

**09.01.2024**

Pl: V.S.

Def: H.V.M.

For orders

**ORDER ON I.A's dated 23.06.2023**

The counsel for the Defendant has filed this application framing the additional issue regarding the insufficiency of the court fee paid by the Plaintiff.

2. In the affidavit sworn in support of the application under Sec. 151 of the CPC., it is sworn by the Defendant that this court has framed 5 issues. He has specifically pleaded in para No. 9 of his written statement that the court fee paid by the Plaintiff is insufficient, as the sale consideration amount in the alleged agreement is Rs.32,00,000/- and the Plaintiff has paid the court fee only on Rs.15,16,970/-. Thus the Plaintiff has not paid the court fee on the sale consideration mentioned in the alleged sale agreement. Therefore, the suit is not maintainable as the Plaintiff has not paid proper court fee on the alleged sale agreement. Therefore, it is necessary to frame the issue regarding the insufficiency of the court fee payable by the Plaintiff. Accordingly, it is prayed to frame the additional issue.

3. Per contra, the counsel for the Plaintiff has filed objections to the present application, by opposing to allow the same on the ground that, on the basis of the rival pleadings of the parties, this court has framed the issues and as per the sale agreement entered into between Defendants and him, the total sale consideration is Rs.32,00,000/-. However, the Defendants have produced the document for only to an extent of 2065 sq.ft as per the Bidadi Municipal Office document and as per the said document, the total sale consideration is Rs.15,16,970/- and he has paid the court fee as per the document produced by the Defendant. Therefore, this court has to consider the court fee as per the document produced by the Defendant and it is not necessary to frame any additional issue. Hence, it is prayed to reject the application.

4. Heard the counsels for the Plaintiff. The counsel for the Defendant has filed his written arguments to the present application. I have perused the same and the other materials on record.

5. The following points would arise for the consideration of this court:-

- i) Whether the I.A filed by the Defendant deserves to be allowed?
- ii) If so, what order?

6. My answers to the above Points are as under:-

Point No.1 : In the Affirmative;

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

**REASONS**

**7. Point No.1:-** Admittedly, the Plaintiff has has filed this suit against the Defendant seeking the relief of specific performance of the sale agreement dated: 03.04.2016 and for the consequential relief of Permanent Injunction.

8. The record reveals that, already on the basis of the rival pleadings of both the parties, my learned predecessor has framed the issues on 16.02.2021. The record reveals that, at the time of filing the suit, the counsel for the Plaintiff has calculated the court fee on the sale consideration and paid the court fee of Rs.1,53,125/-. However, according to the counsel for the Defendant, the said payment of court fee is not in accordance with law.

9. On the contrary, the counsel for the Plaintiff in his objection statement has contended that the court fee has been paid on the basis of the document produced by the Defendant and as such, the same is proper.

10. For this purpose, by going through the contents of the written statement, it goes to show that the Defendant has denied the alleged execution of the sale agreement in favour of the Plaintiff. In such circumstance, the burden of proving the existence of the alleged sale agreement is on the part of the Plaintiff. Though in the written statement,

the Defendant has taken up the defence that the sale agreement is a created and concocted document and it is also contended by him that the present market value of the suit schedule property is more than Rs.80,00,000/-, there is no specific contention taken by him to the effect that the suit is not properly valued and that the court fee paid by the Plaintiff is either insufficient or improper.

11. It is pertinent to note that, at Para No.9 of the Written statement dated:- 25.06.2019, there is a specific defence taken by the Defendant to the effect that, the suit is not properly valued and that the court fee paid is not sufficient and proper. In such circumstance, the question whether the court fee paid by the Plaintiff on the plaint is sufficient and proper or not? needs to be decided by the court only after a full fledged trial.

12. However, at this stage, since there is a specific defence with regard to the court fee and the market value of the suit schedule property, it is necessary to frame the additional issue regarding the same. Accordingly, this point is answered in the Affirmative.

**13. Point No.2:-** In view of my answer to Point No.1, I proceed to pass the following:-

**ORDER**

I.A filed by the Defendant  
under Sec.151 of the CPC., is  
hereby allowed.

The Additional issues are framed is as under:

1. Whether the suit is properly valued?
2. Whether the court fee paid is sufficient and proper?

Prl.Senior Civil Judge & CJM.,  
Ramanagara.