the suit for declaration and recovery of possession against the defendants. That, now the defendants have sold the suit land to Rajeshree Cement Factory, Malkhed that is the defendant no.5 vide registered sale deed on 4204/2009-10 dated 10-03-2010 for a consideration amount of Rs.64,13,750/- taking the advantage of their names appearing in the R.O.R. pertaining to suit land. Hence, this sale deed is to be declared as null and void as against the right of the plaintiff as plaintiff is legally entitled as successor to original owner Sharnayya S/o Bhimayya Kalal. Hence, the plaintiff is entitled to sue and defendant is liable to answer.
9. Looking to the averments as made out in the plaint, the plaintiff in his plaint, who contended that, the registered sale deed as executed in favour of defendant no.5 is null and void and is not binding upon him. Further, claimed the possession of the suit property.
10. During the course of argument, the learned advocate for the defendant no.5, who placed his reliance on a decision reported in 2016 (1) KCCR-

773 wherein in the case of Gowramma and Others -Vs- P. Lakshinarayana wherein their Lordship held as under:

“KARNATAKA COURT-FEES AND SUITS VALUATIONS ACT, 1958-Sections 7 (b) and 24 (a)-Suit for declaration-Court fee payable-Suit properties losing agricultural character as they were found in residential layout-Cannot be treated as agricultural properties-Trial Court therefore directing plaintiff to value suit under Section 24 (a) and not under Section 7 (b) as had been done-Justified”.

11. Further, the learned counsel for the defendant no.5 placed his reliance on a decision reported in I.L.R 2012 KARNATAKA-3558 wherein the case of Mr. V. Prabhakar -Vs- Mr. K. Raja and Others wherein their Lordship held as under:

“KARNATAKA COURT FEES AND SUITS VALUATION ACT, 1958-SECTION 38-Payment of Court fee under Prayer sought to declare that the sale deed in question is null and void and not binding on the plaintiff-Ancillary relief was also sought for mandatory injunction-Substantive relief sought in the plant for cancellation of the sale deed-Suit is valued under Section 24 of the Act for the purpose of Court fee-Trial court directing the plaintiff to value the suit under Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958-Pleaded against-Duty of the Court to ascertain nature of the suit and the relief claimed-HELD, In order to determine the proper Court fee payable by the plaintiff, the Court has to first ascertain the substantial relief sought for the plaint. In a multifarious suit, while determining the proper Court fee payable on the plaint, the Court has to see the nature of the suit and the reliefs claimed. If a substantive relief is claimed, though clothed in the garb of a declaratory decree with a consequential relief, the court is entitled to see what is the real nature of the relief, and if satisfied, that it is not a mere consequential relief but a substantive relief, it can demand the proper court fee on that relief, irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief.-FURTHER HELD, Section 38 (1) of the Act provides for payment of court fee in a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create,

declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property-ON FACT, HELD, In the instant case, the substantive relief sought in the plaint is for cancellation of the sale deed in the garb of a declaratory decree. The second relief is for grant of prohibitory injunction though styled as for mandatory injunction, which is ancillary to the main relief. If the relief is sought only as ancillary to the main relief, the plaintiff has to be charged only on the value of the main relief as provided in Section 6 of the Act. Therefore, the plaintiff has to value the suit for the purpose of court fee under Section 38 and not under Section 24 of the Act.- KARNATAKA COURT FEES AND SUITS VALUATION ACT, 1958-SECTION 24-PAYMENT FOR COURT FEE UNDER-DISCUSSED”.

12. Further, the learned counsel for the defendant no.5 relied upon a decision reported in 1999 A.I.R. (P & H)-121 in the case of Anil Rishi -Vs- Gurbaksh Singh wherein their Lordship held as under:

“The court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. Xx xx xx”.

13. Further, the learned counsel for the defendant no.5 relied upon a decision reported in I.L.R.1988 Page No.1962 where in the case of M/s Shivaram Bapuchand Shaha and Company -Vs- M/s Hirachand Sakharam Mehata and Company wherein their Lordship held as under:

“KARNATAKA COURT FEES AND SUITS VALUATION ACT, 1958 (Karnataka Act No.16 of 1958)-Sections 38 and 24 (d)-Act fiscal statute, to be construed strictly-To decide whether valuation proper, substance of relief material and relevant not the form-Section 24 (d) general provision not dealing with any specific relief-If suit falls under particular provision of Act, cannot be brought under general provision-Suit for declaration of decree as null and void, in effect is for cancellation of decree and falls under Section 38”.

14. During the course of arguments, the learned advocate for the defendant no.5, who argued that, the defendant no.5/company purchased the suit property from the defendant no.1 to 4 for a consideration amount of Rs.64,13,750/- for the purpose of erecting the Cement Factory therefore, the suit property lost its nature. Therefore, under such circumstances, the valuation as made by the plaintiff for the purpose of court fee is incorrect.
15. I have also gone through the decision as relied upon by the advocate for the plaintiff reported in AIR 2010 SC-2807 wherein the case of Suhrid Singh @ Sardool Singh -Vs- Randhir Singh and Others wherein their Lordships of Hon'ble Apex Court at Para No.6 of judgement held as under:

"Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that, the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B'- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that, the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17 (iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and

he seeks not only a declaration that, the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7 (iv) (c) of the Act. Section 7 (iv) (c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that, where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of Section-7”.

16. Further, their Lordships in the said Para No.6 of the judgement, it is held that, in essence both may be suing to have the deed set aside or declared as not binding. But the form is different and court fee is also different. If 'A', the executant of the sale deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that, the deed is null or void and not binding him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17 (iii) of Second Schedule of the Act. Further, their Lordships of Hon'ble Apex court hold that, if 'B', a non-executant, is not in possession, and he seeks not only a declaration that, the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7 (iv) (c) of the Act.
17. Therefore, at present case on hand, already the suit property lost its agricultural nature wherein already the defendant no.5 erected the Cement Factory. Therefore, under such circumstances, the plaintiff is liable to pay the court fee under Section 24 (a) of K.C.F. & S.V. Act.

18. I have also gone through the certified copy of the sale deed dated 10-03-2010 wherein, the defendant no.5/company purchased the suit property for industrial purpose vide Government of Karnataka Notification No.21-LRM-2008, dated 30-12-2009 wherein, the Government permitted the defendant no.5 to purchase the suit property for industrial purpose.
19. Further, I have also gone through the decisions as relied upon by the learned advocate for the defendant no.5. There is no dispute about the proposition of law as declared in the said decisions. Therefore, considering the facts and circumstances of the case, the defendant no.5 has proved that, the court fee as paid by the plaintiff is incorrect. Therefore, the plaintiff is liable to pay the court fee under Section 24 (a) of K.C.F. & S.V. Act as on the date of market value of the suit property i.e. on the basis of non-agriculture land. Therefore, the Issue No.7 is answered in the Affirmative and Additional Issue No.1 is answered in the Affirmative.
20. In view of my findings to the Issue No.7 and Additional Issue No.1, I pass the following;

O R D E R

The plaintiff is hereby directed to correct the valuation of the suit property on the basis of market value as on the date of suit as mentioned in the sale deed and pay the court fee.

No order as to cost.

21. As per order dated 21-10-2016, the plaintiff, who not made correct valuation of the suit property on the basis of market value as on the date of suit as mentioned in the registered sale deed.
22. Further, I have also gone through the Order VII Rule-13 of C.P.C. Even after rejection of the plaint, due to non-payment of court fee as required, the plaintiff is not precluded from presenting fresh suit on the same cause of action on payment of proper court fee. Therefore, considering the facts and circumstances of case, no prejudice will be caused to the plaintiff if the plaint is rejected. Therefore, I pass the following order.

O R D E R

The plaint is rejected under Order VII Rule-11 (b) of C.P.C.

No order as to cost.

(Dictated to the Stenographer in the open court, transcribed by him, corrected by me, then signed on this 25th day of October 2016)

(M.D. Talawar)
Senior Civil Judge, Chittapur.

ORDER

The plaintiff is hereby directed to correct the valuation of the suit property on the basis of market value as on the date of suit as mentioned in the sale deed and pay the court fee.

No order as to cost.

Call on: 25-10-2016.

Senior Civil Judge, Chittapur.