



**IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH  
DATED THIS THE 9<sup>TH</sup> DAY OF AUGUST, 2024  
BEFORE  
THE HON'BLE MR. JUSTICE H.P.SANDESH  
WRIT PETITION NO. 104722 OF 2022 (GM-CPC)**



**BETWEEN**

SANGAMESHGOUDA MUDIGOUDRA,  
S/O. BASAPPA,  
AGE: 72 YEARS,  
BASAVA SADANA, NO.963,  
3<sup>RD</sup> MAIN, 1<sup>ST</sup> CROSS,  
TARALABALU BADAVANE,  
DAVANGERE-02.

...PETITIONER

(BY SRI. DINESH M. KULKARNI, ADVOCATE)

**AND**

1. SHRI BASAVANNEPPA  
S/O. SHIVABASAPPA KARADER,  
SINCE DECEASED REPRESENTED BY HIS  
LEGAL HEIRS

1(A) SHRI SHIVAMURTEPPA  
S/O. BASAVANNEPPA KARADER,  
AGE: 70 YEARS, OCC: AGRICULTURE,  
R/O. HIREMAGANUR VILLAGE,  
TQ: RANEBENNUR, DIST: HAVERI-581115.

1(B) SHRI GURUMURTEPPA  
S/O. BASAVANNEPPA KARADER,  
AGE: 68 YEARS, OCC: AGRICULTURE,  
R/O. HIREMAGANUR VILLAGE,  
TQ: RANEBENNUR, DIST: HAVERI-581115.

1(C) SHRI JAYANNA  
S/O. BASAVANNEPPA KARADER,  
AGE: 66 YEARS, OCC: AGRICULTURE,  
R/O. HIREMAGANUR VILLAGE,





TQ: RANEBENNUR, DIST: HAVERI-581115.

- 1(D) SHRI VIRUPAKSHAPPA  
S/O. BASAVANNEPPA KARADER,  
AGE: 66 YEARS, OCC: LIC AGENT,  
R/O. HIREMAGANUR VILLAGE,  
TQ: RANEBENNUR, DIST: HAVERI-581115.
- 1(E) SHRI BASAVARAJ  
S/O. BASAVANNEPPA KARADER,  
AGE: 61 YEARS, OCC: ENGINEER,  
R/O. HIREMAGANUR VILLAGE,  
TQ: RANEBENNUR, DIST: HAVERI-581115.
2. THE STATE OF KARNATAKA,  
REP. BY DEPUTY COMMISSIONER,  
HAVERI DISTRICT, HAVERI-581110.
3. THE DEPUTY DIRECTOR OF  
PUBLIC INSTRUCTIONS,  
HAVERI DISTRICT, HAVERI -581110.
4. BLOCK EDUCATIONAL OFFICER,  
RANEBENNUR TALUK,  
RANEBENNUR-581115, DIST: HAVERI.

...RESPONDENTS

(BY SRI. VINAY S. KOUJALAGI, ADV. FOR R1(A-E);  
SRI. PRAVEEN K. UPPAR, AGA FOR R2-R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI AND QUASH IMPUGNED ORDER DATED 28-07-2022 PASSED BY III ADDL. SENIOR CIVIL JUDGE, RANEBENNUR IN M.A.04/2020 VIDE ANNEXURE-F, AS NULL AND VOID.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.08.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

**CAV ORDER**

1. In this writ petition, the petitioner approached this Court to issue a writ of certiorari and quash the impugned order dated 28.07.2022 passed by the III Additional Senior Civil Judge, Ranebennur in M.A.No.4/2020 vide Annexure-F as null and void and issue any other writ or direction as the Hon'ble Court deems fit in the circumstances of the case.

2. The factual matrix of the case is that respondent No.1/plaintiff filed a suit in O.S.No.136/2018 for the relief of cancellation of both the registered gift deeds dated 01.09.1993 executed by the plaintiff in favour of defendant No.4 in respect of the suit land and another dated 23.03.2005 executed by defendant No.4 in favour of defendant No.3 in respect of the very suit land. The suit land is described in the schedule as land bearing Sy.No.23A/11A/1 measuring 14 gunta situated at Hiremaganur village in Ranebennur taluk.



3. It is contended in the suit that the suit land belonged to the plaintiff but the name of Karabasappa was entered nominally as joint owner in the RTC of the suit land. Defendant No.4 was much acquainted with the plaintiff and he intended to construct marriage hall at Hiremaganur village in the name of father of defendant No.4. Accordingly, defendant No.4 had requested the plaintiff to gift the suit land. In this regard, deliberations took place between the plaintiff and defendant No.4 and they have arrived at a conclusion that the plaintiff has to gift his suit land in the memory of his wife Smt.Shanthamma through registered gift deed to defendant No.4 and defendant No.4 on his cost has to convert the suit land to non-agricultural purpose and to construct the marriage hall in the name of father of plaintiff Basappa Mudigoudar and in the memory of Shanthamma, the wife of plaintiff. It was also an understanding of the parties that the name of Shanthamma, wife of plaintiff has to be carved in the stone slab and that the stone slab was to be fixed in the



conspicuous place of the front wall of marriage hall. Marriage hall should be kept for public use and there was an agreement between the plaintiff and defendant No.4 that defendant No.4 should not alienate the suit land to others in any manner and should not use it for any other purpose. Imposing such conditions, stipulations and terms, the plaintiff had gifted the suit land in favour of defendant No.4 on 01.09.1993. Defendant No.4 though accepted the said gift, has failed to comply the terms and conditions of the gift. He neither constructed a marriage hall nor kept or retained the suit land as it was. Instead defendant No.4 gifted the suit land to defendant No.3 by executing the registered gift deed on 22.03.2005 for the play ground of school and hence the said gift deed is illegal and defendants No.1 to 3 acquire no title over the suit land since there is violation of conditions of the gift deed dated 01.09.1993.

4. It is also contended that initially the plaintiff had filed a suit in O.S.No.401/2012 for cancellation of both



gift deeds and possession of the suit land. In the said suit, plaint was ordered to be returned to present the same before the District Court, Haveri and it was numbered as O.S.No.3/2012 which was withdrawn with a liberty to file a fresh suit. Accordingly, the fresh suit in O.S.No.1/2014 was filed before the District Court, Haveri. By order dated 24.08.2015, again the District Court, Haveri ordered to return the plaint to present it before the proper Court. Hence, the plaint was presented before the Civil Court, Ranebennur and it was numbered as O.S.No.264/2015. Since the proviso of Section 80(1) of CPC were not complied with, the said suit was withdrawn with liberty to file a fresh suit after compliance of issuance of notice under Section 80(1) of CPC and thereafter issued the notice and the same was served. Hence, the present suit is filed for cancellation of both gift deeds and for possession of the suit land from defendants No.1 to 3.

5. Defendant No.4 filed written statement denying the averments made in the plaint and contended that the



suit is not maintainable and it ought to have been filed before the appropriate Court and Court has no pecuniary jurisdiction to entertain the suit and suit is also barred by limitation.

6. Based on the pleadings of the parties, the Trial Court framed the issues and issue No.5 reads as follows:

*"Whether 4<sup>th</sup> defendant proves that, the suit is barred by law of limitation and further proves that, this Court has no pecuniary jurisdiction to entertain the suit?"*

7. Thereafter, the Trial Court allowed the parties to lead evidence on issue No.5 which was framed as preliminary issue. Trial Court having considered the issue No.5, evidence of defendant No.4, who has been examined as DW.1, document marked as Ex.D.1 and cross-examination of DW.1, comes to the conclusion that the Court has no pecuniary jurisdiction and ordered to return the plaint to the plaintiff to present the same before the



competent Court within 30 days subject to payment of court fees and point of limitation.

8. Being aggrieved by the order passed by the Trial Court, a Miscellaneous Appeal was filed under Order XLIII Rule 1 read with Section 96 of CPC. The First Appellate Court having considered the pleadings and also the grounds urged in the appeal memo, framed the following points for consideration:

**Point No.1:** *Whether the trial court failed to appreciate the provisions of Karnataka Court Fees and Suits Valuation Act in respect of pecuniary jurisdiction of the Court?*

**Point No.2:** *Whether the trial court fell in error in mixing the point of limitation and jurisdiction in a single issue No.5?*

**Point No.3:** *Whether the interference of this Court is warrant?*

**Point No.4:** *What order or decree?"*

9. The First Appellate Court having reassessed the material available on record including the pleadings and





contentions, answered points No.1 to 3 as affirmative and comes to the conclusion that the Trial Court has failed to consider the provisions of the Karnataka Court Fees and Suits Valuation Act, 1958 (hereinafter referred to as 'Act' for brevity) in respect of pecuniary jurisdiction of the Court and also comes to the conclusion that the limitation is mixed point of question of fact and law and the Trial Court has committed an error in making the point of limitation and jurisdiction in a single issue i.e. issue No.5. Hence, comes to the conclusion that interference of the First Appellate Court is required and set aside the order of the Trial Court and directed the Trial Court to reframe issue No.5 as a separate point of limitation and also jurisdiction and decide the same in accordance with law.

10. Being aggrieved by the order passed by the First Appellate Court, the present writ petition is filed.

11. The main contention in this writ petition is that the First Appellate Court passed the impugned order contrary to the provisions of law and the Trial Court has



rightly held that the Court has no pecuniary jurisdiction considering the prayer made by the plaintiff. It is also contended that the Trial Court in para 11 of its order has rightly held that the suit to be valued based on the market value of the property as the suit property is non-agricultural land and it is affordable to calculate the market value under Section 38 of the Act. It is also contended that the First Appellate Court has wrongly held that the value of the property mentioned in the gift deed i.e. Rs.1 lakh is to be taken for the purpose of valuation and the same is wrong and contrary to the provisions of Sections 7, 24 and 38 of the Act.

12. Learned counsel for the petitioner also during his argument vehemently contends that even the suit is filed for the relief of possession and suit is not valued and it ought to have valued as separate court fee for possession also. Counsel in support of his argument, would vehemently contend that the Trial Court has passed a detailed order and even an elaborate discussion was



made while passing such an order and the First Appellate Court has committed an error in reversing the same.

13. In support of his argument, he has relied upon the judgment of this Court in the case of ***Smt.Damegunta Rajeshwaramma and Another vs. Smt.Jayalakshamma and Others*** reported in **2010 (2) KCCR 1429** wherein this Court held that as per Section 38 of Act, when the suit is filed for cancellation, court fee is payable on the market value or the value as indicated in the document and held that the court fee has to be determined on the basis of the market value of the property as on the date of the suit and not the consideration shown in the document.

14. He has also relied upon the judgment in the case of ***Mr.V.Prabhakar vs. Mr.K.Raja and Others*** reported in **2013 (1) KCCR 570** and brought to notice of this Court regarding Section 38 of the Act, wherein it has been held that the expression 'value of the subject matter' connotes not value of the property specified in document



but it is real and actual value at the time of filing the suit. In the said judgment, it is held that the court fee has to be computed on the basis of the market value of the property, which is the subject matter of the sale deed in question as on the date of the presentation of the plaint and the market value has to be determined in accordance with Section 7 of the Act.

15. Per contra, learned counsel for the respondent No.1/plaintiff would vehemently contend that the First Appellate Court has taken note of the judgment of the Hon'ble Apex Court in the case of ***Satheedevi vs. Prasanna and Another*** reported in ***(2010) 5 SCC 622*** and has also elaborately discussed the judgment in the case of ***R.Rangaiah and Another vs. Thimma Setty and Others*** reported in ***1963 (1) MLJ 671*** of this Court and distinguished the judgment which have been relied upon by the other side and rightly comes to the conclusion based on the judgment of the Hon'ble Apex Court and judgment of this Court that valuation of the property used



in Section 38(1) of the Act refers the valuation mentioned in the document but not actual or real market value. He further submits that the Trial Court has not properly appreciated the facts and has wrongly concluded that the plaintiff has to pay the court fee on the actual market value.

16. It is also contended that the provisions of Section 7 of the Act stipulates that where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint and insofar as it forms part of the estate paying annual revenue to Government the market value of the land for the purpose of different suits mentioned therein shall be 25 times the revenue payable. The proviso of Section 7 of the Act is applicable not only to the relief that will have to be valued under Section 24 and other provisions of the Act but to also under Section 38 of the Act. The First Appellate Court having considered the judgment in **Satheedevi's** case laid down the law that the



value of the property used in Section 38(1) of the Act refers the valuation mentioned in the instrument but not the actual and real market value. When such judgment was distinguished, the question of interfering does not arise.

17. Having heard the petitioner's counsel and the counsel for the respondent/plaintiff, the following point would arise for consideration of this Court:

*"Whether the First Appellate Court has committed an error in reversing the finding of the Trial Court and whether it requires issuance of writ of certiorari to quash the impugned order dated 28.07.2022?"*

18. Having taken note of the material on record, it is not in dispute that the suit is filed for the relief of cancellation of both the registered gift deeds executed by the plaintiff in favour of defendant No.4 and defendant No.4 in turn executing the gift deed in favour of defendant No.3 in respect of the very same suit land. It is also not in



dispute that the transactions are taken place in respect of same suit schedule property. It is also not in dispute that the contention of the plaintiff that in terms of gift deed dated 01.09.1993 the defendant No.4 did not acted upon and he violated the conditions of the gift deed. It is also important to note that the defendant No.4 took a specific defence in the written statement that the suit is barred by limitation as well as the Court has no pecuniary jurisdiction and accordingly mixing up both the limitation as well as pecuniary jurisdiction of the suit, a common issue has been framed. The same has been answered by the Trial Court and the based on the document at Ex.D.1 issued by the competent authority and having taken note of the suit land is converted and total extent of suit property is 14 guntas and it costs 1416.38 x 800 sq.mtrs., which comes to Rs.11,33,104/-, comes to the conclusion that the Court has no pecuniary jurisdiction and there is patent error of jurisdiction and that the suit has to be presented before the proper forum. The same is reversed by the First Appellate Court distinguishing the material facts and



considering Section 7 of the Act as also Section 38 of the Act.

19. Before considering the issue involved between the parties, it is appropriate to extract Sections 7 and 38 of the Act:

**“7 - Determination of market value:** (1) *Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.*

(2) *The market value of land in suits falling under section 24 (a), 24 (b), 26 (a), 27, 28, 29, 31, 35(1), 35(2), 35(3), 36, 38, 39 or 45 shall be deemed to be-*

(a) *Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue and such revenue is permanently settled - twenty-five times the revenue so payable:*

(b) *Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is*





*recorded as aforesaid, and such revenue is settled, but not permanently-twelve and a half times the revenue so payable;*

*(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, fifteen times the net profits if any from the land during the year before the date of presenting the plaint or thirty times the revenue payable on the same extent of similar land in the neighbourhood, whichever is lower;*

*(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned or the land is a garden or the land is a house site whether assessed to full revenue or not, or is land not falling within the foregoing description-the market value of the land.*

*Explanation: The word "estate", as used in this section means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which in the absence of such engagement, shall have been separately assessed with revenue."*



**“Section 38 - Suits for cancellation of decrees, etc.:** (1) *In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit, and such value shall be deemed to be*

*If the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or to her document was executed;*

*If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.*

(2) *If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.*

*Explanation 1: A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section.*



*Explanation 2: In a suit for cancellation of a decree and possession of any property, the fee shall be computed as in a suit for possession of such property.””*

20. Having read Section 7 of the Act, the same is an exception of the determination of market value and proviso is very clear that fee payable under this Act depends on the market value of any property, such value has to be determined as on the date of the presentation of the suit and Sub-clause (2) also refers the instances (a) to (d) and also explanation to the word 'estate'.

21. Having considered Section 38 of the Act, when the relief is sought for cancellation of gift deeds in a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit, and such value shall be deemed to be, if the whole decree



or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed and Sub-clause (2) also relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less. Explanation 1 and 2 also very clear regarding cancellation of a decree and possession of any property, the fee shall be computed as in a suit for possession of such property.

22. Having read both the provisions, this Court has to take note of the determination of the market value as well as payment of court fee. The main ground urged in the suit also is that pecuniary jurisdiction and the main contention is that the suit exceeds the limit of pecuniary jurisdiction of Rs.5 lakhs and hence the suit is not maintainable.

23. No doubt, the gift is valued at Rs.30,000/- in respect of first gift deed and in respect of second gift deed



it is valued for Rs.1 lakh. It is also important to note that no doubt the judgment which have been referred by the petitioner's counsel in the cases of **Damegunta** and **V.Prabhakar**, the Single Bench of this Court held that court fee has to be determined on the basis of the market value of the property as on the date of the suit and not the consideration shown in the document.

24. It is also settled law that the plaintiff has to pay court fee on the market value of the property as on the date of presentation of the suit in terms of Section 7 of the Act. It is also important to note that the suit is filed seeking the relief of cancellation of document and hence the Court has to take note of Section 38 of the Act. In a suit for cancellation of document i.e. settlement deed, it is held that court fee has to be paid not on the value of the property specified in the document but on the actual value. The same is decided in a Division Bench judgment in the case of **R.Rangaiah**. No doubt, it is also held in the judgment reported in 1974 (2) KLJ 225 that if it is a case



for cancellation of sale deed, the court fee has to be paid on the market value of the property and not considering the value mentioned in the same.

25. The judgment of the Apex Court in the case of **Satheedevi** which has been referred by the First Appellate Court while considering Kerala Court Fees and Suits Valuation Act, 1959 Section 40 where a suit is filed for the relief of cancellation of power of attorney and sale deed, the First Appellate Court has made discussion with regard to valuation of the property for expression value of the property for which the document was executed and held that in such suit court fee is required to be paid on the value of the property for which the document was executed and not the market value and also discussion was made with regard to Section 7(1) and held that it becomes clear that the rule enshrined therein is a clear departure from the one contained in Section 7 read with Sections 25, 27, 29, 30, 37, 38, 45 and 48 which provide for payment of court fee on the market value of the



property. Section 40(1) of Kerala court fees act, 1959 is para materia in respect of Section 38 of the Karnataka Stamp Act.

26. The First Appellate Court also while considering the issue involved between the parties in detail discussed the same and the judgment of Division Bench of this Court in **R.Rangaiah** and the judgment of the Hon'ble Apex Court in the case of **Satheedevi** were also taken note of. In **Satheedevi's** case at para 12, it is held that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. In para 20 also, it is held that if the legislature intended that fee should be payable on the market value of the subject matter of the suit filed for cancellation of a document which purports or



operates to create, declare, assign, limit or extinguish any present or future right, title and interest, then it would have, instead of incorporating the requirement of payment of fees on value of subject matter, specifically provided for payment of court fee on the market value of the subject matter of the suit as has been done in respect of other types of suits mentioned in Sections 25, 27, 29, 30, 37, 38, 45 and 48. It is also held that the legislature may have also, instead of using the expression "value of the property for which the document was executed", used the expression "value of the property in respect of which the document was executed". However, the fact of the matter is that in Section 40(1) the legislature has designedly not used the expression 'market value of the property'. Further, in para 21, it is held that if the interpretation placed by the Trial Court and the High Court on the expression "value of the property for which the document was executed" is accepted as correct, then the word 'value' used in Section 40(1) of the Act will have to be read as 'market value' and we do not see any compelling





reason to add the word 'market' before the word 'value' in Section 40(1) of the Act.

27. The Hon'ble Apex Court also discussed the judgment of Division Bench of this Court in **R.Rangaiah's** case and particularly in para 33, an elaborate discussion was made and held that when the suit is filed for the relief of cancellation of a document which provides for payment of court fee, in suits brought for cancellation of other documents such as a deed of settlement, gift deed or trust deed, it would not be appropriate to regard those documents as executed for a consideration or a specified amount and those cases would not be cases in which there would be any value for which the document is executed. In a case of gift deed, it is clear that same is not for consideration and the same is conveying the property for love and affection.

28. The Hon'ble Apex court in **Satheedevi's** case considering these different issues of different High Courts in para 30 held that in view of our analysis of the relevant



statutory provisions, it must be held that the judgments of the Division Bench of Madras High Court and of the learned Single Judges in Venkata Narasimha Raju vs. Chandrayya, Navaraja vs. Kaliappa Gounder, Arunachalathammal vs. Sudalaimuthu Pillai and Andalammal v. B. Kanniah as also the judgment of the learned Single Judge of Andhra Pradesh High Court in Allam Venkateswara Reddy vs. Golla Venkatanarayana lay down correct law. In the first of these cases, the Division Bench of Madras High Court rightly observed that when there is a special rule in the Act for valuing the property for the purpose of court fee, that method of valuation must be adopted in preference to any other method and, as mentioned above, Section 40 of the Act certainly contains a special rule for valuing the property for the purpose of court fee and we do not see any reason why the expression 'value of the property' used in Section 40(1) should be substituted with the expression 'market value of the property'.



29. I have already pointed out that Section 40(1) of Kerala Court Fees and Suits Valuation Act which is in para materia with Section 38(1) of the Karnataka Stamp Act refers the valuation mentioned in the document but not the actual or real market value. Having taken note of the principles laid down in the case of **Satheedevi** and **R.Rangaiah**, it has been discussed by the Hon'ble Apex Court that if the suit is valued under Section 38 of the Act, the fee shall be computed on the value of the subject matter of the suit or instrument. In order to find out the value of the subject matter of the instrument, we have to find out what is the value mentioned in the instrument, in other words the consideration for which that instrument is executed. If that instrument is a sale deed or a mortgage deed or lease deed, the consideration would be mentioned therein but in the case of deed of settlement and deed of gift or deed of trust, the consideration would be love and affection and the relationship cannot be valued in terms of money. That is the reason why the First Appellate court in the aforementioned judgment has categorically held that



the value of the subject matter of the instrument does not mean the market value of the subject matter of the instrument. The reason that the Legislature consciously has not used the word 'market value' in Section 38 of the Act, whereas the said word is explicitly used in Section 24 of the Act. Then it amounts to rewriting the Section or recasting or reframing the provision of law which is not permissible. The same is also discussed by this Court in the case of ***R.Rangaiah***.

30. Both the Hon'ble Apex Court as well as Division Bench of this Court have held that as per Section 35(8) of the Act, when used a word 'value of the subject matter of the instrument' i.e. consideration mentioned in the instrument is to be taken into consideration while valuing suit for the purpose of court fee under Section 38 of the Act and not the market value of the property.

31. When such a detailed discussion was made interpreting Section 7 as well as Section 38 of the Act and also the First Appellate Court in para Nos.16, 17, 18, 22



has discussed the same and even considering the authoritative pronouncement of Hon'ble Apex Court with regard to invoking Section 38 of the Act, comes to the conclusion that the valuation of the property used in Section 38(1) of the Act refers the valuation mentioned in the document and not the actual and real market value. In para No.23 also, it has taken note of Section 7 as well as Section 38 and rightly comes to the conclusion that in view of judgment in **Satheedevi** and **R.Rangaiah**, the suit ought to have been valued under Section 38 and not under Section 7 as contended and hence, the First Appellate court has not committed any error in reversing the finding of the Trial Court. When such being the case, I do not find any force in the contention of the petitioner's counsel relying on the judgment of Single Bench of this Court in the case of **V.Prabhakar** in respect of the sale deed is concerned.

32. The other contention of the petitioner's counsel that the suit is not valued for possession and court fee



ought to have been paid the separately, the said contention cannot be accepted since the relief sought for is cancellation of very document of conveying the rights under the gift deed and when the very declaration of the documents is violation of condition of gift deed, if Court comes to the conclusion that the relief of possession is ancillary as held by the First Appellate Court, and need not pay the separate court fee with regard to the possession also and the First Appellate Court also made discussion with regard to Section 6 of the Act and hence, I do not find any error committed by the First Appellate Court and hence there is no merit in the writ petition.

33. It is also important to note that the First Appellate Court has also observed that the Trial Court ought not to have framed the same issue including question of limitation as well as pecuniary jurisdiction when both are distinct and hence, it has rightly directed the Trial Court to consider the same independently.



34. In view of the discussion made, I pass the following:

ORDER

The writ petition is dismissed.

**Sd/-**  
**(H.P. SANDESH)**  
**JUDGE**

Sh  
List No.: 1 Sl No.: 3