

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL

JUDGE AND JMFC, MADDUR

Present: Shri Sarfaraz Hussain Kittur B.A., LL.B. (Hon's.), LL.M.,
Additional Senior Civil Judge and JMFC,
Maddur, Mandya District

Dated: This, the 31st day of March, 2021

OS No.62/2016

1	Sri.Chikka Marigowda
 PLAINTIFF
	(Represented by Sri M.J.Sumanth, Adv.)

V/s.

1	Smt.Chikkathayamma and others.
 DEFENDANTS
	(D, 6 to 10 : Exparte, D11 to 16 Represented by Sri.G.R.Chandrashekar,.Advocate,D17 by Sri.B.Appaji Gowda Adv., D5 by Sri.B.Puttalingegowda, Advocate)

I.A.X & XI

1	Sri M.Puttaswamy (defendant No.17)
 APPLICANT
	(Represented by Sri.B.Appaji Gowda., Adv.,)

- Vs-

1	Sri Chikkamarigowda
 OPPONENTS
	(Represented by Sri.M.J.Sumanth., Adv.,)

ORDERS ON I.A.No.X and XI

The defendant No.17 has filed I.A.X under order XIV Rule 5(1) read with 151 of CPC seeking for framing of additional issue regarding maintainability of suit for non-payment of proper Court fee by the plaintiff.

Further defendant No.17 has filed I.A.XI under Order VII Rule 11 (b) read with section 151 of CPC and Section 11(2) of the Karnataka Court Fees and Suits Valuation Act seeking for rejection of plaint on the ground of payment of insufficient and improper Court fee.

3. In the affidavits annexed to I.A.No.X and XI, the defendant No.17 has stated that the plaintiff has filed this suit for partition and declaration that the sale deed executed in favour of defendant No.17 is null and void. It is stated that the plaintiff ought to have paid the Court fee as per Section 38 of the Court Fees and Suits Valuation Act i.e., on the market value of the property. It is stated that the plaintiff is not in possession of the suit property. On the other hand, it is stated that the defendant No.17 is in possession and enjoyment of the suit property. Therefore the plaintiff is required to pay Court Fee under Section 35(1) and 38 of the Karnataka Court Fees and Suits Valuation Act. The plaintiff has paid only a sum of ₹181/- as per Section 35(2) of

the Karnataka Court Fees and Suits Valuation Act. On these grounds, the defendant No.17 has sought for rejecting the plaint as well as for framing additional issue as stated above.

4. The plaintiff has filed common objection to I.A.No.X and XI stating that he has filed the suit for the relief of partition and separate possession and has paid the Court fee in accordance with law. The plaintiff has lawful right and share in the suit properties. It is stated that no person has any right to sell the share of the plaintiff in the suit properties. The defendant No.17 has filed I.A.No.X and XI only in order to delay the proceedings of the suit. The suit properties are agricultural lands and the plaintiff has paid the Court fees in accordance with Section 7(2) (b) to (d) and Section 35(2) of the Karnataka Court Fees and Suits Valuation Act. The plaintiff has stated that I.As filed by the defendant are not maintainable and has sought for dismissing I.A.No.X and XI.

5. Heard the learned counsel for defendant No.17 and the plaintiff.

6. The following points arise for consideration:

- 1) *Whether the defendant No.17 has made out sufficient grounds to show that the framing of additional issue with respect to insufficiency of Court fee paid is necessary?*
- 2) *Whether the defendant No.17 has made out sufficient grounds to show that the relief claimed is undervalued as he ought to have paid Court fee under section 35 (1) and not under section 35(2) of the Karnataka Court Fees and Suit Valuation Act and the plaintiff on being required by the Court to correct the valuation within a time fixed by the Court has failed to do so?*
- 3) *What order?*

7. Having heard the learned counsel for the plaintiff and defendant No.17, having considered the I.A.s., objections, pleadings and the material on record, the aforementioned points are answered as follows:

Point No.1: In the negative

Point No.2 : In the negative

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

: REASONS :

8. Points No.1 & 2:- These points have been taken up together for common discussion in order to avoid repetition as they involve common grounds and questions of facts and law and as the determination of one point has a direct bearing on the other.

9. It is the well settled law that while considering an application under order VII Rule 11 of CPC, the Court has to look into the plaint averments alone. On perusal of the plaint, it is noted that the plaintiff has filed this suit for the relief of partition and separate possession in respect of his purported 1/5th share in the suit properties and for declaration that the sale deed dated:04/09/2014 executed by the defendant No.2

to 4 and 11 to 16 in favour of defendant No.17 is not binding on the share of the plaintiff with respect to the suit property. In the plaint, the plaintiff has specifically averred that he along with the defendants is in joint possession and enjoyment of the suit properties and has been exercising right over the suit properties as they are joint family ancestral properties. The plaintiff has averred that from the date of his birth itself, he has legitimate share over the suit properties being the member of Hindu Undivided Joint Family. Further it has been averred that defendants No.2 to 4 and 11 to 16 have no exclusive right, title and interest to sell the suit schedule property and as such the Sale Deed dated:04/09/2014 executed by them in favour of defendant No.17 is not binding on the legitimate share of the plaintiff over the suit schedule properties. In view of these averments, the plaintiff has valued the suit property for a sum of ₹60,00,000/- and has valued his 1/4th share at ₹12,00,000/- for the purpose of jurisdiction. Further he has valued the suit for the purpose of Court fee at ₹905/- under section 7 (2) of the

Karnataka Court Fees and Suits Valuation Act i.e., by multiplying twenty-five times the assessment amount of ₹36.20/-. The market value of his share has been calculated at ₹181/- Accordingly, the plaintiff has paid a Court fee of ₹200/- as per section 35 (2) of the Karnataka Court Fees and Suits Valuation Act.

10. The only ground raised by the defendant No.17 in both the IAs is that the plaintiff is not in joint possession of the suit property as defendant No.17 is in exclusive possession of the suit property. Therefore, it is argued that the plaintiff ought to have paid court fee under section 35(1) of the Karnataka Court Fees and Suit Valuation Act and not under section 35(2) of the said Act. In this regard, it is noted that in **B.S. Malleshappa v. Koratagere B. Shivalingappa and Others**¹ the Hon'ble High Court of Karnataka has held at para No.11 of its judgment that payment of Court fee will depend upon plaint averments alone. Neither the averments in the

¹ 2001 (4) Kar. L.J. 431 (DB)

written statement, nor the evidence nor the final decision have a bearing on the decision relating to Court fee. The scope of investigation under section 11 of the Karnataka Court Fees and Suit Valuation Act is confined practically to determine two points: (i) Under valuation of the subject matter of the suit and (ii) Category under which the suit falls, for the purpose of Court fee. Once the category of suits is determined with reference to plaint averments, the Court cannot subsequently change the category on the basis of the averments in the written statement or on the basis of evidence and arguments. Further it has been held that if the plaintiff claims that he is in joint possession of a property and seeks partition and separate possession, he categorises the suit under section 35 (2) of the Act. He is therefore liable to pay Court fee only under section 35 (2) if on evidence, it is found that he was not in joint possession, the consequence is that the relief, may be refused in regard to such property or the suit may be dismissed. But the question of Court treating the suit as one falling under section 35 (1) of the Act and directing the

plaintiff to pay the Court fee under section 35 (1) of the Act does not arise. It is noted that the same propositions of law have been laid down by the Hon'ble High Court in **Smt. Nanjamma (since dead) by LRs and others v. Smt. Ashwathamma and others**² and **Smt. Nanjamma v. Smt. Akkayamma since dead by her LRs and others**³ as in the case of **B.S. Malleshappa (supra)**.

11. In the present case also, the plaintiff, who has claimed that he is in joint possession of the suit property and has sought for partition and separate possession, has categorised the suit under section 35 (2) of the Act. Accordingly, the plaintiff has paid a Court fee of ₹200/- as per the said provision of law. Therefore, in the light of the law laid down by the Hon'ble High Court of Karnataka in the aforementioned decisions, the contention of defendant No.17 that the Court fee valued and paid by the plaintiff under section

² 2014 (4) KCCR 3445.

³ 2015 (2) KCCR 1437 (DB).

35(2) of the Karnataka Court Fees and Suit Valuation Act is not correct cannot be accepted.

12. Hence in the light of the foregoing discussion, I am of the considered opinion that it is neither necessary to frame an additional issue as sought by the defendant No.17 nor are there sufficient grounds for rejecting the plaint under Order VII Rule 11 (b) of CPC. Accordingly, ***points No.1 and 2 are hereby answered in the negative.***

13. **POINT No.3:-** In the light of the discussion and reasons under points No.1 and 2 and in the light of well settled law, it appears that the IAs filed by the defendants No.17 have been filed only to protract the proceedings and therefore the IAs are liable to be rejected with costs. Hence, it is just and proper to pass the following

ORDER

The IA – X under order XIV Rule
5(1) read with 151 of CPC and IA – XI
under Order VII Rule 11 (b) read with
section 151 of CPC and Section 11(2) of

the Karnataka Court Fees and Suits Valuation Act are hereby dismissed with costs of ₹300/- payable by the defendant No.17 to the plaintiff.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the 31st day of March, 2021)

**(Sarfaraz Hussain Kittur)
Addl. Senior Civil Judge &
JMFC, Maddur**