ORDER ON IA No.5

The present application is filed by the defendant No.2 under Order 7 Rule 11(b) and (d) R/w/ section 151 of CPC seeking rejection of plaint.

2. The defendant sworn to affidavit to the present application and stated that the plaintiffs have filed the suit for declaration that the sale deed executed by defendant No.1 in favour of defendant No.2 dt: 07-06-2022 is not binding on them and it is void ab initio as for as suit schedule property is concerned. The value of the said sale deed is Rs.28,09,000/-. The total extent sold under the said sale deed is 1 acre 38 guntas. The plaintiffs are claiming their right on 14 guntas. The value of the right of the plaintiffs is Rs.4,62,658/-. This court has no pecuniary jurisdiction to entertain the suit. The plaintiffs have also sought for the relief of declaration that the said sale deed is *void ab initio*. Therefore, they are liable to pay court fee of Rs.1,40,440/- on the entire sale consideration amount. Even the plaintiffs choose to pay court fee on the 14 guntas of land they shall pay court fee of Rs.13,947/- on the value of their land which is Rs.4,62,658/-. Therefore, the court fee paid by the plaintiffs is insufficient. This court has no pecuniary jurisdiction to entertain the suit. The plaintiffs have also sought for consequential relief of permanent injunction against the defendants. The defendant No.2 is in possession of the suit schedule property as per the sale deed executed by the defendant No.1 on 07-06-2022. All revenue entries have been made in favour of the defendant No.2. Therefore, there is presumption U/s 133 of the Karnataka Land Revenue Act, 1964 about the possession of defendant No.2. Therefore, the suit of the plaintiffs in respect of the said relief is barred by law. Hence, it is prayed to reject the plaint.

3. The plaintiffs have filed objection to the present application by filing statement of objections and contended that the prayer sought by the plaintiffs are clear and in unambiguous. They have sought for the relief of declaration with other reliefs. The plaintiffs are not parties to the sale deed dt: 07-06-2022. Hence, it is not binding on

them. The said document is void *ab initio* as for as plaintiff are concerned. Therefore, the plaintiffs have paid proper court fee in respect of the prayer sought for in the plaint. It is the valuation made by the plaintiff which should be considered for valuation of the suit schedule property. The valuation of suit schedule property projected by the defendant can not be considered to decide the pecuniary jurisdiction of the court as well as court fee payable. The plaintiffs have properly valued the suit and paid court fee on the said valuation. As per the valuation of the suit property by the plaintiffs this court has pecuniary jurisdiction to try the matter. The suit of the plaintiffs is not barred under any law. The defendant No.2 in his affidavit filed to the present application has not specifically stated about the provisions of law under which the suit is barred. The revenue entries in respect of suit schedule property are mechanical revenue entries created by the defendants. Therefore, they do not carry any prescriptive value U/s 133 of the Karnataka Land Revenue Act, 1964. Therefore, it is prayed to reject the present application.

4. Heard and perused.

5. The point that arises for my consideration is as follows;

> *Whether the defendant No.2 has made out sufficient grounds to reject the plaint?*

6. My answer to the above point is in the ***Negative*** for the following;

<u>REASONS</u>

7. The defendant No.2 has sought for rejection of plaint under the provisions of order 7 Rule 11(b) and (d). As per the order 7 Rule 11(b), where the relief claimed is undervalued and the plaintiff on being required by the court to correct to apply the requisite stamp

paper within a time to be fixed by the court fails to do so, the plaint could be rejected. As per the affidavit filed to the present application the court fee payable is Rs.30,947/- to an extent of 14 guntas on which the plaintiffs are claiming right. The suit schedule property is revenue land. Therefore for determination of market value for the purpose of payment of court fee applicable provision is Section 7 of the Karnataka Court Fees and Suit Valuation Act, 1958. As per the said provision land on which annual revenue is payable to the Government, the market value will be 25 times of the revenue so payable. The suit is one for declaration and injunction. Therefore, the court fee payable as per Section 24 of the Karnataka Court Fee and Suit Valuation Act is on the market value of the suit property or on Rs.1000/-, whichever is higher. If we calculate deemed market value as provided under section 7 of the said Act, 25 times of the revenue payable on suit property will not exceed Rs.1000/-. Therefore, the market value on which court is payable is Rs.1000/-. As per the schedule II of the above Act the court fee payable is Rs.25/-. The plaintiff has paid court fee of Rs.25/- at the time of filing the suit. Therefore, the court fee paid by the plaintiff is proper. Therefore, plaint can not be rejected on the grounds mentioned under Order 7 Rule 11(b).

9. In the affidavit sworn to the application it is stated that the suit of the plaintiff is barred under law. But as rightly contended in the objection filed by the plaintiff, the defendant No.2 in his affidavit filed to the present application has not specifically mentioned that under which law the suit is barred. However during the course of arguments learned counsel for defendant No.2 submitted that suit is barred under section 11 of CPC. As per the plaint OS No.284/01 was instituted against the defendant No.1 herein by the husband of the

plaintiff No.1 for partition and separate possession. The defendant No.2 was not a party in the said suit. The relief claimed in the present suit and in the old suit are not one and the same. Therefore, it can not be said that the suit is barred under the principles of *res judicata.* Accordingly it is also held that the plaint can not be rejected under the provisions of under order 7 rule 11(d). Hence, the above point is answered in the ***Negative***. Hence the following;

ORDER

IA No.5 filed under Order 7 Rule 11(b) and (d) of CPC is hereby dismissed.

Addl. Senior Civil Judge & JMFC.,
Maddur.

Learned counsel for the defendant No.2 while advancing his reply arguments on IA No.5 has produced valuation certificate issued by Sub-Registrar, Maddur. On the basis of the said document, it is his contention that this court has no pecuniary jurisdiction to entertain the suit. In order to decide the same plaintiffs have to be given an opportunity to submit their arguments and documents, if any with regard to the valuation of the suit schedule property. For hearing the plaintiffs on valuation of suit schedule property.

Addl. Senior Civil Judge & JMFC.,
Maddur.