

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 21st day of January, 2022

O.S.NO.69/2018

- Plaintiff/s :1. Ningamma
W/o Late Kulladasaiah,
Aged about 70 years.
2. Krishnamurthy
S/o Late Kulladasaiah,
Aged about 48 years.
3. Varadaraju
S/o Late Kulladasaiah
Aged about 33 years,
Plaintiffs No. 1 to 3 are R/at
Alanahalli Village, Hampapura Hobli
H.D. Kote Taluk Mysuru District.
4. Nethravathi
W/o Siddaih
Aged about 43 years.
Residing at Maddur Village,
Jayapura Hobli,
Mysuru Taluk, Mysuru District.
5. Geetha
W/o Shivalingaiah
Aged about 38 years,
Residing at Chowdally Village,
Kasaba Hobli.H.D.Kote Taluk,
Mysuru District.

(By Sh. M.N.Ravishnakar., Advocate,)

-V/s-

Defendant/s :

1. Kamalamma
W/o Late Dasaiah,
Aged about 70 years,
2. Tulasidasa
S/o Late Thimmaiah,
Aged about 48 years.
3. Devaraju
S/o Late Thimmaiah,
Aged about 46 years.
4. Narayana
S/o Late Thimmaiah,
Aged about 44 years.
5. Meenakshi
D/o Late Thimmaiah,
Aged about 42 years.
6. Kamalakshi
D/o Late Thimmaiah,
Aged about 40 years.
7. T.Raju
S/o Late Thimmaiah
Aged about 38 years.
8. Keshavamurthy
S/o Late Thimmaiah,
Aged about 36 years,
9. Nandeeshha
S/o Late Thimmaiah

Aged about 32 years,
The Defendants 1 to 9 are residing at
Alanahalli village, Hampapura Hobli,

H. D. Kote Taluk, Mysuru District.

10. Sharadamma
W/o Late Achyuthan,
Aged about 60 years,
R/at Door No.7, 4th Cross,
Vishweshwara Nagara,
Mysuru City

(By Sh. K.Chandrashekar., Advocate,)

ORDERS

Vide this order, this court shall decide the following preliminary issue framed vide order dt.29.09.21.

Whether the court fees paid by the plaintiffs are insufficient in the present suit?

2. It is the case of the plaintiffs that property bearing Sy.no.11(new Sy.no.39) measuring 4 acres, situated at Village Kadasuru, Hobli Hamapura. Taluk HD Kote (hereinafter called as suit property) was owned by the husband of plaintiff no.1 and father of other plaintiffs namely Kulladasaiah by way of grant certificate in the year 1964 and pursuant to the grant the revenue documents were mutated in his name. After his demise the plaintiffs being his legal heirs inherited the suit property by operation of law and cultivated the suit property with seasonal crops, however due to their illiteracy they could not get the Katha of the suit property transferred in their joint names. In the year 2014 they came to know that the defendant no.1 to 9 being the strangers along with Dasaiah and Kamamma had illegally sold the suit property in favor of defendant no.10 vide registered sale deed dated 07.01.2013

by claiming that they are the owners of the suit property. The defendant no.1 to 9 Dasaiah and Kamalamma had no alienable rights and as such no rights, title or interest transferred to the defendant no.10 under the said sale deed. It is further stated that in the year 2012 the plaintiffs immediately filed an appeal before the Assiatant commisioner, Hunsur to cancel the Katha mutated in the name of defendant no.1o on the basis of fictitious sale deed. However the said appeal came to be dismissed with an observation that the plaintiffs have to approach the civil court seeking their remedy. Hence, the suit.

3. Defendant No.1, 3 and 10 have filed the WS denying the averments made in the plaint.

4. During the course of arguments, the Ld.Counsel for the defendants submits that the present suit filed by the plaintiff is undervalued. It was submitted that the present suit pertains to cancellation of sale deed and as per settled law and S. 38 of the [Karnataka Court Fee and suit valuation Act](#), the plaintiff is liable to pay court fees on the consideration amount of the sale deed sought to be cancelled but they have paid a meager court fee of Rs.88/ only. Thus, the plaint is liable to be rejected on this ground alone.

5. On the contrary, the ld. counsel for the plaintiff vehemently submitted that it is well settled that when the plaintiffs are in actual possession of the suit property and merely seeks cancellation of a document having been obtained by fraud etc. then the plaintiffs are not required to pay ad valorem court fees and is liable to pay court fee on the declaratory relief only. Plaintiff has filed sufficient court fees in accordance with sec 24

(b) of the [Karnataka Court Fee and suit valuation Act](#) and thus, the contention of the Ld.counsel for the defendants have no merits.

6. In the light of the arguments advanced at Bar and further considering the plaint allegations, the preliminary issue is being answered in the Negative with following reasons:-

7. It is settled law that the question of court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. The Apex Court in the case of [Neelavathi v. N. Natarajan](#), (1980) 2 SCC 247, made the following observations in para 6 which is reproduced as under : "6.It is settled law that the question of court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole. (see also: vide [S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Ram Ar. Rm. Ramanathan Chettiar](#) (1958) S.C.R. 1021)"

8. The subject matter of the suit gathered from the plaint and the main prayer therein reflect that this is a suit for the declaration of sale deed dated 07.01.2013.The other relief is to the effect of declaration that plaintiff is the absolute owner of the suit property. The relief of permanent injunction is consequential restraining defendant no.10 from taking possession of the suit property. Considering the body of the plaint, wherein the plaintiffs seeks cancellation of sale deed dated 07.01.2013 registered before the sub-registrar and on perusal of Sec 38 of the Karnataka [Court Fees Act](#) and sec 24(b) of the [Court Fee Act](#), it is

apparent that since the plaintiffs were not the executants of the sale deed dated 07.01.2013 and since same was executed by the defendant no.1 to 9 along with Dasaiah and Kamamma they cannot seek cancellation of the sale deed dated 07.01.2013 and the proper relief would be declaration that the deed is invalid, or nonest, or illegal or that it is not binding on them. In this regard recently in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors.* 2010 (2) RCR (Civil) 564 (C.A.NO. 281113 of 2010 decided on 29.3.2010), it was held as under:

6. 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 nonbinding. 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 advalorem court fee on the consideration stated in the sale deed. If `B', who is a nonexecutant, 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 advalorem 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](#).

Therefore, when executant of a deed wants a document 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 nonest or illegal or that it is not binding on him. Also, if 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 ad valorem court fee and If a non executant seeks a declaration that the deed is null & void, or nonest, or illegal or that it is not binding on him, then he has to pay fixed Court fee under [Article 17 \(iii\)](#) of Second Schedule of the Act.

9. Further, while relying on *Suhrid Singh @ Sardool Singh's* case (supra), it was held to the following effect in *Darshan Singh and others vs. Narinder Kaur and others* in C.R.No.2198 of 2010 Decided on: 27.07.2010 by the Hon'ble Punjab and Haryana High Court:

"7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under [Section 7 \(iv\)\(c\)](#) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds." In view of the judgments of Hon'ble Supreme Court and of the Division Bench, the previous judgments of Single Bench on the issue of payment of court fee stand impliedly overruled. As a consequence of the aforesaid decisions, the following principles can be delineated :(i) If an executant of a document seeks cancellation of the deed, then he has to pay ad valorem Court fee on the consideration stated in the sale deed.

(ii) If a nonexecutant seeks a declaration that the deed is null & void, or nonest, or illegal or that it is not binding on him, then he has to pay fixed Court fee under [Article 17 \(iii\)](#) of Second Schedule of the Act.

(iii) But if a non executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also consequential relief of possession, he has to pay an ad valorem Court fee as provided under [Section 7 \(iv\)\(c\)](#) read with [Section 7\(v\)](#) of the Act.

10. In the instant case, the plaintiffs have claimed the sale deed is null and void or not binding on them without claiming possession since they are already in possession of the suit property as absolute owners. Plaintiffs are not the executants of the sale deed. Therefore, then they have to pay fixed Court fee under Article 24 (b) of the Act in the manner

provided for by clause (2) of [Section 7](#) and not the Court fee on the sale consideration mentioned in the sale deed. The plaintiffs have correctly valued the suit and paid court fee of Rs.88/. In the light of Surhid Singh's case (Supra), the decisions relied upon by the ld. counsel for the defendants do not help the defendants. Thus, is unnecessary to deal with the authorities relied upon by them.

11. From the discussion, as adumbrated hereinabove, the aforesaid Preliminary issue is decided in favor of the plaintiffs and against the defendants and, I hereby pass the following

ORDER

The court fees paid by the plaintiffs on the reliefs claimed is sufficient.

Put up P/F/E

Call on 10.02.2022.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 21st day of January 2022)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote