

: ORDER ON PRELIMINARY ISSUES_:

On the basis of the pleadings of the parties, this court has framed the preliminary issue on court fee.

02. The defendant no.3 and 4 have taken contention in the written statement that, plaintiffs have not paid proper and correct court fee.

03. Plaintiffs have filed this suit against defendants seeking the relief of partition and separate possession of their 1/3rd share in the suit schedule properties. They have also sought the relief of declaration that, the alleged documents created by the defendants no. 2 to 4 in respect of suit schedule property from the 1st defendant is not binding on plaintiffs and same has to be declared as null and void and plaintiffs have not at all paid court fees on the consideration amount of the sale deed. The court fee of Rs.25/- is paid under section 26(c) of K.C.F&S.V Act. In a decision reported in Shivappa V/S Satyappa Yellappa AIR 1971 MYS 352 where in it is held as under;

"The reversioner need not ask for either cancellation of the sale deed or for a declaration that the sale is not binding on him, but could straight way ask for possession. Hence the court fees is not payable under section 38(1) of court fees Act on the amount of consideration in the sale deed, but court fees is payable on the relief of the possession. A separate court fee is not payable in respect of all the three reliefs mentioned. Court fee is payable on the market value of the suit

property as on the date of institution improved, the value of the property including determining the court fee."

In a decision reported in Mahaboobsab V/S Goudappa 1974(2) KLJ S.N. 305 where in it is held as under:

"The value of the property in section 38(1) must be understood as the market value of the property and not the amount of consideration mentioned in the deed sought to be cancelled, thus in a suit for cancellation of the sale deed, that plaintiff is justified in valuing the suit on the basis of the market value of the property which was the subject matter of the sale deed 1963(1) Mys.LJ 67 relied."

In a decision reported in Smt. Nanjamma V/S Smt. Akkatayamma and others, ILR 2008 kar 1420 where in it is held as under:

"The scope of investigation under S.11 is confined practically to determine two points (1) under valuation of the subject matter of the suit and (2) category under which the suit falls, for the purpose of court fee. Once the category of suit is determined with reference to plaint averments, The court can not subsequently change on the basis of the averments in the written statements or on the basis of evidence and arguments. In short, if the suit is found under sec.35(2) of the Act on the plaint averments, the court has no power to convert the suit as one falling under sec. 35(1) of the Act, at any time, much less while rendering the judgement. The only exception is when the plaint is amended. "

In a decision reported in M/s Commercial Aviation Travel Company and Mrs. Vimala Pannalal AIR 1988 SC 1636 Hon'ble Supreme Court has held as under;

"The question for consideration was the correctness of valuation as in the partition, so also in the case of suit accounts,allegation of the plaint from the basis on which the suit valuation must be accepted for the purpose of court fee and jurisdiction. "

04. In the light of the principles laid down in the above referred decisions, it is clear that in order to seek the relief of a declaration that sale deed is null and void, the suit is to be valued under section 38(1) of K.C.F.&S.V Act. But the plaintiffs have valued the suit under section 26(c) of K.C.F.&S.V Act which is not correct and proper. However the plaintiffs need not value the suit on the basis of the consideration amount of the sale deed. They may value their suit on the basis of the market value of the suit schedule property and it is not necessary that the suit should be valued on the consideration amount. But plaintiffs have valued the suit under section 26(c) of K.C.F.&S.V Act. They have to value their suit under section 38(1) of K.C.F.&S.V Act on the basis of the market value and pay the court fees on the market value. The plaintiffs have paid proper court fee on the relief of partition and separate possession sought by the plaintiffs in their plaint. Plaintiffs has paid maximum court fee of Rs. 200/- on the relief of partition and separate possession. However plaintiffs have to

value the suit for the relief of declaration of sale deed as null and void and they have to furnish fresh valuation ship on the relief of declaration. Plaintiffs have to value suit under section 38 of K.C.F.&S.V Act and furnish fresh valuation ship with proper court fee on the said relief. So, I proceed to pass the following;

:ORDER:

Preliminary issue is answered in affirmative with direction to the plaintiffs to furnish fresh valuation ship and pay proper court fee on the relief of declaration of sale deed as null and void.

Call on: 22-01-2021

Sd/-

(KIRAN S.P)

II Addl. Civil Judge & JMFC: K.G.F.