

KAMS400002782023



IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa
Sambrani

This the 14th day of August, 2023

O.S. No.12/2023

PLAINTIFF : Smt. Bharathi.

// Vs. //

DEFENDANTS : Sri. Basavaraju @ Lorry
Basavanna & Others.

: I.A.NO.4 :

APPLICANT : Sri. Kantharaju,
S/o Malegowda,
Aged about 45 years,
R/at: Ward No.2,
Hospital Block,
Vinayaka Badavane,
K.R.Nagar Town,
Mysuru District.

.....2nd defendant

(By Sri. C.D.M., Advocate)

Vs.

OPPONENTS : Smt. Bharathi,
W/o Ramegowda B.R.,
Aged about 57 years,
R/at: Door No.5420,
Vijayanagara Extension,
2nd Phase, 4th Stage,
Mysuru City.

.....Plaintiff

(By Sri. C.D.M., Advocate)

: ORDER ON I.A.No.4 :

The learned counsel for the defendant has filed this application under Order 7 Rule 11(a) and (b) R/w Sec.151 of CPC seeking rejection of plaint on the ground of plaint schedule properties are not properly valued as per the market value prevailing before the Sub-Registrar, K.R.Nagar and the court fees paid is insufficient. Hence, prayed to reject the plaint.

2. This application is objected by the learned counsel for the plaintiff by filling objections.

3. Heard and perused the records.

4. The points that arise for my consideration are as follows:

1. Whether the application filed by the defendant No.2 under Order 7 Rule 11(a) and (b) R/w Sec.151 of CPC seeking rejection of plaint on the ground of suit is under valued and court fees paid is insufficient deserves to be allowed?

2. What order?

5. My findings to the above point are as follows:

Point No.1 : In the Negative

Point No.2 : As per final order,

for the following:

: REASONS:

POINT No.1:-

6. Along with the written statement the defendants have filed this application under Order 7 Rule 11(a) and (b) R/w Sec.151 of CPC seeking rejection of plaint. The plaintiff has filed this suit against the defendants seeking the relief that, she is the absolute owner in respect of suit schedule property and consequential relief of permanent injunction.

7. The defendant No.2 has sworn to the affidavit and submitted that, the plaintiff has filed

the suit for the relief of declaration and permanent injunction against the defendants. The suit of the plaintiff is not maintainable for want of cause of action against the defendants and the plaintiff has not valued the plaint schedule property in accordance with prevailing market as per the Sub-Registrar valuation for the year 2022-23. The plaint schedule property which has been stated in the plaint, the plaintiff has stated each site measuring 30x40 feet. The plaintiff has stated in the plaint schedule the Khata No.10417/1 up to 10417/8 consisting of different measurement mentioned as hereunder;

- a) Municipal Katha No.10417/1-measuring 30x40 feet
- b) Municipal Katha No.10417/2-measuring 30x40 feet
- c) Municipal Katha No.10417/3-measuring 30x40 feet
- d) Municipal Katha No.10417/4-measuring 30x40 feet
- e) Municipal Katha No.10417/5-measuring 30x40 feet
- f) Municipal Katha No.10417/6-measuring 30x40 feet
- g) Municipal Katha No.10417/7-measuring 30x62 feet
- h) Municipal Katha No.10417/8-measuring 30x62 feet

Total square feet of 8 sites mentioned in the plaint is 10,920 square feet. As per the total square feet is 10,920, then in order to calculate in terms of

square meter, the calculation mentioned as hereunder;

a) Total square feet of the plaint schedule is = 10,920 feet.

b) In terms of square meter, the total square feet has to be divide by 10.764. Then total square feet = $10,920 / 10.764$

c) In terms of square meter plaint schedule is = 1,014 square meter

d) One square meter as per the Sub-Registrar valuation = Rs.6,800/-

e) Total square meter $1,014 \times 6,800 =$ Rs.68,95,200/-

f) Total market value of the plaint schedule = Rs.68,95,200/-

g) Half of the market value of the plaint schedule = Rs.34,47,600/-

h) Hence, the court fee has to calculated on the half of the market value of the property, hence the plaintiff has to pay the court fee on Rs.34,47,600/- and the court fee payable is **Rs.1,60,553/-**.

8. It is further submitted by the defendant No.2 that, as per prevailing Sub-Registrar valuation the plaintiff has to value the suit on Res.68,95,200/- and the plaintiff has to pay the court fee on the half of the market value on Rs.34,47,600/-. Therefore, the required court fee payable by the plaintiff is Rs.1,60,553/. He court fee paid is Rs.23,625 and the deficit court fee is Rs.1,36,928/-, the suit itself is not maintainable and the plaint is liable to be rejected because the suit has been under value and the required court fee has not been paid by the plaintiff. If the application is allowed no hardship or injury would be caused to the other side, if the application is not allowed, he will be put to great hardship and injury. Therefore, he prayed to allow this application.

9. The plaintiff filed the objections and submitted that, the application filed by the defendant No.2 is neither maintainable in law nor on facts. The reasons averred in the affidavit are all false and the defendant No.2 has sworn the same just to protract the proceedings of the case. The defendant No.2 has wrongly understood the

provisions of law. It is the prerogative of the plaintiff to value the suit. The 2nd defendant cannot dictate the plaintiff and he is not entitled to file the present application. He further submitted that, this court has got every jurisdiction to try the suit and the suit filed by the plaintiff is either expressly or impliedly barred under any law. The payment of court fee is a question of fact which will be decided under the event of trial by farming necessary issue. The application is malafide and there are no bonafide reasons in it. The application filed by the defendant No.2 is misconceived with facts and law. The 2nd defendant has filed this application only to drag the proceedings of the case. If the application is allowed, great injustice, irreparable loss and untold hardship would be caused to the plaintiff and it leads to miscarriage of justice. Therefore, she prayed to dismiss the application.

10. On perusal of the entire records, the plaintiff has filed this suit against the defendants seeking the relief that, she is the absolute owner in respect of suit schedule property and consequential relief of permanent injunction. The valuation slip

filed by the plaintiff along with the plaint it appears that, the plaintiff has valued the suit under Sec.24(d) of Karnataka Court Fees and Suit Valuation Act and valued the suit for Rs.7,00,000/- and based on the half of the market value paid the court fees of Rs.23,625/-.

11. The learned counsel for defendant objected this valuation of the suit in the written statement. Accordingly, an issue with regard to payment of sufficient court fees is framed. The defendant No.2 not disputed the valuation of the suit as to jurisdiction of the court. The defendant No.2 mainly contended that, court fees paid by the plaintiff is insufficient as the market value of the suit schedule properties exceeds Rs.68,95,200/-and half of the market value the plaintiff is required to pay court fees of Rs.1,60,553/-. But, the plaintiff has deposited only Rs.23,625/-. Therefore, there is deficit of court fees of Rs.1,36,928/-.

12. On the other hand learned counsel for the plaintiff contended that, this court has got every jurisdiction to try the suit and there is no express or implied bar under law to entertain the suit. With

regard to payment of court fees is concerned, it is a question of fact which will have to be decided under the event of trial by framing the issues.

13. In this regard learned counsel for the plaintiff relied upon the decision of Hon'ble High Court of Karnataka held in between **Venkatesh R. Desai V/s Smt.Pushpa Hosamani in W.P.No.8087/ 2018 dated 26.10.2018** wherein it is held as follows;

In the case of Sujir Keshav Nayak(supra), the Supreme Court summed-up the law applicable in such matters in the following;

"---The law on this aspect, thus, should be taken to be as under:

(1) Where the question of court fee is linked with jurisdiction a defendant has a right to raise objection and the court should decide it as a preliminary issue.

(2) But in those cases where the suit is filed in court of unlimited jurisdiction the valuation disclosed by the plaintiff or payment of amount of court fee on relief claimed in plaint or memorandum of appeal should be taken as correct.

(3) This does not preclude the court even in suits filed in courts of unlimited jurisdiction from examining if the

valuation, on averments in plaint, as arbitrary.”

26. On a comprehension of the principles in the decision aforesaid, it is more than apparent that the law relating to the court fees and suits valuation has never been intended to provide a tool to the defendant or any party to the litigation to avoid the decision on the merits of the case and to elongate the life of the suit in the name of raising the questions regarding valuation and/or court fees.

27. Of course, when the question of suit valuation relates to and has implication on the jurisdiction of the court, it may be determined as a preliminary issue as envisaged by Order XIV Rule 2 CPC; and else, the matter simplicitor of valuation and/or court fees, though raised by the defendant, could be decided along with other issues, if it does not otherwise relate to the jurisdiction of the court. This has been the reason that in the case of Nanjamma(Supra) an Renuka Manghnani(supra), this court made it clear that in the suit relating to the partition of joint property, the plaint averments of joint possession takes it within the periphery of Section 35(2) of the Act of 1958 and when it does not relate to jurisdiction, such an issue is not to be tried as a preliminary issue. In Renuka Manghnani the learned Single

judge said, and in our view rightly so that,-

14. The principles laid down in this decision rightly applicable to the present case. In the case on hand, the defendants are not disputing the jurisdiction of the court. Therefore, the question of court fee is not linked with jurisdiction of the court. Hence, the court should not decide it as a preliminary issue. The suit is filed in court of unlimited jurisdiction and hence the valuation disclosed by the plaintiff or payment of amount of court fee on relief claimed in plaint at this stage is taken as correct. In this case, the question of suit valuation not relates to and has no implication on the jurisdiction of the court. Hence, it may not be determined as a preliminary issue as envisaged by Order XIV Rule 2 CPC. The matter is simplicitor of valuation and/or court fees, raised by the defendant, could be decided along with other issues as it is relates to the jurisdiction of the court. Therefore, the contention of the defendants that, the suit itself is not maintainable and the plaint is liable to be rejected because the suit has been

under value and the required court fee has not been paid by the plaintiff at this stage not sustainable. This court has got every jurisdiction to try the suit and there is no express or implied bar under law to entertain the suit. With regard to payment of court fees is concerned, it is a question of fact which will be decided during the trial in Issue No.2. Accordingly, point No.1 is answered in the **Negative.**

POINT No.2:-

15. For the reasons stated above, I pass the following:

: ORDER :

*I.A.No.4 filed by the defendant
No.2 under Order 7 Rule 11(a) and
(b) R/w Sec.151 of CPC is rejected.*

(Dictated to the stenographer, transcribed and typed by her, added some paragraph on computer, corrected and then pronounced by me in the open Court, on this the **14th August, 2023**)

**(Sujatha M. Sambrani)
Senior Civil Judge & JMFC.,
K.R.Nagar.**