

ORDER ON IA NO.VII

The defendant No.1 has filed the present application under Order XIV Rule 5 read with Section 151 of the CPC., to frame additional issues, which reads thus:

1. Whether the suit of the plaintiffs is properly valued under the provisions of Karnataka Court Fees and Suits Valuation Act for the purpose of court fees and jurisdiction?
2. Whether the suit of the plaintiffs is properly valued by invoking the provision of Section 23 of Karnataka Court Fees and Suits Valuation Act in respect of plaint 'A' and 'C' schedule properties?

2. It is averred in the affidavit annexed to the application that, in her written statement she has taken specific defence in respect of pecuniary jurisdiction of this court and valuation. The plaint 'B' schedule property is non agricultural. Therefore, the valuation ought to be made under the market value. Therefore, the above proposed additional issues are very much necessary and relevant for the proper adjudication of the suit. If the proposed additional issues are not framed then the defendant No.1 will be put to great hardship. With these, prayed to allow the application.

3. Per contra, the plaintiffs have resisted the application by filing objection. In the objection contended that there is no necessity to frame additional issues as averred in the application. The issues already framed will be sufficient to decide the suit. The dispute involved and relief claimed in the suit not at all comes under Section 23 of the Karnataka Court Fees and Suit Valuation Act. The above application is filed to drag on the proceedings and to cause delay in disposal of the case. Therefore, the plaintiffs sought for dismissal of the application.

4. The points that would arise for consideration are:-

1. Whether the application deserves to be allowed?
2. What order?

5. I have heard the learned counsel for the parties to the lis and meticulously perused the materials on record.

6. My answer to the above said points are as under:

Point No.1: In the Affirmative;

Point No.2: As per final order for the following:

REASONS

7. **Point No.1:** After hearing, careful perusal of affidavit, objection and materials placed on record, the plaintiffs have filed the present suit against the defendants for grant of Mandatory and consequential Permanent Injunction. The learned counsel for the defendant No.1 vehemently argued that the plaintiff has deliberately undervalued the relief and value of the suit exceeds the pecuniary jurisdiction of the court. The defendant No.1 in her written statement has specifically contended the same. Therefore, the proposed additional issues are necessary for determining the controversy between the parties. On the other hand the learned counsel for the plaintiffs vehemently argued that the plaintiffs

have rightly valued and dispute involved and relief claimed in the suit not at all falls under the Section 23 of the Karnataka Court Fees and Suit Valuation Act. Therefore, the proposed additional issues are not necessary to adjudicating the suit.

8. When the matter was posted for cross examination of PW.1, at this stage the defendant No.1 has filed the present application to frame additional issues as prayed in the application. The defendant No.1 has raised the issue in respect of pecuniary jurisdiction and court fee. It is settled law that the issue relating to pecuniary jurisdiction goes to the root of the matter and such issue needs to be framed. Therefore, the above proposed additional issues are necessary for adjudication of the matter. Therefore, the defendant No.1 has made sufficient ground to allow the application. In view of above, I answer point No.1 in the **Affirmative**.

9. **Point No.2:** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

IA No. VII filed by the defendant No.1
under Order XIV Rule 5 of CPC is hereby
allowed.

The proposed additional issues are framed as under:

1. Whether the defendant No.1 proves that suit is not properly valued and the court fee paid is insufficient?
2. Whether the defendant No.1 proves that this court has no pecuniary jurisdiction tried the suit?
3. Whether the suit of the plaintiff is maintainable in the present form?

Note: Addl. issue No.1 to 3 treated as preliminary issue

No order as to costs.

To hear on preliminary issue by:

II Addl. Civil Judge & J.M.F.C.,
Karkala.

