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IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30TH DAY OF SEPTEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

CIVIL REVISION PETITION NO.100033/2019

BETWEEN:

SRI.HUSENSAB S/O RASOOLSAB AWATI
AGED ABOUT 55 YEARS,
OCC:AGRICULTURE
R/AT.MOMIN GALLI, JAMKHANDI,
DIST:BAGALKOTE-587101

... PETITIONER

(BY SRI.MRUTYUNJAY TATA BANGI, ADVOCATE)

AND:

1. SRI.BASAYYA S/O MALLAYYA GADAD
AGED ABOUT 68 YEARS,
OCC:BUSINESS, R/AT GADAD GALLI,
JAMKHANDI, DIST:BAGALKOTE-587101
2. SMT.SURAIYYA W/O SIKANDAR AWATI
AGED ABOUT 58 YEARS,
OCC:HOUSEHOLD WORK,
R/AT C/O. IRSHAD S/O. ABDUL
GAFAR MANIYAR, GAGA VES,
NEAR CITY BUS STAND,
KOLHAPUR, MAHARASTRA STATE-445101

SMT.MAKTUMBI W/O RASOOLSAB AWATI
SINCE DECEASED BY L.Rs

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3. SMT.GUDUMA
W/O. BASHIRAHMAD KAKHANDAKI,
AGED ABOUT 61 YEARS,
OCC:HOUSEHOLD WORK,
R/AT BEGUAM PETH,
SOLLAPUR, MAHARASTRA STATE-445101
4. SMT.RAMIJA W/O SAYYAD RASOOL KOODAGI
AGED ABOUT 59 YEARS,
OCC:HOUSEHOLD WORK,
R/AT. AASAR GALLI, VIJAYAPURA-586101
5. SMT.TAYARAA W/O RIYAZ KOODAGI
AGED ABOUT 51 YEARS,
OCC:HOUSEHOLD WORK,
R/AT AASAR GALLI, VIJAYAPURA-586101
6. SRI.MUBARAK S/O HUSENSAB CHOUDHARI
AGED:ABOUT 68 YEARS, OCC:BUSINESS,
R/AT MOMIN GALLI, JAMKHANDI,
DIST:BAGALKOTE-587101

... RESPONDENTS

(R1 – SERVED ; R2 – R6 NOTICE D/W)

THIS CRP IS FILED UNDER SEC.115 OF CPC, PRAYING TO SET ASIDE THE ORDER DATED 19.02.2019 ON I.A. NO. V PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE, JAMKHANDI IN O.S. NO.74/2012 REJECTING THE APPLICATION FILED UNDER ORDER VII RULE 10 OF CODE OF CIVIL PROCEDURE AND ALLOW THE I.A. NO. V BY ALLOWING THE PRESENT REVISION PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14.09.2020, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

1. The petitioner is before this Court seeking for setting aside the Order dated 19.02.2019 passed on I.A.No.V by the Principal Senior Civil Judge, Jamkhandi in O.S.No.74/2012 rejecting the application filed under Order VII Rule 10 of the Code of Civil Procedure, 1908 ('the CPC' for short) and consequently allow the said application.
2. The case of the petitioner is that;
 - 2.1 Respondent No.1 had instituted a suit for specific performance of agreement of sale dated 27.06.2006 alleging that the deceased husband of the defendant No.1 i.e., respondent No.2 herein, had executed an agreement of sale agreeing to sell the suit schedule property for a sum of Rs.5,00,000/- and received an earnest money of Rs.4,50,000/- at that time, leaving a balance of Rs.50,000/- to be paid at the time of registration of the sale deed.

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2.2 In regard thereto a notice was issued on 14.07.2010 calling upon the deceased husband of the 1st defendant to execute the sale deed. However, by the time the Suit was filed, the deceased husband of the 1st defendant had already executed a sale deed in respect of the middle portion of the property on 28.07.2009 in favour of defendant No.4 i.e., respondent No.6 herein and defendants No. 2 and 3 had instituted a suit for partition and separate possession in O.S.No.50/2010. Hence, all of them were arrayed as parties in the Suit when filed.

2.3 At the time of filing of a suit for specific performance, the Plaintiff – respondent No.1 herein had valued the Suit at Rs.5,01,000/-, Rs.5,00,000/- being the consideration mentioned in the agreement of sale and Rs.1,000/- being the cost of issuance of notice. Hence the same came to be instituted before the Principal Senior Civil Judge, Jamakhandi on account of the fact that

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any suit above Rs.5,00,000/- had to be instituted in such Court.

2.4 Defendant No.3 – petitioner herein had filed a written statement contending inter alia that the Suit is over-valued, the proceedings have been filed in a wrong forum inasmuch as the valuation of the Suit could only be Rs.5,00,000/- being the valuation of the property, in the agreement of sale. The Plaintiff has inflated the valuation by adding Rs.1,000/- as cost of legal notice so as to bring it within the pecuniary jurisdiction of the Principal Senior Civil Judge, Jamakhandi. It is for this reason, the petitioner-defendant No.3 had also filed an application in I.A.No.V under Order VII Rule 10 of the CPC for return of the plaint to be presented before the appropriate Court having pecuniary jurisdiction.

2.5 The said application was opposed by the Plaintiff therein and the trial Court by its Order dated 19.02.2019 rejected /dismissed the application by

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holding that it was open to the Plaintiff to value the Suit and make payment of court fee thereon. The plaintiff-respondent No. 1 had valued the Suit at Rs.5,01,000/- and made payment of court fee thereon.

2.6 The Court further held whether the Plaintiff was entitled to the reliefs or not could be decided after trial, since the Plaintiff had paid the court fee as per the valuation made and the said valuation would require it to be filed before the Principal Senior Civil Judge, there was nothing wrong in the same and dismissed the said application under Order VII Rule 10 of CPC.

2.7 It is aggrieved by the same that the petitioner-defendant No.3, who was the applicant, is before this Court.

3. Sri. Mrutyunjaya Tata Bangi, learned counsel appearing for the petitioner, would submit that;

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- 3.1 The Plaintiff has deliberately altered the valuation so as to be able to file the same before the principal Senior Civil Judge Jamkhandi, since the said amount of Rs.1,000/- towards cost of legal notice if were not be included, the same would not have come before the said Court. This he submits is a kind of forum hunting or choosing of the forum, which needs to be deprecated by this Court.
- 3.2 He submits that by overvaluing the Suit, the Suit has been filed before the Principal Senior Civil Judge. If it would have been valued properly, it would have to be filed before the JMFC Court, which would provide for a different appeal route. The change of the same by such valuation has prejudicially affected the petitioner.
- 3.3 In terms of Section 50 of the Karnataka Court Fees and Valuation Act, 1958 ('the Court Fee Act', for short), the Plaintiff is only required to value the Suit and make payment of court fee as per

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the consideration amount in the agreement of sale. The addition of any amount, which has an impact of changing the jurisdiction, cannot be countenanced in law. The aspect here is not merely overvaluation, but by overvaluing, the jurisdiction of the Court has been changed and hence this ought to have been meticulously examined by the Court.

3.4 Merely because the Plaintiff had made payment of the Court fee as per valuation resorted to by the Plaintiff, it could not be said that the Court did not have the power to interfere with the same.

3.5 On these grounds he submits that the impugned Order dated 19.02.2019 is required to be set aside and the plaint be rejected.

3.6 In support of his arguments, he relies on the decisions of this Court in the following cases:

- i. **B. S. Suresh Vs. Jagadish** reported in **ILR 1989 KAR 1249**, more particularly para 9, which is extracted hereunder:

"9. Section 50 of the Karnataka Court Fees and Valuation Act

*.....
From Section 50, it is clear that there is no prohibition to value the Suit for the purpose of jurisdiction and for the purpose of relief differently. What is contemplated under Section 50 is that the fee payable shall be the same both for the purpose of jurisdiction as well as for the purpose" of relief. If relief cannot be valued at the present stage as in the instant case in respect of suits under Section 33 of the Karnataka Court Fees and Suits Valuation Act, the valuation made for the purpose of jurisdiction on the basis of the market value of the immovable property in question is solely for the purpose of jurisdiction to grant the relief. If it is found that the amount due is far less than what normally would be the pecuniary jurisdiction of the Court of the Civil Judge, then there would be no initial want of jurisdiction as that Court has jurisdiction for determining questions involving unlimited claims in regard to money.*

- ii. **Thibbaiah Vs. Desigowdai** reported in **ILR 1993 Kar 973**, more particularly, para 5, which is extracted hereunder:

"5. We are concerned here with the Karnataka Court fees & Suits Valuation Act, 1958. There is a specific provision governing the valuation of the Suit as per Section 50. Section 50 itself indicates that the value

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for the purpose of determining the pecuniary jurisdiction of the Court will be normally the value for the purpose of computing the Court fee, unless there is some other Act or legal provision governing the determination of the jurisdiction. Sub-section (2) of Section 50 only amplifies this provision by pointing out that when a fixed Court fee is payable for the purpose of determining the pecuniary jurisdiction, the actual market value shall be taken as the value determining the pecuniary jurisdiction. As already noted Section 35 provides for a fixed Court fee which in turn depends on the value of the Plaintiff's share; which will be the value to determine the pecuniary jurisdiction of the Court.

4. Heard Sri. Mrutyunjaya Tata Bangi, learned counsel for the petitioner. The contesting respondent No.1 i.e., Plaintiff in the Suit has been served and remained unrepresented. Notice has been dispensed to the other respondents, who were defendants in the Suit. In view thereof, the matter is taken up for hearing.
5. On the basis of the submissions made by Sri.Mrutyunjay Tata Bangi, learned counsel for the petitioner, the questions which would arise for determination are:
 - i. ***Whether the Plaintiff is free to value the Suit in any manner it deems fit and just, by making payment of the court fee could***

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such a plaintiff change the jurisdiction of the Court?

- ii. *Whether in a suit for specific performance, it is only the value of the property shown in the said agreement that would have to be considered for the purpose of jurisdiction or would any other item like cost of issuance of legal notice be included so as to increase the valuation.*
- iii. *What would be the role of the Court in the event of an artificial increase in the valuation altering the jurisdiction of the Court?*
- iv. *What Order?*

6. Before answering the above questions, it would be required to look into the applicable statutes. Firstly, the application is filed under Order VII Rule 10, the said order VII Rule 10 is extracted hereunder for easy reference.

"10. Return of plaint.- (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the Suit be returned to be presented to the Court in which the Suit should have been instituted.

Explanation: For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.

(2) **Procedure on returning plaint--**On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the

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party presenting it, and a brief statement of the reasons for returning it.

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.- (1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the Plaintiff.

(2) Where an intimation is given to the Plaintiff under sub-rule (1), the Plaintiff may make an application to the Court--

(a) specifying the Court in which he proposes to present the plaint after its return,
(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the Plaintiff under sub-rule (2), the court shall, before returning the plaint and notwithstanding that the Order for return of plaint was made by it on the ground that it has not jurisdiction to try the Suit,--

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3), --

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with the summons for appearance in the Suit, unless that Court, for

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reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date for fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the Plaintiff shall not be entitled to appeal against the order returning the plaint.

10B. Power of appellate Court to transfer suit to the proper Court.- (1) Where, on an appeal against an order for the return of plaint, the court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct Plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the Court in which the Suit should have been instituted, (whether such Court is within or without the State in which the court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the Suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

(2) The directions made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit."

7. The relevant provision of the Court Fees Act for this matter is Section 50. Section 50 of the Court Fees and Suits Valuation Act is reproduced hereunder for easy reference:

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Section 50 - "Suits not otherwise provided for. –

(1) In a suit as to whose value for the purpose of determining the jurisdiction of Courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same:

Provided that notwithstanding anything contained in Sub-section (2) of Section 7, the value of land specified in Clause (a), (b) or (c) of the said sub-section shall, for purposes of determining the jurisdiction of Courts, be the market value of such land.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint."

8. I answer the above questions as under:
9. **Re-Question No.1: Whether the Plaintiff is free to value the Suit in any manner it deems fit and just, by making payment of the court fee could such a plaintiff change the jurisdiction of the Court?**
 - 9.1 The Valuation of any suit would have to be made as per the applicable provisions of the Karnataka Court Fees Act. The said Act needs to be strictly followed not only in order to ascertain the court fee payable, but also to ascertain the jurisdiction of the Court.

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- 9.2 The valuation of the purpose of payment of court fee would be relevant for the reason that, if proper court fee is not paid, the same would be a ground for rejection of plaint in terms of Order VII Rule 11 (b) and (c) of the CPC, giving a right to the defendant to file an application under the said provision seeking for rejection of the plaint. It further provides an opportunity to the Plaintiff to rectify the defect pointed out, before the plaint can be rejected.
- 9.3 Order VII Rule 10 of the CPC however stands on a different footing. The same is not a mere rejection of the plaint, but is a return of the plaint with a direction to present the plaint before a Court having the proper and adequate pecuniary jurisdiction and/or territorial jurisdiction over the matter.
- 9.4 In view of the above, it is but required that the valuation is properly made, the jurisdiction of the Court is predicated on the basis of the valuation of the Suit, in that, one of the important criteria

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for lodging a plaint before a particular Court is the pecuniary jurisdiction of that Court to entertain a particular matter. Depending on the valuation the same could go before the Civil Juge and Judicial Magistrate First Class or before a Civil Judge or before a District Court.

9.5 Thus, a party cannot by artificially inflating the valuation or undervaluing the Suit be allowed to file a particular suit before a Court which would in the absence of such incorrect valuation not have any jurisdiction to try the matter.

9.6 In view of the above discussion, I am of the considered opinion that the Plaintiff is not free to value the Suit in any manner he deems fit. The Plaintiff would have to value the Suit strictly in terms of the applicable provision of the Court Fees Act. Merely because the Plaintiff is willing to pay higher court fee by inflating the valuation, he cannot be permitted to do so since the hierarchy of the Court dictates that particular Suit with

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particular valuation would have to be filed and tried by a particular Court, thus, giving rise to a vested right to the defendant that the Suit of particular nature of particular valuation would be tried by that particular Court only and not by any other Court.

10. **Re - Question No.2: *Whether in a suit for specific performance, it is only the value of the property shown in the said agreement that would have to be considered for the purpose of jurisdiction or would any other item like cost of issuance of legal notice be included so as to increase the valuation.***

10.1 The valuation of the Suit for specific performance is provided under Section 40 of the Court Fees Act. The same is reproduced hereunder for easy reference:

"40. Suits for specific performance.-

In a suit for specific performance, whether with or without possession, fee shall be payable,—

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of a contract of mortgage, computed on the amount agreed to be secured by the mortgage;

(c) in the case of a contract of lease, computed on the aggregate amount of the fine or premium, if any, and of the average of the annual rent agreed to be paid;

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(d) in the case of a contract of exchange, computed on the amount of the consideration, or as the case may be, on the market value of the property sought to be got in exchange;

(e) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on such market value or where such consideration has no market value, at the rates specified in section 47."

10.2 A perusal of the said provision would indicate that, where the Suit is for a specific performance of contract of sale, the fee shall be computed on the amount of consideration. In this particular instance, admittedly the Suit is one for specific performance of a contract of sale and the consideration as agreed in the said contract of sale is Rs.5,00,000/-. Thus, it is that valuation which has to be the basis for valuing the Suit for specific performance.

10.3 In the present case, apart from the valuation made as regards the consideration under the agreement of sale, the Plaintiff has added another item, namely the cost of issuance of legal notice to totally value the Suit at Rs.5,01,000/-.

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10.4 It is only by the addition of the relief, in this instance, towards legal notice, namely Rs.1,000/- that the valuation came to be increased in such a manner that the jurisdiction of the Court itself came to be changed. This in my considered opinion is not permissible.

10.5 The recovery of Rs.1,000/- towards cost of legal notice is only a consequential relief and not the main relief. It is trite law that any suit would have to be valued on the main relief and further trite law that the highest court fee of a particular relief, if paid, the consequent relief would not require a separate valuation unless provided for.

10.6 In the present case, the recovery of Rs.1,000/- towards legal notice is not specifically provided for, and as such, the Suit would have to be only valued in terms of Section 40 of the Court Fees Act on account of consideration shown in the agreement of sale, i.e., Rs.5,00,000/-. However, in the event of seeking for specific performance as

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also additional relief of compensation, in the event of compensation sought for being more than the consideration shown in the agreement of sale, then the higher of the two would have to be valued both for the purpose of court fee and jurisdiction.

10.7 In the present case, the recovery of cost of issuance of leal notice would therefore have to be eschewed for the purpose of determining the jurisdiction of the Court.

11. **Re - question No.3. *What would be the role of the Court in the event of an artificial increase in the valuation altering the jurisdiction of the Court?***

11.1 The Court would have to carefully examine the mode and methodology of the valuation made by the Plaintiff, more particularly when such a valuation would have the impact of altering the jurisdiction of the Court.

11.2 The court cannot merely on the basis of the of the Plaintiff being willing to make payment of the court fee permit such a plaintiff to value the Suit

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at his whims and fancies and make payment of the stamp duty on that basis. The Court while dealing with the same and more so on an application under Order VII Rule 10 of the CPC would have to determine the valuation. The Court would also have to separate the main relief from the ancillary relief in order to ascertain the valuation for the purpose of jurisdiction and that for payment of court fee separately and come to a finding that it is competent to take up the matter and that the Suit has been filed in a proper and competent court.

12. Re-Question No.4: *What Order?*

12.1 In view of the above discussion, this would be a fit case for setting aside the Order of the trial Court dated 19.02.2019 passed on I.A.No.V by the Principal Senior Civil Judge, Jamkhandi in O.S.No.74/2012 and allowing the said application filed under Order VII Rule 10 of the CPC.

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12.2 However, on account of the fact that the Plaintiff though served has not appeared before this Court and it being required for this Court while returning the plaint to comply with the requirements under Order VII Rule 10A of the CPC, I am of the considered opinion that the same cannot be done in the absence of the plaintiff, though served.

12.3 As such, I deem it fit to set aside the Order dated 19.02.2019 passed on I.A.No.V by the Principal Senior Civil Judge, Jamkhandi in O.S.No.74/2012 and remand the matter to the said Court to pass necessary orders on I.A.No.V in accordance with the observation made above as also in compliance with the provisions of Order VII Rule 10A of the CPC.

Accordingly the petition is **partly allowed**.

**Sd/-
JUDGE**

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