

MHAU060005982006



**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, KANNAD, AT**  
**KANND**

(Presided over by P. M. Kolse)

**CNR NO.MHAU06000598-2006**

**R.C.S No.77/2006**

**Bijlabai Bhaskar Aher & Ors.**

**...Plaintiffs**

**Versus**

**Devidas Namdeo Zimman & Ors.**

**...Defendants**

**ORDER BELOW EXH.171**

(Delivered on 04<sup>th</sup> August 2022)

1. The defendant no.8 and 9 (for short "defendants") have moved this application under order 7 rule 11 (b) of Code of Civil Procedure (for short 'C.P.C.') for rejection of plaint.

2. The defendants contended that, initially the suit was instituted only by the plaintiff no.1 Bijlabai against 7 defendants. During pendency of the suit defendant no.4 Kesarbai transposed as Plaintiff No.2 vide order of this Court below Exh.12. The plaint thereafter underwent various amendments till 30.01.2014 and finally amended plaintiff was submitted on 13.02.2014. Present defendant no.8 and 9 have filed their written statement below Exh.59.

3. It is contended that the plaintiffs have undervalued the suit and affixed insufficient court fee stamp for the pecuniary jurisdiction. The

plaintiff no.2 got transposed as the plaintiff no.2 and thereby indirectly claiming her 1/6<sup>th</sup> share equivalent to the plaintiff no.1. Therefore, court fees ought to have been doubled since both the plaintiffs are claiming 1/6<sup>th</sup> share each. The valuation of the agricultural land is shown as 6445/- and valuation of the house property is shown as 5,40,000/- and 1/6<sup>th</sup> share valuation is shown as Rs.1,80,000/-. The plaintiff no.2 neither valued her share nor has paid any court fees. Further, the plaintiffs are also seeking the declaration about the registered sale deed bearing no.2744/2007 and 2745/2007 dated 11.06.2007. The valuation of the house property shown in the sale deed is Rs.45,000/- and the valuation of the agricultural land is shown as Rs. 6,80,000/-. Thus the total valuation of the properties land and house property so far as the relief of declaration is concern would be Rs.7,25,000/-. However, the plaint and clause of valuation is silent on this point. The correct total valuation of the suit is 10,97,890/-, therefore, plaintiffs ought to have paid Court fees on Rs.10,97,890/- The plaintiffs are bound to made valuation of the suit as per the valuation of the suit property. Hence prayed to allow the application.

4. The plaintiffs have filed their say Exh.180 and strongly opposed the application. They submitted that the application is false, frivolous and not tenable in the eyes of law. They submitted that the application is filed only to prolong the matter. The plaintiffs have valued their claim properly and there is no any error in calculation of valuation and the plaintiffs have paid the requisite Court Fees as per the provisions of statute. The valuation mentioned by the defendants in the application is denied for want of knowledge and no any cogent evidence is placed on record. Hence, prayed to reject the application with heavy costs.

5. Perused the application, say and plaint. Heard learned

advocate for both sides. Following points arose for determination which I produce along with my findings.

Sr. No.	Points	Findings
1	Whether relief claimed is undervalued ?	In the negative
2	What Order ?	As per final order

### REASONS

#### As to Point No.1 and 2 :-

6. After perusal of pleadings of plaintiffs and considering the submissions of both sides, it appears that the plaintiffs have filed suit for partition, declaration and permanent injunction. Initially suit was filed by plaintiff no.1 only, but thereafter as per order below Exh.12 dated 16.03.2012 the defendant no.4 Kesarbai Jadhav was transposed as plaintiff no.2 and claimed her 1/6<sup>th</sup> share in the suit property as equal to plaintiff no.1.

7. As per the para no.10 of the plaint the plaintiffs valued the agricultural land 200 times of land revenue which is equivalent to Rs. 6,445/-. The defendants contended that the plaintiffs have to made valuation of Rs.6,445/- each and pay the Court fees accordingly. Let us go through the provision of Sec.6 (vii) of the Maharashtra Court Fees Act.

#### Sec.6 (vii) :- for share in joint property :-

*In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a coparcener or co-owner according to the value of the share in respect of which the suit is instituted;*

**Explanation** – for the purpose of this paragraph, if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purpose of agriculture, the value of such land shall be deemed to be the value as determined under paragraph (v) of this section.

8. As per the above provision if the suit filed for partition on the basis of joint family property the valuation of the property should be made on the basis of the share of the plaintiff. Where the land is assessed to revenue it should be valued on the assessment as per section 6 (v) of the Act. Here, in this case the plaintiffs have valued the suit 200 times on the assessment of the land revenue i.e. Rs. 6,445/- if we bifurcate the valuation as per 1/6<sup>th</sup> share each it comes only Rs. 430 approximately i.e. in total Rs.860 for the shares of plaintiffs. But plaintiffs have made valuation on total valuation of Rs.6,445/- of Assessment which is more than their share. The contentions of the defendants that the plaintiffs have to made valuation of Rs.6,445/- each is not supported by any provision. Therefore, there is no substance in the objection raised by the defendants.

9. Moving ahead, the defendants contended that the plaintiffs have shown the valuation of house properties as Rs.5,40,000/- and for 1/6<sup>th</sup> share it is shown as Rs.1,80,000/-. But as the defendant no.4 is transposed as plaintiff no.2 to claim her 1/6<sup>th</sup> share, the same valuation would apply to the plaintiff no.2.

10. There is no doubt that the plaintiffs have shown the valuation of house properties as Rs.5,40,000/-. If we divide the amount of Rs.5,40,000/- in six share it comes as Rs.90,000/- for each share, and if we make addition of two shares it comes as Rs.1,80,000/-. Accordingly, the valuation of house property made by the plaintiffs appears to be

correct. Therefore, there is no need to interfere in the said valuation of the house properties.

11. Further, the defendants contended that the plaintiffs are seeking declaration pertaining to the registered sale deed no. 2744/2007 and 2745/2007 dated 11.06.2007. The valuation of the house property shown in the sale deed is Rs. 45,000/-, whereas the valuation of the agricultural land shown in the registered sale deed is Rs.6,80,000/-. Thus the total valuation of the properties land and house property so far relief as declaration concerned would be Rs.7,25,000/-.

12. I have gone through the above contentions. The plaintiffs are seeking declaration that the sale deed no.2744/2007 and 2745/2007 are not binding on them. For that purpose they have made valuation upon Rs.1000/- as per the Maharashtra Court Fees Act. As per the pleadings of the plaintiffs the defendant no.1 and 3 have executed the above mentioned sale deeds of the suit property on 11.06.2007 i.e. during the pendency of the suit. Moreover, present plaintiffs are not parties to the said sale deeds. It is settled law that when the party aggrieved is not party to the sale deed and he is seeking only declaration, there is no need to made valuation as per the valuation of the sale deed subject to facts and relief claimed in the suit.

13. In the case in hand the suit is filed for partition and plaintiffs are not parties to the above mentioned sale deeds. Moreover, said sale deeds were executed during the pendency of the suit. Therefore, the prayer of declaration and valuation is enough to suffice the purpose. Therefore, I do not find any substance in the objection raised by the defendants.

14. The defendants also relied on the valuation certificate of the suit properties filed by the defendant no.2 and 10 to 14 along with Exh.157 issued by Sub Registrar Kannad. In the said valuation certificates the valuation of the suit properties are show more than the valuation shown by the plaintiff in the suit. The said certificates are issued on 24.01.2014 i.e. after two years of the amendment made by the plaintiff in the suit property. However, the plaintiff has filed the valuation certificate of suit property pertains to year 2012 along with Exh.179 which was got under the right to information Act. In the said certificates the valuation of suit property i.e. 112, 23, 113, 12 and 57 are shown Rs.400/- per Sq. mtrs. and valuation of 35/1/e/296 of plot no.25 is shown as Rs.1050 per sq. mtrs. which is less than valuation of year 2014. therefore, the valuation of the suit property as per the valuation of 2012 is within the jurisdiction of this Court.

15. Having gone through the above circumstances, I am of the view that plaintiff has valued the suit properly. Therefore, I answer point no.1 in the negative and in answer to point no.2 I pass following order:-

**ORDER**

1. The application Exh.171 is rejected.
  2. No order as to Costs.
- (Pronounce in open Court)

Date: 04.08.2022

(P. M. Kolse)  
Civil Judge, J.D, Kannad.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file order are same, word to word as per the original Order.

Name of the Stenographer : Y. S. Mali.  
Court : C.J.J.D. & JMFC, Kannad.  
Date : 04.08.2022  
Order signed by the  
presiding officer on : 04.08.2022  
Order uploaded on : 05.08.2022

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