

**ORDER ON I.A. NO.8 FILED U/S 11(2) OF KARNATAKA
COURT FEE AND SUIT VALUATION ACT**

The applicant/defendant No.5 has filed this application seeking direction to the plaintiff to pay the court fee U/s 35(1) of Karnataka Court Fee and Suit Valuation Act.

2. Further, the applicant/5th defendant herein has filed affidavit with application, wherein he has stated that, in the plaint para No.5 the plaintiff has admitted the fact that, the plaint schedule properties are in possession and enjoyment of the 1st defendant herein. Hence, it is according to the applicant, the plaintiff has invoked the provision of Sec. 35(2) of Karnataka Court Fee and Suit Valuation Act. Further the applicant is stating that, the plaintiff is required to pay the court fee on the market value of the respective share, which is not paid on the

plaint. Further, it has been averred in the affidavit that, without payment of sufficient court fee on the market value in accordance with law, the suit is not maintainable. Hence, seeking to direct the plaintiff to pay the required prescribed court fee U/s 35(1) of Karnataka Court Fee and Suit Valuation Act.

3. Further, protesting the said application of the defendants, the plaintiff herein has presented the statement of objections. Wherein the plaintiff has denied refuting all the averments mentioned therein in the application. Again the plaintiff submitted in the objections that, in the suit, the PW-1 has already examined before this court and she has also lead her examination in chief. When she was offered and tendered before this court for the purpose of cross-examination, the defendants did not conduct cross-examination without cross-examination and without disputing the court fee in the written statement, they have presented this application with an intention to expel the proceedings of the suit. Further, the court has not framed the issues regarding the court fee. Further according to the plaintiff, the suit has to be determined on merit, the alleged issue burden lies on the defendant to prove such issue adducing the evidence. Hence, the application is not maintainable and liable to be dismissed.

4. Heard the counsels for both the parties to the application and also verified the pleadings and the materials placed before this court.

5. The following points arise for this court's consideration.

1) Whether applicant/defendant No.5 has made out sufficient grounds for allowing the present application?

2) What Order?

6. This court findings on the above points for consideration are as under:

Point No.1: In the Negative.

Point No.2: As per the final order for the following:

REASONS

7. **POINT NO.1:**

On verifying and also going through the materials pleadings available on record. Notably the suit is filed against the defendants for the relief of partition and separate possession in respect of the suit schedule properties. This court has already framed issues on the pleadings of the plaint and statement. Wherein no issue has been casted fixing and saddling the burden on the defendants to prove that, the court fee paid by the plaintiff on the plaint invoking the provision of Sec.35(2) of Karnataka Court Fee and Suit Valuation Act,

valuing the property for Rs.4,53,750/- and paying Rs.200/- towards the court fee is not sufficient.

8. Thereafter, the plaintiff has already examined before this court. Now, the instant application has been moved stating that, the court fee borne by the plaintiff is not sufficient and the plaintiff was required to pay the court fee invoking the provision contemplated U/s 35(1) of Karnataka Court Fee and Suit Valuation Act. Where the applicant taken the ground and urged before this court that, at paragraph No.5 of the plaint, the plaintiff has clearly averred that, the schedule properties are in joint possession and enjoyment of the 1st defendant.

9. Hence it is according to the applicant, the plaintiff ought to have paid the court fees on the market value invoking the provisions of Sec.35(1) of Karnataka Court Fee and Suit Valuation Act. However, the same was refuted specifically in the statement of objections of the plaintiff. Notably the defence of the court fee paid by the plaintiff was not sufficient has been taken in the statement of the defendants. However, no issues were casted on the said averments. Further, when the evidence is already adduced by the parties discloses that, the plaintiff is not in physical possession of the property or any portion thereof it is of no consequences.

10. Thus mere stating that, the 1st defendant is in possession of the schedule property, the right of the plaintiff if she deserves to be entitled for her share, the same cannot be struck off or taken away. Further, though the plaintiff is not in physical possession over the schedule property and she being the lady when she has to live her marital life with her husband and she expected to lead her matrimonial life in the house in which she was given in her marriage. As such though the plaintiff is not in physical possession of the property or any portion thereof, the possession of the one co-owner is to be construed as possession of all the co-owners. In that event, the valuation on the schedule U/s 35(2) of Karnataka Court Fee and Suit Valuation Act is proper and correct in the very opinion of this court.

11. Accordingly, at this belated stage and juncture, the application without any issues and when the possession of the co-owner is to be considered and constitute possession of the all the co-owners, the court fee which is expected to be paid by the plaintiff is U/s 35(2) of Karnataka Court Fee and Suit Valuation Act. Accordingly, she has already paid the court fees of Rs.200/- which is mandated and required to be paid U/s 35(2) of the Karnataka Court Fee and Suit Valuation Act. Accordingly the same is proper and correct. In the absence of any plea regarding ouster or adverse possession, the plaintiff continuous to be in joint possession of the property if she is able to substantiate her pleadings of the plaint during full fledged trial.

12. However, in the considered view of this court, what is the court fee fixed and paid by the plaintiff as per the valuation is very sufficient and the suit is very much maintainable without court fee Sec.35(1) of Karnataka Court Fee and Suit Valuation Act. Hence, the application is liable to be dismissed. Hence, this court without further discussion proceeds to answer point No.1 in the **Negative**.

13. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The I.A No.8 U/s 11(2) of Karnataka Court Fee and Suit Valuation Act is hereby dismissed.

For cross-examination of PW-1.

Call on 10.12.2024.

**(Chandan S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.**