

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 5<sup>TH</sup> DAY OF SEPTEMBER, 2024****BEFORE****THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI****WRIT PETITION NO. 5409 OF 2022 (GM-CPC)****BETWEEN:**

MR. BELLACCHI @ SUNDARI,  
AGED ABOUT 59 YEARS,  
W/O GOPALAM M.,  
R/AT SAMRIDDHI HOIGEBAIL,  
ASHOKANAGAR POST,  
MANGALURU TALUK - 575 006.

REPRESENTED BY HER GPA HOLDER,  
SRI. NARAYANA MANIYANI S,  
AGED ABOUT 56 YEARS,  
S/O MAHALINGA MANIYANI,

...PETITIONER

(BY SRI. VIJAYA KRISHNA BHAT M., ADVOCATE)

**AND:**

1. MRS. GRACY FERNANDES NEE D'SOUZA,  
AGED ABOUT 71 YEARS,  
W/O NORMAN FERNANDES,  
D/O LATE ELIZABETH D'SOUZA,  
R/AT EVERSHINE CITY,  
AVENUE, SECTOR III BUILDING 119,  
FLAT NO.G-004, VASAI EAST,  
MUMBAI - 401 208.



REPRESENTED BY HER GPA HOLDER  
MR. NELSON DAVID D'SOUZA,  
AGED ABOUT 50 YEARS,  
S/O LATE JOHN B D'SOUZA,  
R/AT MOLAMPIL HOUSE,  
PANJIMOGARU POST,  
NEAR PUMP HOUSE,  
KULUR MANGALURU - 575 013.



2. MRS. ANGELINE D'SOUZA @ CELL D'SOUZA  
AGED ABOUT 95 YEARS,  
W/O MONTHU D'SOUZA,  
R/AT KOTTARA CHOWKI  
MALEMAR ROAD, SOUZA COMPOUND,  
MANGALURU

REPRESENTED BY HER DAUGHTER AND  
GPA HOLDER MRS.LETITIA D'SOUZA,  
AGED ABOUT 72 YEARS,  
W/O AUGUSTINE D'SOUZA,  
R/AT D'SOUZA COMPOUND,  
NEAR MALEMAR ROAD,  
KOTTARA CHOWKI  
MANGALURU - 575 013.

3. MR. DANIEL FERRAO  
AGED ABOUT 63 YEARS,  
S/O LATE BENEDICT FERRAO  
R/AT PAVOOR ULIYA HOUSE,  
ADYAR POST,  
MANGALURU TAUKE - 575 029.

...RESPONDENTS

(BY SRI. RAKESH KINI, ADVOCATE FOR R1;  
SRI. P. UDAYA SHANKAR PAI, ADVOCATE FOR R3;  
R2 SERVED AND UNREPRESENTED)

THIS WP IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA FILED PRAYING TO QUASH THE IMPUGNED ORDER DATED 15.12.2021 BEFORE THE 4TH ADDITIONAL CIVIL JUDGE, MANGALURU, DK, O.S.NO.1591/2015 VIDE ANNEXURE-F AND HOLD ADDITIONAL ISSUE NO.2 IN THE AFFIRMATIVE GRANT AN INTERIM ORDER OF STAY OF ALL FURTHER PROCEEDINGS IN O.S.NO.1591/2015 PENDING ON THE FILE OF THE 4TH ADDITIONAL CIVIL JUDGE, MANGALURU, DK.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 05.09.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

**CAV ORDER**

Aggrieved by the order passed on the preliminary issue in O.S.No.1591/2015 dated 15.12.2021 by the IV Additional Civil Judge, Mangaluru, the petitioner/defendant No.2 is before this Court.

2. The plaintiffs have filed the suit for permanent prohibitory injunction restraining the defendants from alienating the suit properties. Later, they sought for an amendment wherein an additional relief of declaration that the sale dated 30.05.2015 and the sale deed dated 01.10.2015 executed by the defendants in favour of the third parties are not binding on the plaintiffs. The defendant No.2 has filed his written statement and it is his specific stand that the suit is not properly valued and the court fee paid is insufficient.

3. The trial court had framed an additional issue No.2, which is treated as a preliminary issue. The issue framed by the trial Court is "whether the defendants prove that the suit is not properly valued for the purpose of court fee and jurisdiction?" In the suit, the plaintiffs have valued the relief of



declaration under section 24(d) of the K.C.F. & S.V. Act. It is the case of the defendants that they have claimed that the sale deeds are not binding on them indirectly. The plaintiffs are claiming cancellation of sale deed and they are the co-owners of the property. Therefore, they have to value the relief under Section 26(a) and under Section 38 of the K.C.F. & S.V. Act. The trial Court had held the issue against the defendants. While giving a finding that the suit is properly valued for the purpose of court fee and jurisdiction, the trial Court had considered the judgement of the Hon'ble Apex Court in the case of ***Suhrid Singh @Sardool Singh Vs. Randhir Singh and Others***<sup>1</sup> and the Court has observed that as per the said judgement of the Hon'ble Apex Court, the plaintiffs being the non-executants of the document need not pay the court fee on advalorem value. The suit need not be valued on the market value of the suit properties, but a fixed court fee is sufficient. The trial Court had also considered the argument of the defendants that the plaintiffs are not the strangers, but they are claimed to be co-sharers. Court observed that the judgment relied by the defendant do not apply therefore, the said ruling is not

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<sup>1</sup> AIR 2010 SC 2807



applicable to the facts of this case. The trial Court observed that Section 50 of the Act says that, if no specific provision is made in the act, value for the purpose of jurisdiction will be the same as that of the value for the purpose of payment of court fee. Under section 24(d) of the Act, no special provision is made to value the jurisdiction. Therefore, for the purpose of the jurisdiction also, the suit has to be valued under section 24(d) of the Act only. The Court had observed that the relief of declaration that the sale deed are null and void has been valued for an amount of Rs.1,000/- for the purpose of court fee and jurisdiction. Therefore, the valuation made under Section 24(d) of the Act is correct and proper. Accordingly, it was held that the suit is properly valued for the purpose of court fee and jurisdiction and as the suit is of the year 2015, the parties are directed not to seek adjournments to lead their evidence. Aggrieved thereby, defendant No.2 is before this Court.

4. Learned counsel appearing for the petitioner/defendant No.2 submits that the order passed by the trial Court is arbitrary, illegal and liable to be set aside. The trial Court had failed to consider various contentions as urged by the petitioner/defendant No.2 and has erroneously held that the



suit is properly valued. It is submitted that the trial Court had failed to appreciate various judgements relied on by the defendants. It is submitted that the injunctive relief sought by the plaintiffs should have been valued under Section 26(a) of the K.C.F. & S.V. Act and not under Section 26(c) of the Act. The relief that is sought with reference to an immovable property and the title of the plaintiffs in respect of the same is denied. Hence, the prayer of permanent injunction sought by the plaintiffs is clearly covered under section 26(a) of the K.C.F. & S.V. Act. Coming to the declaratory relief, it should have been valued under Section 38 of the Act. The Court had failed to consider that aspect and erroneously held that the court fee that is paid by the plaintiffs is sufficient. It is further submitted that the value of the immovable property and the market value of the property exceeds Rs.5 lakhs which is above the pecuniary jurisdiction of the trial Court. It is submitted that even otherwise, either under Section 24(d) or under Section 26(a) or under Section 38 of the Act, the basis of valuation for the purpose of jurisdiction is the market value of the property and this has not been done by the plaintiffs and if the proper valuation is made, the suit will be out of the purview of the



pecuniary jurisdiction of the trial Court. Learned counsel submits that the writ petition has to be allowed and the order passed by the trial Court has to be set aside.

5. Learned counsel appearing for the respondent/plaintiff submits that the trial Court had rightly dealt with all the issues and had rightly observed that the court fees that is paid by the plaintiffs is proper. He submits that the case of the plaintiffs squarely falls and covered by the judgement of the Hon'ble Apex Court in ***Suhrid Singh's case*** referred supra and there is no illegality with the order passed by the trial court. He submits that when the trial court had rightly exercised the discretion, this Court exercising the jurisdiction under Article 227 of the Constitution of India cannot interfere with such a well considered order.

6. Having heard the learned counsels on either side, perused the entire material on record. The respondent herein had initially filed a suit for permanent injunction. Thereafter, he had sought for a declaration that the sale deeds executed by the defendants are not binding on him. The plaintiffs had valued the relief under section 24(d) of the K.C.F. & S.V. Act.



According to the defendants, plaintiff has to value the relief under Section 26(a) and under Section 38 of the K.C.F. & S.V. Act. When declaration is sought with respect to the cancellation of the sale deeds, the Hon'ble Apex court in ***Suhrid Singh's case*** referred supra had made a distinction between a suit that is filed by a executants of the document and a third party. There is no dispute about the fact that the plaintiffs are third parties to the said sale deed. At this juncture, it is appropriate to look at para Nos.6, 7, 8, 9 and 10 of the judgement of the Apex Court in ***Suhrid Singh's case*** referred supra.

***"6. The second proviso to Section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under sub-clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under sub-clause (e) thereof.***

***7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not***





*binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.*

*8. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the*



*plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.*

*9. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenary" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under Section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.*

*10. We accordingly allow these appeals, set aside the orders of the trial court and the High Court directing payment of court fee on the sale consideration under the sale deeds dated 20-4-2001, 24-4-2001, 6-7-2001 and 27-9-2003 and direct the trial court to calculate the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Act, as indicated above, with reference to the plaint averments."*

7. The Hon'ble Apex court in the above referred judgment, observed that if a party to a sale deed seeks



cancellation, he has to pay advalorem court fees on the consideration mentioned in the sale deed. If a person who is a non-executant is in possession of the property and the suit for a declaration that the deed is null and void does not bind on his share, he has to merely pay a fixed court fee of an amount of Rs.1,950/- under Article 17(3) of the second schedule of the Act. But if a non-executant is not in possession and he seeks not only a declaration that the sale deed is void but also the consequential relief of possession, he has to pay advalorem court fee as provided under Section 7(4)(c) of the Act. In this case, it is the case of the plaintiffs that they are in possession of the property and he is a third party to the sale deed, as such a fixed court fee has to be paid as per the judgement of the Hon'ble Apex Court in ***Suhrid Singh's case*** referred supra.

8. In the considered opinion of this Court, the trial Court in the light of the settled law had rightly held that the court fees paid by the plaintiffs is sufficient. Hence, this Court do not find any reasons to interfere with the order passed by the trial Court and the writ petition deserves to be dismissed. Hence, this Court is passing the following:



**ORDER**

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in the writ petition shall stand closed.

**SD/-  
(LALITHA KANNEGANTI)  
JUDGE**

MEG  
List No.: 1 SI No.: 2