



NC: 2024:KHC-D:16444
WP No. 106540 of 2024
C/W WP No. 106541 of 2024
WP No. 106542 of 2024

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 11TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO.106540 OF 2024 (GM-CPC)

C/W

WRIT PETITION NO.106541 OF 2024

WRIT PETITION NO.106542 OF 2024

IN WP.NO.106540/2024:

BETWEEN:

ERAPPA S/O. DODDAPPA GEJJI,
AGE: 71 YEARS, OCC: AGRICULTURE,
R/O: GEJJI STREET, KOPPAL – 583 231,
TQ AND DIST: KOPPAL.

...PETITIONER

(BY SRI SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

1. THE KARANTAKA KURUBAR BOARDING, KOPPAL,
REPRESENTED BY SECRETARY,
JAMBANNA S/O. KALAKAPPA NANDYAPUR,
AGE: NOT KNOWN, OCC: SECRETARY,
R/O: KALIDAS HIGH SCHOOL,
KUSHTAGI ROAD, KOPPAL – 583 231,
TQ AND DIST: KOPPAL.
2. THE TALUK BLOCK EDUCATION OFFICER,
KOPPAL, OPPOSITE S. P. OFFICE,
KOPPAL – 583 231, TQ AND DIST: KOPPAL.





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3. DISTRICT DIRECTOR OF P
UBLIC INSTURCTOR,
KOPPAL, D. C. OFFICE, KOPPAL – 583 231,
TQ AND DIST: KOPPAL.
4. THE COMMISSIONER,
CITY MUNICIPALITY, KOPPAL – 583 231,
TQ AND DIST: KOPPAL.
5. THE COMMISSIONER,
KOPPAL URBAN DEVELOPMENT OFFICER,
KOPPAL – 583 231,TQ AND DIST: KOPPAL.
6. THE DEPUTY COMMISSIONER,
D. C. OFFICE, KOPPAL – 583 231,
TQ AND DIST: KOPPAL.
7. THE SECRETARY,
GOVERNMENT OF KARANTAKA,
REVENUE DEPARTMENT,
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI MRUTYUNJAY S. HALLIKERI, ADVOCATE FOR C/R1;
SMT. KIRTILATA R. PATIL, HCGP FOR R2 R3, R6 AND R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE ORDER DATED 11.07.2023 TREATING THE ISSUE NO.5 AS PRELIMINARY ISSUE PASSED IN O.S.NO.21/2023 PASSED BY THE SENIOR CIVIL JUDGE AND CJM, KOPPAL AS PER ANNEXURE-A. TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 19.10.2024 IN O.S.NO.21/2023 ON ISSUE NO.5 I.E., PRELIMINARY ISSUE THEREBY DIRECTING PETITIONER TO PAY DEFICIT COURT OF RS.3,01,078-00 ON OR BEFORE NEXT DATE OF HEARING I.E., 19.10.2024 BY THE SENIOR CIVIL JUDGE AND CJM, KOPPAL AS PER ANNEXURE-B AND ETC.,



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IN WP.NO.106541/2024:

BETWEEN:

ERAPPA S/O. DODDAPPA GEJJI,
AGE: 71 YEARS, OCC: AGRICULTURE,
R/O: GEJJI STREET, KOPPAL - 583 231,
TQ AND DIST: KOPPAL.

...PETITIONER

(BY SRI SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

THE KARANTAKA KURUBAR BOARDING, KOPPAL,
REPRESENTED BY SECRETARY,
JAMBANNA S/O. KALAKAPPA NANDYAPUR,
AGE: NOT KNOWN, OCC: SECRETARY,
R/O: KALIDAS HIGH SCHOOL, KUSHTAGI ROAD,
KOPPAL - 583 231, TQ AND DIST: KOPPAL.

...RESPONDENTS

(BY SRI MRUTYUNJAY S. HALLIKERI, ADVOCATE FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE ORDER DATED 11.07.2023 TREATING THE ISSUE NO.6 AS PRELIMINARY ISSUE PASSED IN O.S.NO.31/2023 PASSED BY THE SENIOR CIVIL JUDGE AND CJM, KOPPAL AS PER ANNEXURE-A. TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 19.10.2024 IN O.S.NO.31/2023 ON ISSUE NO.6 I.E., PRELIMINARY ISSUE THEREBY DIRECTING PETITIONER TO PAY DEFICIT COURT OF RS.2,54,904-00 ON OR BEFORE NEXT DATE OF HEARING I.E., 31.10.2024 BY THE SENIOR CIVIL JUDGE AND CJM, KOPPAL AS PER ANNEXURE-B AND ETC.,



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IN WP.NO.106542/2024:

BETWEEN:

ERAPPA S/O. DODDAPPA GEJJI,
AGE: 71 YEARS, OCC: AGRICULTURE,
R/O: GEJJI STREET, KOPPAL – 583 231,
TQ AND DIST: KOPPAL.

...PETITIONER

(BY SRI SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

THE KARANTAKA KURUBAR BOARDING, KOPPAL,
REPRESENTED BY SECRETARY,
JAMBANNA S/O. KALAKAPPA NANDYAPUR,
AGE: NOT KNOWN, OCC: SECRETARY,
R/O: KALIDAS HIGH SCHOOL, KUSHTAGI ROAD,
KOPPAL – 583 231, TQ AND DIST: KOPPAL.

...RESPONDENTS

(BY SRI MRUTYUNJAY S. HALLIKERI, ADVOCATE FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE ORDER DATED 11.07.2023 TREATING THE ISSUE NO.6 AS PRELIMINARY ISSUE PASSED IN O.S.NO.31/2023 PASSED BY THE SENIOR CIVIL JUDGE AND CJM, KOPPAL AS PER ANNEXURE-A. TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 19.10.2024 IN O.S.NO.31/2023 ON ISSUE NO.6 I.E., PRELIMINARY ISSUE THEREBY DIRECTING PETITIONER TO PAY DEFICIT COURT OF RS.2,54,904-00 ON OR BEFORE NEXT DATE OF HEARING I.E., 31.10.2024 BY THE SENIOR CIVIL JUDGE AND CJM, KOPPAL AS PER ANNEXURE-B AND ETC.,

THESE WRIT PETITIONS, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA



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ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

In the aforementioned writ petitions the petitioner / plaintiff calls in the question the orders dated 19.10.2024 whereunder the Trial Court has answered the issue with regard to valuation and Court fee in the negative and directed the plaintiff to pay deposit the Court fee.

2. Learned counsel for the petitioner Sri. Shriharsh A. Neelopant., assailing the order of the Trial Court contends that the same is contrary to the judgment of the Full Bench of this Court in the case of ***Venkatesh R. Desai v/s Smt. Pushpa Hosmani and Others¹*** and that despite the Trial Court having been requested to defer the consideration of the issue regarding valuation and Court fee to be adjudicated along with other issues, the Trial Court has proceeded in adjudicating upon the same. Further relying upon a Co-ordinate Bench judgment of this Court in the case of ***R. Ananda V/S Nanjudaswamy²*** it is contended that merely because the suit property came within municipal limits *ad valorem* Court fee

¹ 'AIR 2019 (1) KAR. L.J. 259(FB)

² "2006(6) AIR KAR R 476"



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would not be payable. Further learned counsel for the petitioner submits that the plaintiff is ready and willing to pay the Court fee, in the event the Trial Court ultimately decides while considering the issue regarding the valuation and the sufficiency of Court fee along with other issues. Hence, he seeks for allowing the writ petition.

3. *Per contra*, learned counsel Sri. Murthyunjay S. Hallikeri appearing for the caveator – respondent No.1 submits that even as per the judgment of the Full Bench of this Court in the case of **Venkatesh R. Desai**¹ it is the discretion of the Trial Court to consider the issue regarding valuation and the Court fee at the preliminary stage. Further he contends that the judgment in the case of **R.Ananda**² has been overruled by another Full Bench of this Court in the case of **Mrs. Elfrieda Winnifred D' Souza v/s Mr. Robin D' Souza And Others**³.

4. The submissions of both the learned counsels have been considered and the material on record have been perused.

³ “ ILR 2022 KAR 529”



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5. It is relevant to the note the Full Bench of this Court in the case of **Venkatesh R. Desai¹** was considering as to whether an issue regarding the Court fee and valuation is required to be adjudicated as a preliminary issue has held as follows:

"32. In the context of the Karnataka Court Fees and Suits Valuation Act 1958, on the principles aforesaid and for the purpose for which the provision is enacted, we are clearly of the view that the expression 'shall as used in sub-sections (2) and (5) of Section 11 of the Act of 1958 is required to be construed as directory in nature and not mandatory. In other words, the determination of the questions envisaged by sub-sections (2) and (5) of Section 11 of the Act of 1958 may be undertaken by the Court before the evidence is recorded on the merits of the claim in its discretion; and such a discretion would obviously be conditioned by the requirements of Rule 2 of Order XIV of CPC. Tersely put, in our view, if the Court finds that the question of valuation and/or Court fees as raised by the defendant relates to the jurisdiction of the Court, it may try such an issue first and before the evidence is recorded on the merits of the claim; and in other eventualities, the Court may examine such a question of valuation and/or Court fees, but not necessarily as a preliminary issue or before the evidence on other issues.

35. Accordingly, and in view of the above, we are clearly of the view that by virtue of Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958 read with Order XIV, Rule 2 of the Code of Civil Procedure, 1908, when an issue of valuation and/or Court fees is raised in a civil suit on the objection of the defendant, the same is not invariably required to be tried as a preliminary issue and before taking evidence on other issues; but could be tried as a preliminary issue if it relates to the jurisdiction and the Trial Court is of the view that the suit or any part thereof could be disposed of on its determination. The reference stands answered accordingly."

(emphasis supplied)



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6. Another Full Bench of this Court in the case of **Mrs. Elfreeda Winnifred D' Souza**³ was considered the following:

"2. One Learned Single Judge in **SMT.VIJAYALAKSHMI vs. SMT. UGAMA BAI**, reported in **(2015) 4 KCCR 3947** has held that if the agricultural land in a declaration suit is situate within the city corporation limits, its valuation has to be done on ad valorem basis u/s 24(a) of the Karnataka Court Fees and Suits Valuation Act, 1958. This provision speaks of market value of the property. The other Learned Single Judge in **R.ANANDA vs. NANJUNDASWAMY** reported in **2006 SCC ONLINE KAR 557** has per contra held that merely because the land comes within the city corporation limits, it does not ipso facto lose its agricultural character and therefore, suit has to be valued u/s 7(2)(b) of the Act, wherein the land revenue factors and not the market value of the suit land. Surprising, both these Learned Judges in support of their views banked upon the very same Division Bench decision namely **J.NARAYANA & ORS. vs. CORPORATION OF CITY OF BANGALORE** reported in **ILR 2005 KAR 60.**"

6.1. While answering the same the Full Bench held as follows:

"(f) What emerges from the above observations of the Division Bench is that where the land, be it agricultural or otherwise, is situate within the municipal limits of a city corporation, for the purpose of Court fee, its market value has to be taken into consideration, even if the land continues to be agricultural in the official records and the land revenue instead of municipal tax otherwise payable thereon. The decision of the Learned Single Judge in **SMT. VIJAYALAKSHMI** reported in **(2015) 4 KCCR 3947** supra accords with this view and therefore, reflects the correct position of law. However, the decision of another Learned Single Judge in **RANANDA** reported in **2006 SCC ONLINE KAR 557** supra runs counter to the



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view now we have taken and therefore, it has been rendered a destitute of precedential value."

(Emphasis supplied)

7. The primary contention in the present writ petitions are that issue regarding the valuation and Court fee has been decided as a preliminary issue which is contrary to the judgment the Full Bench of this Court in the case of **Venkatesh R. Desai¹**. However, it is relevant to note that the Trial Court while requiring the plaintiff to pay Court fee has recorded a finding that the suit properties are the agricultural properties and the same has come within the CMC limits. Having regard to the judgment of Full Bench of the Court in the case of **Mrs. Elfreeda Winnifred D' Souza³** the finding of the Trial Court requiring the plaintiff to pay the deficit Court fee is just and proper.

8. With regard to the vehement contention of the petitioner that having regard to the Full Bench judgment in the case of **Venkatesh R. Desai¹** the issue of Court fee and valuation having been adjudicated upon at the preliminary stage, the same is required to set arise, it is pertinent to note that the plaintiff has not been able to point out that the order



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of the Trial Court with regard to the valuation and the Court fee is erroneous on its merits. The Trial Court has adjudicated upon the valuation and the amount of Court fee that is required to be paid by the plaintiff. The only error that is pointed out is the Trial Court ought not to adjudicated the same at a preliminary stage.

9. Although it is the vehement contention of the petitioner that the judgment of the full bench of this Court in the case of ***Venkatesh R. Desai¹*** was brought to the notice of the Trial Court prior to passing of the impugned order and despite the same, the Trial Court has proceeded to pass the impugned order and if such a course of action is not interfered with, the same would become a precedent which will be contrary to the judgment of the full bench of this Court in the case of ***Venkatesh R. Desai¹***, it is pertinent to note that when the preliminary issue was taken up for consideration, there is nothing on record to demonstrate that the judgment of the full bench was brought to the notice of the Trial Court. It is the contention of the petitioner that along with a memo dated 10.09.2024, a copy of the full bench judgment of this Court in the case of ***Venkatesh R. Desai¹*** was furnished. However, it is



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relevant to note that vide order dated 11.07.2023 itself the Trial Court had ordered that Issue Nos.4, 6 and 7 are treated as a preliminary issue and the matter was adjourned on various dates of hearing i.e., 25.07.2023, 22.08.2023, 05.09.2023, 26.09.2023 and 10.10.2023 for hearing on the preliminary issue and the matter was thereafter posted for orders.

10. In any event, in view of the peculiar facts and circumstances of the present case, the Trial Court already having undertaken the exercise of considering the rival contentions of the parties and recording its finding regarding the valuation and Court fee as a preliminary issue and since there is no prohibition in the law laid down by the Full Bench of this Court in the case of ***Ventakesh R Desai¹*** to adjudicate the issue regarding Court fee as a preliminary issue, which exercise already having been completed by the Trial Court wherein considerable judicial time has been expended, which order is otherwise not erroneous, the contention of the petitioners that the said order is liable to be set aside merely on the ground that it is done at a preliminary stage, is not liable to be accepted and the extra-ordinary discretionary jurisdiction of this Court contained under Article 227 of the Constitution of



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India is not liable to be exercised in the absence of any demonstrable hardship to the petitioners.

11. Hence, the question of favourably considering the relief sought for by the petitioners in these petitions does not arise. Accordingly, the writ petitions are dismissed.

Sd/-
(C.M. POONACHA)
JUDGE

PNV
CT-ASC/List No.: 1 SI No.: 36