

KAUK510000052020



**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA**

**PRESENT: -DESHABHUSHAN KOUJALAGI,
B.A.LLB.,
CIVIL JUDGE & JMFC., HALIYAL.**

DATED THIS THE 31st DAY OF AUGUST, 2024

O.S. No.05/2020

PLAINTIFF :

Sri. Nagendra S/o Shankar Jivoji,
Age: 48 years, Occ: Business
and agriculture,
R/o: Ramdev Galli, Haliyal,
Tal: Haliyal, Dist: Uttar Kannada.

(By: P.B.A, Advocate)

V/s

DEFENDANTS: 01.

Smt. Hanamavva W/o Omanna
Waddar,
Age: 47 years, Occ: Household work,
and agriculture,
R/o: Dharwad Road, Haliyal,
Tal: Haliyal, Dist: Uttara Kannada.

02.

Shri. Adivappa S/o Mukharya
Waddar,
Age: 39 years, Occ: Agriculture,
R/o: Dharwad Road, Haliyal
Tal: Haliyal, Dist: Uttara Kannada.

03. Smt. Demavva W/o Shivappa Bhovi,
Age:55 years, Occ: Household work,
R/o. Pallatwadi Galli,
Vegetable Market, Ponda, Goa State.
04. Sri. Durgappa S/o Basappa Waddar,
Age: 57 years, Occ: Business,
R/o. Bus Stand Road, Haliyal,
Tal: Haliyal, Dist: Uttar Kannada.

(D-1 By Smt. SRG/Sri.NIG, Advs)

(D-2 By Sri. G.V.K, Adv)

(D-3 Exparte)

(D-4 By Sri. S.R.H, Adv)

**ORDERS ON PRELIMINARY ISSUE (ADDITIONAL
ISSUE NO.1)**

The present suit is filed by the plaintiff against the defendants for the relief of declaration to declare that, the judgment and decree in O.S No.45/2008, R.A No.19/2010, FDP No.04/2012 and orders in E.P No.28/2016 which took place between deceased Smt. Balavva and defendants No.1 to 3 interse are behind the back of the plaintiff and not binding on him. The plaintiff has also sought the relief of declaration to declare that, the proceedings in O.S No.172/2018 which are pending between the defendant No.4 and defendants No.1 and 3 and any order passed therein are behind the back of the plaintiff and they are not binding on the plaintiff.

The plaintiff has also sought consequential relief of permanent injunction to restrain the defendants or anybody acting on their behalf from interfering with peaceful possession and enjoyment of the suit schedule property by the plaintiff.

2. After service of suit summons, the defendant No.1 has appeared before the Court through her counsel and filed written statement wherein, she has taken a contention at paragraph No.10 of the written statement that, the plaintiff has clearly admitted that, he has purchased the suit property for Rs.9,58,000/- which is the market value of the suit property and as such, this Court has no pecuniary jurisdiction to try the matter. In view of said contention, the Court has framed the Preliminary Issue (Additional Issue No.1) on 07.07.2023 as under:

Preliminary Issue (Additional Issue No.1): Whether the defendant No.1 proves that, this Court has lacks of pecuniary jurisdiction to entertain the present suit?

3. Heard on Preliminary Issue (Additional Issue No.1) on both side. Perused the entire materials.

4. Having heard and perusal of the records, answer of the Court to the aforesaid Preliminary Issue (Additional Issue No.1) is as under:

5. Preliminary Issue (Additional Issue No.1):

Answered in the **NEGATIVE** for the following:

REASONS

6. PRELIMINARY ISSUE (ADDITIONAL ISSUE

NO.1): Before discussion on core issue, Court deems it proper to narrate the brief facts of the case of the plaintiff and defendants. It is the case of the plaintiff that, he has purchased the suit schedule property for value of Rs.9,58,000/- under a registered sale deed dated 12.06.2013 from its owner i.e., Smt. Balavva W/o Mukharya Waddar and her son i.e., defendant No.2. On the basis of said sale deed, the name of the plaintiff was mutated to the revenue records of the suit property vide MR No.35/2012-13 dated 22.07.2013. Since the date of purchase of the suit property, the plaintiff is in peaceful possession and enjoyment of the suit schedule property and he is a bonafide purchaser for value without noticing previous transaction and disputes pertaining to the suit property.

7. It is further case of the plaintiff that, on his casual visit to the Tahasildar Office, Haliyal on 04.01.2018, he came to know about the notice exhibited on the office notice of Tahasildar, Haliyal inviting objections to M.E No.H38/2017-18. After reading the said notice, the plaintiff surprised to see that, the said notice was pertaining to the suit survey number. Immediately, the plaintiff has filed the objections by stating that, he has purchased an extent of 13 gunthas of agriculture land out of suit survey number and thereby objected to certify M.E No.H38/2017-18 pertaining to his portion of land.

8. It is further case of the plaintiff that, the Tahasildar, Haliyal has rejected the objections of the plaintiff and he has certified M.E No.H38/2017-18 on the basis of order passed in Ex. No.28/2016 dated 25.01.2017 and final decree drawn in FDP No.04/2012 by this Court and further directed his officials to make an entry at Column No.11 of the RTC of the suit property with regard to pendency of O.S No.172/2018. Thereafter, the plaintiff has verified the records pertaining to litigation which were pending before this Court and it was revealed that, the defendant No.1 herein has filed O.S No.45/2008 for partition and separate

possession of her 1/3rd share in the suit properties against Smt. Balavva, defendant No.2 and defendant No.3 herein. The aforesaid proceedings which were pending between the defendants herein and deceased Smt. Balavva were behind the back of the plaintiff and he has not been impleaded as one of the party in the said proceedings and as such, the plaintiff is constrained to file the present suit for the aforesaid relief.

9. On the other hand, the defendant No.1 has contended in her written statement that, the suit of the plaintiff in the present form and nature is not maintainable under law or equity. The plaintiff ought to have sought a declaration to the effect that, he has acquired valid title over the suit property and as such, the judgment and decree passed in R.A No.19/2010 is not valid. Without seeking such a declaratory relief, the present suit is not maintainable. The defendant No.1 is not aware that, the defendant No.2 and Smt. Balavva have sold the suit property to the plaintiff for a consideration of Rs.9,58,000/- through a registered sale deed dated 12.06.2013. The defendant No.1 is not a party to the sale transaction. Moreover, in R.A No.19/2010, it has been held that, the defendant No.1 herein has got 1/3rd share in the suit land and

after disposal of said regular appeal, the alleged sale transaction has taken place. On the date of alleged sale deed, FDP No.04/2012 was also pending before this Court and as such, the alleged sale deed dated 12.06.2013 is hit by law of lis-pendence and the sale deed is not binding on the share of the defendant No.1 herein. All the revenue proceedings which have taken place on the strength of the alleged sale deed are illegal or not binding on the defendants herein. While passing decree in R.A No.19/2010, the Hon'ble Civil Judge, Haliyal has also granted permanent injunction prohibiting the defendant No.2 herein and Smt. Balavva from alienating the suit property till 1/3rd share of defendant No.1 is carved out in the suit property. Therefore, the alleged sale transaction dated 12.06.2013 is illegal.

10. It is further case of the defendant No.1 that, she has obtained a decree in her favour in R.A No.19/2010 and got her 1/3rd share in the suit property by executing final decree passed in FDP No.04/2012 and also obtained actual possession of her share in the suit property in E.P No.28/2016. Hence, the defendant No.1 is the absolute owner of land bearing Survey No.139/2A,1A/3A to an extent of 04 gunthas 05 annas. The defendant No.1 has admitted

pendency of O.S No.172/2018 and further contended at paragraph No.9 of her written statement that, the suit is barred by law of res-judicata. Apart from this, as already stated above, at paragraph No.10 of the written statement, the defendant No.1 has taken a contention that, this Court has no pecuniary jurisdiction to entertain the present suit as the plaintiff himself has admitted in the plaint that, he has purchased the suit property fro value of Rs.9,58,000/-. With these grounds, the defendant No.1 prays to dismiss the suit.

11. Court has gone through the entire materials and it has heard on both side on preliminary issue. According to the defendant No.1, the plaintiff himself has admitted in the plaint that, he has purchased the suit property for consideration amount of Rs.9,58,000/- and as such, this Court lacks pecuniary jurisdiction to entertain the present suit.

12. It is pertinent to note that, the plaintiff is not seeking any declaratory relief on the sale deed dated 12.06.2013. However, the suit of the plaintiff is for the relief of declaration to declare that, the judgment and decree passed in O.S No.45/2008, R.A No.19/2010, FDP No.04/2012 and orders in E.P No.28/2016 which took place between the deceased Smt. Balavva and defendants

No.1 to 3 interse are behind the back of the plaintiff and the same are not binding on the plaintiff. Hence, it is necessary to look into the valuation made by the plaintiff for the purpose of payment of Court fees and jurisdiction of the Court. The plaintiff has valued the suit on Rs.1,000/- under Section 24(d) of the Karnataka Court Fees and Suit Valuation Act for the relief of declaration for each declaratory relief and also valued the suit under Section 26(c) of the Karnataka Court Fees and Suit Valuation Act for the relief of permanent injunction and the same is also valued for the purpose of pecuniary jurisdiction. When such being the case, the contention of the defendant No.1 that, this Court has no pecuniary jurisdiction cannot be accepted.

13. Admittedly, the suit schedule property is agricultural land and previous litigation which were pending between the defendants herein and deceased Smt. Balavva were also before this Court itself. In other words, O.S No.45/2008 and FDP No.04/2012 were pending before this Court in respect of suit survey number. The plaintiff is seeking the relief of declaration to declare that, the judgment and decree passed in aforesaid proceedings are not binding on him. When such being the case, the valuation of the suit

under Section 24(d) and 26(c) of the Karnataka Court Fees and Suit Valuation Act for the purpose of jurisdiction is held to be valid. Hence, this Court does not lacks pecuniary jurisdiction to entertain the present suit. Accordingly, Preliminary Issue (Additional Issue No.1) is answered in the **NEGATIVE** and Court proceeds to pass the following:

ORDER

Preliminary Issue (Additional Issue No.1)
is answered in the Negative.

Consequently, it is held that, suit of the
plaintiff is maintainable.

(Dictated to the Stenographer, transcribed and typed by her, then corrected, signed and pronounced by me in the Open Court on this the *31st Day of August, 2024*)

(DESHABHUSHAN KOUJALAGI)
Civil Judge & J.M.F.C.,Haliyal.