

ORDER ON I.A.NO.2 FILED BY THE DEFENDANTS

The defendants have filed this application under Section 10 and 11 of the Karnataka Court Fee & Suits Valuation Act,1958, to direct the plaintiff to file fresh valuation Slip and also direct the plaintiff to pay the proper court fee before commencement of proceedings.

2. In the memorandum of facts filed in support of application, the learned counsel for defendants has stated that, in para 6 of the plaint, the plaintiff has stated that the suit is valued for the purpose of court fee and jurisdiction under section 24(b) R/w Section 7(2) (b) of KCF and SV act. The properties involved in the suit are non-agricultural properties and hence the provision of section 7 of KCF and SV act is not applicable. On the other hand the properties are to be valued under section 24(b) of KCF and SV act without assistance of Section 7 of KCF and SV act and hence suit is to be valued on 50% of the actual market value of the schedule properties of the plaint. Hence, the learned counsel for defendants has sought for allow the application.

3. The plaintiff has not filed any counter to the application despite giving sufficient opportunities.

4. For disposal of application, the following points arise for consideration:-

1. Whether the defendants have made out sufficient grounds to allow the application?
2. What Order?

5. Having heard arguments, my findings to the above points are:-

Point No.1 : In the **Negative**

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

REASONS

6. **POINT NO.1:** It is pertinent to note that, so far the defendants have not filed written statement. Soon after appearance, the defendants have filed this application. The crucial fact herein is, the court fee issue is not deciding the maintainability of suit. So, the court fee can be considered on merit during the pendency of the suit. It is the burden of the plaintiff to prove that, the valuation slip filed is proper and correct and the valuation is made according to the pleadings of the plaint. So, without filing any written statement, the defendants herein are restrained from taking defence on court fee. Therefore, there is no justification for the defendants to take up such a plea without filing written statement. The matter is at the stage of evidence of plaintiff. As regards the alleged defective valuation of the suit, the defendants cannot be permitted to raise such a plea once the parties have gone for trial and that too without filing written statement. However, it is to be made clear that at any stage of the proceeding if the Court comes to the conclusion that the suit is not properly valued, the plaintiff can be called upon to make good the deficit court fee. But in the instant case, prima facie the Court has not come to the conclusion that there is any such defect. In view of discussion made supra the defendants have not made out grounds to allow the application. Accordingly, this court hold that Point No.1 is answered in the 'Negative'.

7. **Point No.2**:- In view of the reasons stated supra, this proceed to pass the following;

ORDER

I.A.No.II is dismissed.

No order as to costs.

However, the defendants are at liberty to take the defence during the adjudication on merit of the case.

Prl. Civil Judge & JMFC.,
Nanjanagudu.