

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND  
CJM AT RAMANAGARAM**

**Dated : This the 17<sup>th</sup> day of March 2017**

**Present**

**Smt. M.ANITHA.,**  
B.Sc., LL.B.,  
Prl. Senior Civil Judge & CJM.,  
Ramanagaram.

**O.S 265/2014**

**Plaintiff:-** Smt.Puttamma

**(By Sri. K.L.S., Advocate)**

**V/s**

**Defendants:-** Sri.D.S.Ramachandra and others

**(D-3 Sri. A.G., Advocate)**

\* \* \* \* \*

**Orders on I.A No.3 dated 09.09.2014 filed by the  
defendant No.3 U/o 7 Rule 11 of CPC**

The defendant No.3 has come up with this application to reject the plaint.

2. In the affidavit sub-joined with the application, the defendant No.3 deposed that, the plaintiff has prayed two reliefs and has filed a valuation slip and have valued the suit schedule property for Rs.20,00,000/- for the purpose of jurisdiction. For the purpose of court fee, the plaintiff has valued the relief of declaration U/s 24(b) r/w Section 7(a) of the Karnataka Court Fees and

Suits Valuation Act, 1958 at Rs.25/- and for the relief of injunction the plaintiff claims that, relief is consequential and hence no court fee need to be paid but still has paid a court fee of Rs.200/-. The suit has been valued U/s 24(b) r/w Sec.7 without reference to any sub-section thereof. The suit appears to have been valued under Sub-section 2(a) of Section 7 of the Karnataka court fees and suit valuation act 1958, on the assumption that, the suit schedule property is an agricultural land assessed to land revenue. However, by an order dated 31.12.2010 bearing No.ALN/(R)CR/117/2008-09 the Deputy Commissioner, Ramanagara District, has permitted the conversion of land use from agriculture to non-agriculture and hence the land is no more agricultural land assessed to land revenue and hence Section 7(2)(a) has no application and the suit schedule property cannot be valued under the said provision. Since, section 7(2)(a) is not applicable, the market value of the suit schedule property will have to be determined U/s 7(1) of the said Act. As on the date of presentation of the suit, by an order dated 28.12.2012 the Bengaluru Metropolitan Region Development Authority has permitted even the formation of a lay out in the suit schedule property

by carving out residential and commercial sites of various dimensions. Thus the market value of the suit schedule property is much more than what has been valued by the plaintiff. The market value of the developed land in Hejjala village as per the government guidelines is Rs.700/- per square feet. One acre consists of 43560 square feet and hence one acre and ten guntas of land constitute 54450 square feet and at Rs.700/- per square feet, the market value would be Rs.3,81,15,000/-.

3. As under section 24(b) in a suit for declaration and consequential injunction, the court fee will have to be paid on half of the market value and the court fee on half of Rs.3,81,15,000/- which is Rs.1,90,57,500/- and the ad valorem court fee on the same would be Rs.3,02,412/-. That in view of the facts of the case, the plaintiff is obviously not in possession of the suit schedule property. Still the plaintiff has filed the suit stating that, she is in possession to save the court fee as under section 24(a) of the said Act, she would have to pay court fee on the full market value of the suit schedule property which is Rs.3,81,15,000/- and ad valorem rates the court fee will be Rs.3,97,700/-. Besides, the plaintiff

has also sought a decree declaring the general power of attorney dated 25.10.2005 and the sale deed dated 22.03.2006 as not binding on the plaintiff which amounts to cancellation of the said documents. Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958, dealing with the suits for cancellation of decree etc., *In Smt. Damegunta Rajeshwaramma and another Vs. Smt. Jayalakshamma and others reported in 2011(1) KLJ 389, the Hon'ble High Court of Karnataka has held that, "Court fee payable has to be computed on the basis of value of property, which must be understood as market value of property as on date of plaint and not amount of consideration mentioned in the sale sought to be cancelled".* The value of the subject matter of the suit i.e., the value of the suit schedule property is Rs.3,81,15,000/- and hence the plaintiff will have to pay an ad valorem court fee of Rs.3,97,700/- for getting the general power of attorney cancelled. As the plaintiff also seeking cancellation of sale deed in respect of the suit schedule property, the plaintiff will have to pay another sum of Rs.3,97,700/- for getting the sale deed cancelled. Hence, for the relief of cancellation of the general power of attorney and the sale deed the plaintiff will have to pay a court fee of

Rs.7,95,400/- . Thus the plaintiff will have to pay a court fee of, Rs.3,97,700/- on the prayer for declaration of title and injunction, Rs.7,95,400/- on the prayer of cancellation of the general power of attorney and the sale deed and in all the plaintiff will have to pay a total court fee of Rs.11,93,100/- on the plaint. That inspite of the clear provision of law as aforesaid, the plaintiff has neither valued the suit property not paid proper court fee. The plaintiff is prosecuting the suit from 04.06.2014 by paying merely Rs.200/- causing not only a huge loss to the state exchequer but also causing fraudulent inconvenience to this defendant. The suit also appears from the statement in the plaint to be barred by law i.e., by section 6 of the Specific Relief Act, 1963. Because, the plaintiff has stated in paragraph No.2 of the plaint that, the defendant have occupied the suit schedule property by trespassing on it and hence the plaintiff has admittedly lost possession. Since the plaintiff has admittedly lost possession on 25.10.2005 and 22.03.2006 when the general power of attorney and the sale deed were executed and according to the plaintiff herself the same were executed without her consent and hence the possession was handed over to the general power of

attorney holder and the purchaser under the above said sale deed, without her consent, and since the suit is brought nine years thereafter, the suit is barred by the provisions of the Specific Relief Act. Wherefore, this defendant prays that, the suit may be rejected U/o 7 Rule 11 of CPC.

4. Despite the adequate opportunities given to the plaintiff, she has failed to file her objection statement to the present application. Consequentially, the matter went for a stage to hear arguments on present application.
5. The court perused the written arguments filed by the learned counsel for defendant No.3 and recorded the arguments of counsel for plaintiff as Nil, since he fail to address the arguments.
6. From the rival contention of the parties, the following point emerge for consideration:-

*Whether the defendant No.3 made out a ground to reject the plaint in terms sought?*

7. I have scrutinized the entire materials related to the application on hand. Now, finding of the Court on the point is in the "Negative" for the following:-

## **REASONS**

8. The plaintiff has prayed for the following relieves:-

a) *Declaration that, the plaintiff is the absolute owner having right in the suit schedule property.*

b) *The general power of attorney dated 25.10.2005 and sale deed dated 22.03.2006 are not binding on the plaintiff.*

c) *Permanent injunction restraining the defendants from interfering with plaintiff's possession of the suit schedule property.*

9. The plaintiff has filed a valuation slip and have valued the suit schedule property at Rs.20,00,000/- for the purpose of jurisdiction and market value of the suit schedule property as Rs.20,00,000/-. The plaintiff has valued the relief of declaration U/s 24(b) r/w Section 7(a) of the Karnataka Court Fees and Suits Valuation Act, 1958 at Rs.25/-. Besides, on invoking Sec.7 of the Act, on the ground that the suit schedule property is an agricultural land assessed to land revenue has paid Rs.200/- as court fee with regard to the relief that, the GPA is not binding on him.

10. The defendant No.3 raised an objection under the present application that, by an order dated

31.12.2010 the Deputy Commissioner, Ramanagara District has permitted the conversion of suit schedule land use from agriculture to non-agriculture and the land is no more agriculture land assessed to land revenue and hence section 7(2)(a) has no application and the suit schedule property cannot be valued under the said provision. Added to this, the defendant No.3 contended that, the market value of the suit schedule property will have to be determined U/s 7(1) of the Act, since as on the date of presentation of the suit, by an order dated 28.12.2012 the Bengaluru Metropolitan Region Development Authority has permitted even the formation of a lay out in the suit schedule property by carving out residential and commercial sites of various dimensions. Thus the market value of the suit schedule property is much more than what has been valued by the plaintiff. The market value of the developed land in Hejjala village as per the government guidelines is Rs.700/- per square feet. One acre consists of 43560 square feet and hence one acre and ten guntas of land constitute 54450 square feet and at Rs.700/- per square feet, the market value would be Rs.3,81,15,000/-.

11. No doubt, the plaintiff has not filed any objection to the current application and therefore the application is remained unchallenged. But, the court could not ignore that, even in the absence of objection statement, it is the duty of the court to ascertain whether the court fee paid is sufficient or not. After the category of the suit has been ascertained, the court has to find out whether the plaintiff has correctly valued the relief for the purpose of court fees in the manner laid down in Section 7 of the Court Fees Act. This process also involves the examination of the plaint allegations and, if there is nothing to indicate otherwise, the plaintiff valuation which prima facie is accepted as correct. Ordinarily the court would accept court fee paid in the first instance as correct, but if it transpires subsequently that, an allegation of fact on the basis of which the court fee was computed is not correct, than it is within the power of the court to demand additional court fee before the judgment is pronounced. Thus the court could not reject the plaint summarily without providing an opportunity to the plaintiff to pay the additional court fee, if the plaintiff is required to pay the same. Be that as it may.

12. Coming to the case before Court, allegations in the plaint so that, it is a declaration and permanent injunction suit which is governed by Sub-section (2)(a) of Section 7 of Court Fee Act for computing the proper court fee. The court fee paid by the plaintiff is acceptable as correct because, the plaintiff has asserted in the plaint that, the suit schedule property is a land granted in her favour under the Dharkasth order dated 19.03.1991 and there is interference to her possession by the defendants. Of course, in paragraph No.2 of the plaint, the plaintiff made an averment that, though the defendants have no right or interest in the property have occupied the property unlawfully. But, the said sentence does not convey a clear meaning that, the plaintiff is not in possession of the suit schedule property. More importantly, the suit property as described in the schedule of the plaint is an agricultural land bearing Sy.No.5 measuring 1 acre 10 guntas of Hejjalla village, Bidadi Hobli, Ramanagara Taluk. Indeed the plaintiff produced the photocopy of the grant certificate along with the RTC extract of the year 2013-14 pertains to the suit schedule property, which prima facie shows that, the revenue authority still maintained the name of plaintiff as Kabjeddar and Cultivator of the said land. Absolutely there is no

reference or mention about the alleged conversion order in any of the columns of the RTC extract which is related to the suit schedule property. Incidentally, I may bring it on record that, the defendant No.3 has not produced any documents in support of his application meaning that, he has not produced the conversion order allegedly passed by the Deputy Commissioner dated 31.12.2010. Wherefore, as on record, it appears to the court that, the subject matter of the suit is an agricultural land and there is no document to show that, it has been already converted for non-agricultural purpose and sites have been formed therein. Wherefore, the defendant No.3 ought to produce evidence before the court to establish his contention that, the property in dispute has been already converted for non-agriculture purpose and sites have been formed therein and as such the court fee is to be paid on non-agricultural land.

13. The general rule that, the court must base its decision as to the court fee payable on the allegations and prayers in the plaint is correct only to this extent that, the general rule is invoked primarily for the purpose of classification of suit; in other words, in order to find out the nature of the suit and the

category it belongs to, the court must examine the allegations and reliefs claimed in the suit for the simple reason that, it is the allegations made in the plaint which determine the nature of the suit. In making this classification about the category of the suit it is not permissible to call in aid the allegations made in the written statement. Wherefore, the plea taken by the defendant about the nature of the suit schedule property cannot be ascertained at present based upon the statement of defendant No.3. The scope of investigation U/s 11 of the Act is confined practically to determine two points: (i) undervaluation of the subject matter of the suit; and (ii) category under which the suit falls, for the purpose of court fee. Once the category of the suit is determined with reference to plaint averments, the court cannot subsequently change the category on the basis of the averments in the written statement or on the basis of evidence and arguments. The plaintiff in a suit being dominus litis has the choice of filing a suit of a particular nature or seek a particular relief. Neither the defendant nor the court can alter the suit as one for a different relief as a suit falling in a different category and require the plaintiff to pay court fee on such altered category of suit. In the instant suit, the

plaintiff claims that, she is the owner in possession of the suit schedule property, she categorizes the suit under section 24(b) of the Act which reads thus:-

*Section 24(b) whether the prayer for a declaration and for consequential injunction and the relief sought is with reference to any movable property, computed on one and half market value of the property or on Rs.1,000/- which ever is higher ;*

14. Apparently on invoking Section 7(2)(a)(b) of the Act, the plaintiff determine the market value of the suit schedule property and the court fee payable on the reliefs claimed and this is based upon the revenue payable to the land and accordingly paid the court fee of Rs.25 and Rs.200/-. Therefore, if and when a court comes to the conclusion that, the averment about possession in the plaint is not borne out by the evidence, the obvious result would be that, the plaintiff suit would fail unless the plaint is suitably amended and further court fee paid. Wherefore, in the present suit the plaintiff paid the fixed court fee in respect of her prayer for declaration of title and consequential injunction on invoking Section 24(b) of the Act. Likewise, based upon the value of the subject matter of the suit assessed U/s 7 of the Act, she has paid the court fee of Rs.200/- for the reliefs that the general power of attorney dated 25.10.2005 and the sale deed

dated 22.03.2006 are not binding on her. On appreciation of the evidence, if the court disbelieve the case of plaintiff regarding possession, it can only hold that the suit is not maintainable U/s 6 of the Specific Relief Act and it is barred by law and therefore, plaintiff is not entitled to relief. Hence, at present, the court cannot draw an inference on the basis of plea taken by the defendant No.3 that, the land in question is no more agricultural land assessed to land revenue.

15. In total, all the contentions taken by the defendant No.3 in the present application is on the ground that, the land in question is already converted for non-agricultural purpose and that plea is to be determined only after Full Fledged Trial meaning that, recording of evidence is necessary in respect of the plea taken. A separate issue can be framed with regard to the plea of valuation of suit and payment of court fee. The defendant No.3 is at liberty to establish his plea with regard to the said issue.

16. Hence, the court fee paid on the plaint is proper. Hence, there is no merit in the application filed by the defendant No.3 and the same is liable to be rejected. Hence, I am inclined to hold the point is in the "Negative" and proceed to pass the following:-

**ORDER**

I.A No.3 filed by the defendant  
No.3 dated 09.09.2014 U/o 7 Rule 11  
of CPC is hereby dismissed.

No order as to costs.

*(Dictated to the Stenographer, transcribed by him, the transcript corrected by me and then pronounced in the open Court on this the 17<sup>th</sup> day of March 2017)*

**Prl., Senior Civil Judge & CJM,  
Ramanagaram.**