



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE R.NATARAJ

WRIT PETITION NO.201083 OF 2018 (GM-CPC)

BETWEEN:

1. OSMANSAB
S/O KAREEMSAB LADAF,
AGE: 54 YEARS OCC: AGRICULTURE & COOLIE
2. MEHABOBSAB S/O KAREEMSAB,
AGE: 49 YEARS OCC: PRIVATE JOB,
3. HUSSAINBEE W/O KAREEMSAB,
AGE: 70 YEARS OCC: HOUSEHOLD,

ALL ARE R/O BHANKUR TQ: CHITTAPUR
DIST. KALABURAGI-585211.

...PETITIONERS

(BY SMT. SHARADA PATIL KULGERI, ADVOCATE)



AND:

1. KASIMSAB
S/O MASHAKSAB LADAF,
AGE: 73 YEARS, OCC: AGRICULTURE,
R/O DIGGAON TQ. CHITTAPUR
DIST. KALABURAGI-585211.
2. MEHABOBBEE W/O MEHABOBSAB,
AGE: 90 YEARS
OCC: HOUSEHOLD,
R/O C/O MOHD RAFIQ (WELDER),
NEAR RAJABAKSHA DARGA, MADDI NO.2,



SHAHABAD (SINCE DECEASED THROUGH
LEGAL REPRESENTATIVE).

A) ABDUL NABI S/O MEHABOBSAB,
AGE: 70 YEARS.

B) MOHD ISMAIL
S/O MEHABOBSAB,
AGE: 68 YEARS.

C) MOHD OSMAN
S/O MEHABOBSAB,
AGE: 62 YEARS.

D) HAJIKAREEM
S/O MEHABOBSAB,
AGE: 58 YEARS.

E) MOHD RAFIQ
S/O MEHABOBSAB,
AGE: 52 YEARS.

F) MALANBEE
D/O MEHABOBSAB,
AGE: 65 YEARS.

G) RABIYABEE
D/O MEHABOBSAB,
AGE: 54 YEARS

ALL R/O NEAR RAJABBAKSHA DARGA,
MADDI NO.2 SHAHABAD,
TQ. CHITTAPUR, DIST. KALABURAGI-585211.

3. MUKTUMBE W/O RUKMUDDIN,
AGE: 80 YEARS, OCC: HOUSEHOLD,
R/O BACK OF MAZID, DIGGAON
TQ. CHITTAPUR, DIST. KALABURAGI.
4. LALBEE W/O HUSSAINSAB,
AGE: 75 YEARS, OCC: HOUSEHOLD,
R/O BEHIND BHAGI CLASSES, ALANDI ROAD,



DIAGGAON VILLAGE POONA
(SINCE DECEASED THOROUGH HER LEGAL
REPRESENTATIVE)

A) BASHU S/O HASSAINSAB,
AGE: 58 YEARS, OCC: BUSINESS,
R/O POONA MAHARASHTRA.

5. ABBASBEE S/O MEHABOOB MOULANA,
AGE: 70 YEARS, OCC: HOUSEHOLD,
R/O LAXMINAGAR, SY.NO.11, BEHIND DARGA,
ARODA POONA, (SINCE DECEASED THROUGH HER
LEGAL REPRESENTATIVE) (BROUGHT ON RECORD AS
PER ORDER ON I.A NO.10 DATED: 09.03.2016)

A) HUSSAIN S/O MEHABOOB SHAIK,
AGE: 55 YEARS

B) IBRAHIM
S/O MEHABOOB SHAIK,
AGE: 53 YEARS

C) RAFIQ
S/O MEHABOOB SHAIK,
AGE: 50 YEARS

D) DASTIR
S/O MEHABOOB SHAIK,
AGE: 47 YEARS,

E) MOULANA
S/O MEHABOOB SHAIK,
AGE: 45 YEARS

F) TANVEER
S/O MEHABOOB SHAIK,
AGE: 38 YEARS

G) MALANBEE
D/O MEHABOOB SHAIK,
AGE: 42 YEARS,



ALL R/O LAXMINAGAR
BEHIND DARGA BAKERY,
PAIL WADA SY . NO.11
ARODA, POONA (MAHARASHTRA)

6. MUMTAZ BEGUM W/O IBRAHIMSAB,
AGE: 45 YEARS, OCC: HOUSEHOLD,
R/O BEHIND AMBIKA BAKERY,
NEAR SANNI MANDIR,
PATIL WADA, ARODA, POONA.
7. HANEEFA BEE W/O KAREMSAB,
AGE: 90 YEARS OCC: HOUSEHOLD.
8. TASLEEM D/O SALEEMABEE,
AGE: MAJOR, OCC: HOUSEHOLD.
9. BAKASH S/O SALEEMABEE,
AGE: 17 YEARS, OCC: BUSINESS.
10. ALTAF S/O SALEEMABEE
AGE: MINOR (15 YEARS), OCC: BUSINESS.

(ALL ABOVE 4 R/O HOUSE NO.3-2-94
KUMAR GALLI, TANDOOR-501141)
DEFENDANT NO.9 AND 10 ARE MINORS
HENCE UNDER GUARDIANSHIP OF DEFENDANT NO.7,
WHO IS THEIR NATURAL MATERNAL GRAND-
MOTHER)

11. ORIENT CEMENT COMPANY THROUGH
ITS VICE PRESIDENT MR. ASHOK KUMAR SWAIN
S/O LATE UPENDRA NATH SWAIN HAVING ITS
OFFICE AT CHITTAPUR, DIST. KALABURAGI
(DEFENDANT NO.10 IS MINOR AND HENCE
REPRESENTED
BY HER MATERNAL GRAND-MOTHER HANEEFABEE
W/O KAREEMSAB, DEFENDANT NO.7).

...RESPONDENTS

(BY SRI. GANESH NAIK, ADVOCATE FOR R1;
SRI. S. N. PADSHETTY, ADVOCATE FOR R11;



V/O DATED 03.01.2020 NOTICE TO R5,
(A, C, D, E AND G) ARE DISPENSED WITH;
R2 (A), R2(B), R3 ARE DEAD;
R5 (B), R5(F), R6 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A WRIT, ORDER OR DIRECTION IN NATURE OF CERTIORARI, QUASHING ANNEXURE-F VIZ., THE ORDER DATED-05.03.2018, IN I.A.NO.19, IN O.S.NO.194/2011, PASSED BY THE SENIOR CIVIL JUDGE CHITTAPUR.

THIS PETITION, COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR JUSTICE R.NATARAJ

ORAL ORDER

(PER: THE HON'BLE MR JUSTICE R.NATARAJ)

The plaintiffs in OS No.194/2011 on the file of the Senior Civil Judge, Chittapur have filed this petition challenging the order dated 05.03.2018 on I.A.No.19 filed by defendant No.1, by which the plaintiffs were directed to furnish the correct valuation of the suit property on the basis of the market value mentioned in the sale deed in favour of defendant No.11 dated 19.05.2011.



2. The suit in OS NO.194/2011 was filed for partition and separate possession of plaintiffs half share in the suit property and for a declaration that the sale deed executed by defendant No.1 dated 19.05.2011 in favour of defendant No.11 does not bind the right of the plaintiffs in the suit property.

3. The plaintiffs No.1 and 2 contend that they are the sons of Kareemsab while plaintiff No.3 is the wife of Kareemsab, defendant No.1 was the brother of Kareemsab while defendant Nos.2, 3, 4 and 5 were the sisters of Kareemsab. The defendant No.7 was second wife of Kareemsab, who had two daughters, one of whom is arrayed as defendant No.6. The defendant Nos. 8 to 10 were the granddaughters of Kareemsab. Defendant No.11 was the company, which had purchased the suit land from defendant No.1. The plaintiffs contended that the suit property belonged to their grandfather Mashaksab Ladaf. After his death, it was mutated in the name of defendant No.1. Mashaksab Ladaf had two sons named Kareemsab and Kasimsab, who were enjoying the property as joint



owners. They contended that Kareemsab died on 13.12.2004 and the plaintiffs succeeded to his share in the suit property. The plaintiffs contended that they and the defendants were the joint owners and in possession of the suit property and were tenants in common. They contended that as there no was dispute between them, they were cultivating the land jointly and after the death of Kareemsab, defendant No.1 taking advantage of his name entered in revenue records, sold the suit property to the defendant No.11 on 19.05.2011. The plaintiffs therefore sought for partition and separate possession of their half share in the suit property and also sought for a declaration that the sale deed executed by defendant No.1 in favour of defendant No.11 did not bind their interest.

4. The suit was contested by defendant No.1, who denied the contents of the plaint and contended that the father of the plaintiff Nos.1 and 2 never lived in the village, but was employed in the Shahabad factory, till he died in the year 2004. He contended that after the death of his father, Kareemsab sold the house to one Kasimsab



with the consent of defendant and his sisters and mother in the year 1973. He contended that the said Kareemsab, his sisters relinquished their share in Sy.No.84/2 in his favour in the year 1974 after receiving a sum of Rs.2,000/-. He contends that from the year 1974, he was in possession and enjoyment of the suit property, which was known to everyone including the plaintiffs. He also contended that Sy.No.125 belongs to Kasimsab. But the name of the grandfather of plaintiff Nos.1 and 2 is shown in the register of land in Sy.No.125. He contended that his father Mashaksab Ladaf had no share in the land bearing Sy.No.125. He submits that he purchased the share of Mashaksab Ladaf s/o Kaseemsab in the year 1978 and from then on his name was entered in the revenue records. With these and other contentions, they prayed the Court dismiss the suit.

5. The defendant No.2 filed an additional written statement, which was taken on record. Defendant No.5 also filed a written statement denying the claim of the plaintiffs and contended that, she gave away land in



Sy.No.84/1 to defendant No.1 under Hiba and that defendant No.1 accepted the Hiba and took possession and got his name entered in the revenue records. Defendant No.7 also contended that the father of the plaintiff Nos.1 and 2 was employed in a factory at Shahabad and that the sisters of defendant No.1 had relinquished their share orally in the land bearing Sy.No.84/2 in favour of defendant No.1 and hence, plaintiffs were not entitled to a share therein.

6. Defendant No.11 filed its written statement contending that after making enquires about the ownership of defendant No.11 in respect of land bearing Sy.No.84/1 and 84/2, it had purchased it for valuable consideration. Therefore, it contended that it was a bona fide purchaser having paid valuable consideration to the defendant No.1. It contended that the plaintiffs had no right, title or interest in the suit property and it was in possession of the suit property under the sale deed executed by defendant No.1. Based on these contentions, the Trial Court framed the following issues:



ISSUES

"1. Whether the plaintiffs prove that, the grand father of the plaintiffs Mashaksab Ladaf was the owner and possessor of land Sy.No.125, measuring 19 Acres 19 Guntas to the extent of 3 Acres 17 Guntas and Sy.No.84/1, measuring 4 Acres 10 Guntas?

2. Whether the plaintiffs prove that, after his death the said suit lands mutated in the name of defendant no. 1 though both the sons of said Mashaksab i.e. Kareemsab (father of the plaintiff no.1 and 2) and Kashimsab enjoyed the suit lands as tenants in common?

3. Whether the plaintiffs prove that, after the death of Kashimsab the father of the plaintiff nos. 1 and 2 and defendant no.1 are enjoyed the suit properties as tenants in common?

4. Whether the plaintiffs prove that, the defendant no.1 refused to effect partition in the suit properties?

5. Whether the plaintiffs prove that, the registered sale deed as executed by the defendant no.1 in favour of defendant no. 11 Is not binding upon them?

6. Whether the plaintiffs are entitled for their half share in the suit properties and partition and separate possession as prayed for?

7. Whether the defendant no.1 proves that, mashaksab owned only the Sy.No.84/1, measuring 4 acres 10 Guntas?

8. Whether the defendant no. 1 further proves that, after the death of Mashaksab, the Kareemsab sold the house to one Kashimsab in the year 1973 as Contended at Para No. 12 of the written statement?



9. *Whether the defendant no.1 proves that, Kashimbee, Kareemsab and sisters of defendant by name Mehaboobe, Muktumbee, Lalbee and Abbashbee relinquished their share in Sy.No.84/2 in the year 1974 for Rs.2000/-?*

10. *Whether the defendant no,1 proves that, since 1974 he is in possession of Sy.No.84/2, measuring 4 Acres 10 Guntas as owner and possessor?*

11. *What Order or Decree?"*

7. After the suit was set down for trial, the defendant No.1 filed an application under Section 11(2) of the Karnataka Court Fees And Suit Valuation Act, 1958 (herein after referred to as the 'the Act, 1958' for brevity) read with Order 7 Rule 11(b) of CPC to determine market value of the suit property and also pay the Court fee. It was stated in the affidavit accompanying the application that the suit property was valued as if it was an agricultural land. However, the sale deed executed by the defendant No.1 in favour of the defendant No.11 showed that the land in question was converted for industrial purposes and that the defendant No.11 had set up a cement factory. He contended that the market value of the suit property was therefore, more than what was



declared by the plaintiffs in the suit. He therefore contended that it was necessary to determine the market value of the suit property for the purpose of payment of Court fee.

8. This application was contested by the plaintiffs, who claimed that they were interested in the land bearing Sy.No.84/1 and 84/2, in which they had undivided share. They contend that the sale deed executed by defendant No.1 in favour of defendant No.11 was not binding upon them and therefore, any order passed in favour of defendant No.11 or it getting the land converted for non agricultural purpose also did not bind their interest. The plaintiffs contended that they were in joint possession of the suit property and suit property was properly valued under Section 35(2) of the Act, 1958. He contended in order to verify whether the suit property was properly valued or not, it is the only averments made in the plaint that has to be looked into and not the averments made in the written statement.



9. The Trial Court after considering the contentions urged, allowed the application in terms of the impugned order and directed the plaintiffs to furnish the correct value of the suit property on the basis of the market value, mentioned in the sale deed in favour of defendant No.11 and directed the plaintiffs to pay the Court fee.

10. The Trial Court came to the aforesaid conclusion on the ground that the plaintiffs had sought for cancellation of the sale deed and therefore, they were bound to pay the Court fee on the advalorem value, namely the consideration mentioned in the sale deed. It held that if a person, who is not a party to the documents seeks for a declaration that it is null and void and not bind his share, then he merely has to pay Court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act, 1958. The consideration mentioned in the sale deed dated 19.05.2011 executed by defendant No.1 in favour of defendant No.11 was Rs.24,30,000/-. It was mentioned in the sale deed that defendant No.11 had purchased for establishing a cement plant. Therefore, it held that the



suit item No.1 namely land in Sy.No.84/1 was not an agricultural land as it was purchased by defendant No.11 after obtaining permission from the Deputy Commissioner. Therefore, it held that the valuation furnished by the plaintiffs under Section 35(2) of the Act was not in accordance with law.

11. Being aggrieved by the aforesaid order the plaintiffs are before this Court.

12. Learned counsel for the plaintiffs submits that valuation of suit property is based on the averments made in the plaint and not on the contentions raised by defendant No.1. She contended that a perusal of the written statement filed by defendant No.1 did not show whether there was any challenge to the valuation of the suit and market value as declared by the plaintiffs in the suit. She contended that the Trial Court therefore did not frame any issue regarding the Court fee payable or that the suit was not properly valued. She contended that defendant No.11, who purchased the property from defendant No.1 did not raise any contentions. Thus, she



contended that defendant No.1 could not have filed an application after the suit was set down for trial to determine the correct value and to pay the Court fee.

13. Per contra, learned counsel for defendant No.1 submitted that the land in question was conveyed to defendant No.11 for the purpose of establishing a cement factory and therefore, it was no longer an agricultural land and could not have been valued under Section 35(2) of the Act, 1958 as the plaintiffs were never in possession of the suit property, but defendant No.11 was in possession. Therefore, he contended that the suit property must have been valued based on the market value of the property. Learned counsel for defendant No.11 supported the contentions of learned counsel for defendant No.1 and contended that the property in question was made out in the name of defendant No.11 in the year 1974 and neither the plaintiffs nor their predecessors claimed their share in the property from the year 1974 to 2011 and therefore, suit was barred by law of limitation.



14. I have considered the submission made by learned counsel for plaintiffs and learned counsel for defendant Nos.1 and 11.

15. The plaintiffs had categorically stated in the plaint that the suit property was owned and possessed by their grandfather and after his death, it was transferred to the name of the defendant No.1, though, the father of the plaintiff Nos.1 and 2 was entitled to half share in the property. They contended that they were in joint possession and enjoyment of the same along with defendant No.1. The plaintiffs therefore sought for partition and separate possession of their share in the suit property and for a declaration that the sale deed executed by defendant No.1, in favour of defendant No.11 was not binding upon them. When a suit of this nature was filed, while determining the market value of such property, all that had to be looked into was the averments made in the plaint as to whether the suit had to be valued under Section 35(1) or Section 35 (2) of the Act, 1958. Section 7 of the Act, 1958 declares that where the Court fee is



payable under the Act depending on the market value of any property, such valuation shall be determined as on the date of presentation of the plaint, meaning thereby, that it is the averments made in plaint alone that has to be looked into. As the plaintiffs had claimed that the suit property was in their joint possession and that they and defendant Nos.1 were joint tenants cultivating the property, the valuation of the suit under Section 35(2) of the Act, 1958 was correct. The defendants did not dispute the valuation of the suit in their written statement. Therefore, no issue regarding the market value declared by the plaintiffs and the Court fee paid thereon was framed by the Trial Court. The defendant No.1 after the commencement of trial filed the instant application to determine the market value under Section 11 of the Act, 1958 and under order 7 rule 11(b) of CPC. The Trial Court was clearly oblivious of the provisions contained in Section 11(2) of the Act, 1958. Section 11(2) of the Act mandates as follows :



"If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit."

Therefore, there were two stages when the issue whether Court fee paid is correct or not can be determined. The first stage is when the suit is filed and second after the suit is filed, after examining the evidence on record. When the suit was filed, the Court has accepted the valuation based on the assertion in the plaint. Under Section 11(2) of the Act the Court has the power to revisit the issue after evidence is recorded, to determine whether the Court fee paid is proper or not. In the present case, since the evidence has not begun and there were no contentions raised by the defendants in their written statement about the correctness of the valuation made by the plaintiffs in the suit, the impugned order passed by the Trial Court requiring the plaintiffs to determine the market



value, based on the consideration mentioned in the sale deed executed by defendant No.1 in favour of defendant No.11 is misconceived and deserves to be interfered with.

16. We also cannot loose sight of the fact that the plaintiffs had claimed that the sale deed executed by defendant No.1 in favour of defendant No.11 was not binding upon their share. Hence, the conveyance by the defendant No.1 in favour of defendant No.11 as well as the consequent acts by the defendant No.11 may not bind the plaintiffs. It is also noticed that the suit property was not converted for non agricultural purposes and hence, the land continued to be an agricultural land and therefore, valuation of the suit by treating the suit property as agricultural land was just and proper.

17. In that view of the matter, the plaintiffs are bound to succeed in this petition, consequently this petition is allowed. Impugned order passed by the Trial Court is set aside. The Trial Court is directed to proceed with the suit in accordance with law. However, if after evidence is adduced and the Trial Court comes to the



conclusion that the subject matter of the suit is not properly valued or the fee paid is not sufficient, then it shall recover the fee payable in accordance with law from the plaintiffs.

Sd/-
(R.NATARAJ)
JUDGE

NJ
Ct:si
List No.: 1 SI No.: 1