

KAUP020016502019



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND CJM.,
UDUPI

Present: Sri. Vignesh Kumar,
B.A.(Law), LL.M.

Prl. Senior Civil Judge & CJM.,Udupi.

Dated : This the 7th day of August, 2023

O.S. No.170/2019

Between:

Shobha R. Shetty : **Plaintiff**
(Rep. by Sri.H.R.S., Advocate)

-Versus-

Shantheri B. and another : **Defendants**
(Rep. by Sri.V.S., Advocate D1.
(Rep. by Sri. V.V.P., Advocate D2.)

I.A. No.XI

Between:

Shantheri B. : **Applicant/Defendant No.1**

-Versus-

Shobha R.Shetty : **Opponent/plaintiff**

ORDERS ON I.A.NO.XI

This is an application filed under Section 11 of The Karnataka Court Fees and Suits Valuation Act 1958 and Section 151 of CPC by the defendant by contending that the Court fee paid is insufficient.

2. In the affidavit annexed to the IA, it is averred by the defendant no.1 that the plaintiff as sought for two reliefs in the suit i.e. one for cancellation of GPA deed and another for cancellation of the Sale deed. However, the plaintiff has valued the suit only for Rs.16,45,000/- on the basis of sale consideration amount mentioned in the sale deed and has paid Court fees accordingly. However valuation of another relief regarding cancellation of GPA deed is not made. As such the plaintiff is required to pay additional sum of Rs.93,675/- as deficit Court fees on the additional relief of cancellation.

3. learned counsel for plaintiff has filed his objection contending that the Court fees paid under Section 38 and 26 of Karnataka Court Fees and Suits Valuation Act is sufficient and only with an intention to drag on the proceedings the present IA is filed. Hence, prayed to its dismissal.

5. Heard both side and perused case records.

6. The following point would arise for my consideration:

“Whether the Court fee paid is sufficient?”

7. My findings to the above point is in the affirmative for the following:

REASON

8. **point no.1** : It is an accepted principles of law that for the purpose of calculation of Court fee only the plaint averments need to be looked

into. The plaintiff has sought for cancellation of GPA deed dated 22.07.1998 and consequentially for the relief of cancellation of registered Sale deed dated 21.04.2017 which is executed on the basis said GPA. The suit is valued for Rs.16,45,000/- for the purpose of relief of cancellation of the GPA deed as well as the Sale deed. Accordingly, Court fee of Rs.93,650/- is paid as per Section 38 of Karnataka Court Fees and Suits Valuation Act. The GPA deed as well as the Sale deed under question or pertaining to immovable property situated in Puttur Village. The defendant has not produced any document to suggest the valuation of the said suit schedule property. The plaintiff has not produced separate valuation slip and therefore there is a confusion regarding its sufficiency. Infact, under Section 38 of Karnataka Court Fees and Suits Valuation Act, the Court fees has to be determined on the basis of the market value of the property. The plaintiff has valued the suit for Rs.16,45,000/- which is the sale consideration amount under the registered Sale deed. Accordingly Court fees is paid. In the absence of any material placed by the defendant, the said valuation of the suit schedule property i.e Sy.No.236 situated in Puttur Village, Udupi Taluk has to be considered as correct.

9. The major contents of the defendant is that the plaintiff has sought for cancellation of GPA deed as well as the Sale deed. However, the Court fee is paid only in respect of cancellation of the GPA deed and not in respect of the Sale deed. Hence it is argued that the plaintiff is required to pay additional sum of Rs.93,650/- towards deficit Court fee. Thus the defendant is not disputing that the market value of suit schedule property is more than Rs.16,45,000/- or not. Both the GPA deed and Sale deed

under challenge in this suit are inter-connected documents. In this connection it is necessary to refer to Section 9 of Karnataka Court Fees and Suits Valuation Act which reads as follows:

“9. Documents falling under two or more descriptions.- Subject to the provisions of the last preceding section, a document falling within two or more descriptions to this Act shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees:

Provided that, where one of such descriptions is special and another general, the fee chargeable shall be the fee appropriate to the special description.”

10. Applying the said provision to the case in hand, both the GPA deed dated 22.07.1998 and Sale deed dated 21.04.2017 are interconnected to each other. On the basis of said GPA itself the sale transaction has taken place. Therefore, when there are documents in two descriptions, the fees chargeable thereunder should be on the highest of such fees. The GPA deed although refers to the suit schedule property but it does not convey the consideration amount. On the other hand the sale deed date 21.04.2017 clearly refers to sale consideration amount Rs.16,45,000/-. Therefore the said amount is considered for the purpose of Court fees in respect of cancellation of both GPA as well as the Sale deed.

11. As per Section 38 of the Karnataka Court Fees and Suit Valuation Act the plaintiff has correctly paid of Rs.93,650/- on the basis of sale consideration amount mentioned in Sale deed as a value of the subject matter of the suit. Therefore, the Court fee paid by the plaintiff is very much sufficient and the IA is devoid of any merits. There is much force in

the argument of learned counsel for plaintiff that only with an intention to prolong and protract the proceedings the present IA is filed. When the case is posted for cross-examination of PW1. Upon payment of cost of Rs.200/-, these IA No.X and XI are filed . The timing of these IAs would clearly indicate that the defendants are only trying to protract the proceeding. Hence, it is necessary to impose heavy cost. Accordingly, point no.1 is answered in the affirmative and this Court deems fit to pass the following:

ORDER

I.A.No.XI under Section 11 of The Karnataka Court Fees and Suits Valuation Act 1958 and Section 151 of CPC is hereby dismissed with cost of Rs.2,000/-.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 7th day of August, 2023)

(Vignesh Kumar)
Prl. Sr. Civil Judge and CJM.,
Udupi.