

2 M/s Al-Falah Education Social &
Economic Trust (R)
Behind Kalyagate, Magadi Town,
Magadi.

Represented by its president
Abdul Rehman,
S/o. late Fakaruddin Saheb,
Aged about 66 years.

The present suit is for declaration to declare that the registered sale deed dated 03.12.2004 is *void ab intio* and for perpetual injunction.

2. Heard learned counsel for the plaintiffs on payment of court fees payable for the relief of declaration to declare that the sale deed dated 03.12.2004 is *void ab intio*. The learned counsel for the plaintiffs submit that for the purpose of court fees and jurisdiction the suit schedule property is valued at Rs.10,00,000/- and court fee of Rs.25/- is paid for each of the reliefs as per Sec.26(c) and Sec.24 (d) of K.C.F. and S.V. Act, 1958.

3. Considering the plaint and submission of the learned counsel for the plaintiffs following points arise for my consideration.

1. **Whether the court fees paid by the plaintiffs U/Sec.24 (d) of KCF and SV Act for the relief of declaration to declare that the sale deed dated 03.12.2004 is *void ab intio* is proper?**
2. **What order?**

4. My findings for the above points are as under.

Point no.1 : In the negative

**Point no.2 : As per final order
For the following;**

R E A S O N S

5. **Point no.1**:- It is the case of the plaintiffs that they have paid the court fees for the purpose of relief of declaration to declare that the sale deed is *void ab intio*, as per Sec. 24(d) of K.C.F. and S.V. Act. In this regard I have perused the plaint. The plaintiffs have sought to declare the regd. sale deed dated 03.12.2004 is *void ab intio*. The said sale deed is alleged to have been executed by defendant no.1 in favour of defendant no.2 during the pendency of proceedings before land tribunal. This being the case I am of the view that with the said relief of declaration, virtually the plaintiffs pray for cancellation of the sale deed. Further, the said relief of

declaration is a main relief. Therefore, I am of the view that Section 38 of Karnataka Court Fees and Suit Valuation Act, 1958 gets attracted to the facts of the case.

6. Be it stated, though the plaintiffs are not parties to the said sale deed, which is sought to be declared as *void ab initio*, they still have to pay the court fees for declaration to declare that the sale deed is *void ab-initio* as per Sec.38 of KCF and SV Act. In this regard I am supported by the decision of the Hon'ble High Court of Karnataka between The Laxmi Sahakari Bank Niyamita Gulledgudd V. Smt.Sunanda [WP No.66012/2012 (GM-CPC)], wherein the Hon'ble court held as below;

“The plaintiff contends that declaration sought is that the sale deed is null and void and it is not binding on him, as he is not a party to the proceedings. In law, it makes no difference whether the person, who is seeking declaration or cancellation is a party to the transaction or not. The Court fee is payable on the valuation and therefore, the trial Court was justified in directing the

plaintiff to pay Court fee under Section 38 of the Karnataka Court-Fees and Suits Valuation Act, 1958.”

7. Furthermore, considering the relief sought for and facts and circumstances of the case, I am of the view that the plaintiffs have to pay court fees as per section Sec.38 of the K.C.F. and S.V. Act for the relief of declaration to declare that the sale deed is *void ab initio*. In this regard it is worth to refer the decision of the Hon'ble High Court of Karnataka between Sunita W/O M.Siddangouda Melmani V. Sidlingeshwargoudas/O Siddangouda Police Patel And Ors. [Writ Petition No.82202 OF 2010(GM-CPC)], wherein the Hon'ble court held as below;

“But when the plaintiff seeks cancellation of a sale deed executed by her, Section 38 of the Court Fees Act is attracted. She has to pay the Court fee on the consideration mentioned in the said sale deeds. That is what the Trial Court has done. It is clearly stated that she has to value the suit in respect of sale deeds executed by the plaintiff in favour of the defendants and pay the

court fee. The said order is valid and legal and does not suffer from any infirmity. No interference is called for. Accordingly, the writ petition is dismissed.”

8. In this circumstances considering the plaint and the relief sought for and also considering the law laid down by the Hon'ble Court, I am of the view that for the relief of declaration to declare that the sale deed dated 03.12.2004 is *void ab intio*, the plaintiffs have to pay the court fee as per Sec.38 of the K.C.F. and S.V. Act. In these circumstances I hold that the court fee paid by the plaintiffs for the said relief of declaration U/Sec. 24(d) of the K.C.F. and S.V. Act is not proper. Accordingly, I answer point no. 1 in the negative.

9. **Point no.2** :-For the reasons stated on point no. 1 and in the interest of Justice and equity I proceed to pass the following;

ORDER

The court fee paid by the plaintiffs for the relief of declaration to declare that the sale deed dated 03.12.2004 is *void ab intio* as per Sec.24 (d) of K.C.F. and S.V. Act is not proper.

Plaintiffs are hereby directed to pay the court fee for the relief of declaration to declare that the sale deed dated 03.12.2004 is *void ab intio* as per Sec.38 of K.C.F. and S.V. Act.

Parties to bear their respective costs.

(Dictated to the Stenographer, typed by him corrected by me and then pronounced in the open court on this the **22nd day of October, 2020.**)

(Hanumanth Satwik)
Addl. Sr. Civil Judge & JMFC
Magadi.