

### **O R D E R O N I . A . N O . I I I**

The learned counsel for the defendant No.4 has filed the said application U/o 7 rule 11(b) & (d) of CPC, r/w sec. 11(2) & 3 of Karnataka Court fees and suit valuation Act, 1958.

It is stated and sworn to in the affidavit annexed to the said application by defendant No.4 that the plaintiffs have filed this suit seeking declaratory relief that they are entitled for partition of suit land and also declaring that the sale deed dtd: 12.6.2008 executed by defendant No.1 to 3 infavour of defendant No.4 is not binding as null and void. But, no court fees is paid for the relief of declaration at all and the plaintiffs are liable to pay court fee on sale consideration amount of Rs. 42,30,000/-, if, they need relief of declaration that sale deed is not binding on them as null and void. No declaratory relief can be claimed without paying court fee on the sale consideration mentioned and shown in the registered sale deed. Therefore, the suit is not maintainable and liable to be dismissed. The plaintiffs have claimed independent relief of permanent injunction without paying any court fee. As the lands are N.A land the plaintiffs are bound to pay court fee on the market value of Rs. 42,30,000/- as shown in the sale deed. As Admitted by the plaintiffs' husband of plaintiff No.1 had purchased the land in the year 1978 and cause of action to get partition suit from 1978 and at least finally on 1995 when the defendant No.1 got his name

entered in the record of rights with respect to the suit lands. Hence, the suit is hopelessly time barred. Hence, this application and prays to allow the same.

Per contra, the learned counsel for the plaintiff No.1 has filed objection to the said application by contending that the instant application filed by defendant No.4 is not maintainable. The plaintiffs have filed the suit for partition and court fee is paid as per the provision of Sec. 35 of K.C.F and S.V. Act. The prayer of the plaintiffs with respect to the sale deed is consequential relief and only to the extent that the alleged sale deed is not binding on them to the extent of their respective share. The plaintiffs have not prayed for any declaration for cancellation of sale deed. Therefore, the question of payment of court fee on the sale consideration does not arise. The defendants are knowing the fact that they had played fraud upon the plaintiffs, wants to cut shot the suit and do not want to face the trial. He is very well aware that if, the trial of the case begins, he will be exposed and his duping nature will come before the court. The application filed by the defendant is devoid of merits and in order to delay and defeat the right of the plaintiffs, they have filed present application.

So far as the allegations of the plaintiffs with respect to the limitation is concerned, it is also not correct as the plaintiffs have clearly stated in the plaint as to why and how she has been forced to file the present suit. The

conduct of the defendants is clearly explained in the plaint and hence, the same can not be accepted. The cause of action for the plaintiffs to file the suit for partition arose on the date of execution of the sale deed by the defendant Nos. 1 to 3 in favour of defendant No.4. Hence, the application filed by the defendant No.4 is liable to be rejected.

For the above said facts, the point that arises for my consideration is as follows:

**Whether I.A.No.III filed by the defendant No.4 U/O 7 rule 11(b) and (d) of CPC r/w sec. 11(2) & 3 of Karnataka court fees and suit valuation Act, 1958, deserves to be allowed?**

Heard arguments.

My answer to the above said point is in the **Negative**, for the following :

### **REASONS**

***Point:*** Both learned counsels for the parties have reiterated the averments of application and also objection filed thereto in their arguments. The contention of defendant No.4 is that the plaintiffs have filed the suit seeking the relief of partition of the suit land and also seeking declaratory relief that the sale deed dtd: 12.6.2008 executed by defendant No.1 to 3 in favour of defendant No.4 is not binding on them and same is null and void. But, the plaintiffs have not paid requisite court

fee on the sale consideration amount of Rs. 42,30,000/- as shown in the sale deed.

It is another contention of the defendant is that the suit filed by the plaintiff is barred by law of limitation as husband of plaintiff No.1 had purchased the land in the year 1978.

On the other hand the contention of the plaintiff is that the the plaintiffs have filed the suit for partition and requisite court fee paid by them is just and proper and they have not sought for any relief for cancellation of sale deed. They have sought for consequential relief apart from main relief for partition and separate possession.

I have perused I.A., objection filed thereto and also records. Admittedly, the plaintiffs have filed the suit for partition and separate possession of their legitimate share over the suit schedule property by metes and bounds and also sought for consequential relief of declaration, declaring that the alleged sale deed dtd: 12.06.2008 said to have been executed by defendant Nos.1 to 3 in favour of defendant No.4 is not binding on them. But, the plaintiffs have not sought for any relief for cancellation of sale deed. When such being the facts, the question of paying court fee on the sale consideration amount of Rs. 42,30,000/- as shown in the said sale deed, does not arise. So far as the limitation point is concerned that has to be considered on merits of the case i.e., only after full fledged trial of the suit. However, issues are not framed in this case. If, the defendant has taken up contention in his

written statement with respect to the limitation point, that has to be considered and proper issue will be framed. Hence, considering, the facts and circumstances of the case and also for the foregoing reasons, I am of the view that the present application filed by defendant No.4 is not tenable and same is liable to be rejected. Accordingly, I answered the above said point is in the **Negative** and proceed to pass the following:

**Order**

I.A.No.III filed by defendant No.4 U/o 7 rule 11(b) and (d) of CPC, r/w section 11(2) & 3 of Karnataka court fees and suit valuation Act, 1958, is dismissed.

No costs.

(Shivakumara B.)  
Prl. Senior Civil Judge, Karwar.

For issues by 31.08.2018.

Prl. Senior Civil Judge, Karwar.

