**(1991) 03 KAR CK 0036**

**In the Karnataka High Court**

**Case No :** CRP No. 6451/1990 c/w 1253/1988 and 2720/1990

Ningappa Karabasappa Shivanagutti APPELLANT

Vs

Amrappa Karabasappa Shivanagutti and Others RESPONDENT

**Date of Decision :** 20-03-1991

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115

**Citation :** (1991) 2 KarLJ 373

**Hon'ble Judges :** M. P. Chandrakantaraj Urs, J

## Judgement

Chandrakantaraj Urs, J.-In these three Civil Revision Petitions, petitioners are all plaintiffs in suits brought by them for partition and separate possession of suit schedule properties. Defendants raised objections in regard to correctness of the valuation for the purpose of Court fee and in the light of the said objection, the Courts-below proceeded to decide the question of adequacy of Court fee as preliminary issue under Section 11 of the Karnataka Court Fees and Suits Valuation Act.

2. In all the three cases the trial Courts have come to the conclusion that the plaintiffs are bound to pay Court fee in terms of sub-section (1) of Section 35 of the said Act and not under sub-section (2) of the said section. Aggrieved by the same, the present petitions are preferred. These bare facts are not in dispute.

3. The counsel for respondent in Civil Revision Petition No. 6451 of 1990 drew my attention to a decision of this Court rendered by a learned Single Judge in the case of Mohammed Omar v Saravan Bi and Others, 1974(1) Kar. L.J. 27. In the said decision, the learned Single Judge has held that:

"Where an objection by the defendant, the Court directed the plaintiff to pay additional Court fee (and it was not a case where the Court would lose its jurisdiction to entertain the suit), the plaintiff has got an adequate remedy under Section 11(4) of the Act to challenge the order in an appeal against the final disposal of the suit and hence High Court will not interfere in revision with the order."

Therefore, the learned counsel contended that the Revision Petitions are not maintainable. The view expressed in the said decision does not appear to be in conformity with the view taken by the Supreme Court on identical question when raised in more than one case. In the case of Neelavathi & Others v N. Natarajan & Others, AIR 1980 SC 691, Supreme Court had occasion to consider Sections 21 and 30 of the Tamil Nadu Court Fees and Suits Valuation Act. Section 37 of the Karnataka Act is in pari materia with Section 21 of the Tamil Nadu Court Fees and Suits Valuation Act. The Supreme Court observed in deciding the issue before it that it was well-settled law that the Court fee must be considered in the light of the allegation made in the plaint and that decision cannot be influenced by the pleas in the written statement. All the material allegations contained in the plaint should be considered and taken as averred. It proceeded to further hold on the facts of that case that the Court fee was payable if the plaintiff was excluded from possession of his property under sub-section (1) of Section 21 of the Tamil Nadu Act. But it was however observed by the Supreme Court that the general principle of law was that in the case of co-owners the possession of one was in law possession of all, unless ouster by exclusion was proved, the possession would continue to be joint. In that circumstance, where there was no ouster it was held that the plaintiff in a suit for partition was liable to pay only under sub-section (2) and not under sub-section (1) even if plea was raised in the written statement that he was excluded from possession.

4. Similarly in a later decision, in the case of M/s. Commercial Aviation and Travel Company and Others v Mrs. Vimla Pannalal, AIR 1988 SC 1636, valuation of Court fee in a suit in the Union Territory of Delhi fell for consideration. That case was a suit for accounts. When an objection was taken that suit was under-valued, the learned Single Judge of the Delhi High Court rejected the contention. Division Bench of that Court affirmed the decision of the learned Single Judge. Therefore, the defendants moved the Supreme Court in appeal. In those circumstances, the Supreme Court observed:

"So far as the suits coming under Section 7(iv) of the Court Fees Act are concerned, the Legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the plaintiff. The reason is obvious. The suits which are mentioned under Section 7(iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed, the Legislature has not laid down any standard of valuation in the Court-fees Act. Under Section 9 of the Suits Valuation Act, the High Court may, with the previous sanction of the State Government, frame rules for the valuation of suits referred to in Section 7(iv) of the Court Fees Act. Although the Punjab High Court has framed rules under Section 9 of the Suits Valuation Act which are applicable to the Union Territory of Delhi, such rules do not lay down any standard of valuation with regard to suits coming under Section 7(iv) of the Court-fees Act. Under Rule 4(i) of the Punjab High Court Rules, the value of suit for accounts for purpose of Court Fees Act, which means that the valuation of the relief will have to be made by the plaintiff to value the relief correctly. So long as the account is not taken, the plaintiff cannot say what amount, if at all, would be found due to him on such accounting. The plaintiff may think that a huge amount would be found due to him, but upon actual accounting it may be found that nothing is due to the plaintiff. A suit for accounts is filed with the fond hope that on accounting a substantial amount would be found due to the plaintiff. But the relief cannot be valued on such hope, surmise and conjecture."

Having regard to these two decisions, a Division Bench of this Court, in the case of T.K. Srinivasa Murthy v T. Seetharamaiah, 1989(2) Kar. L.J. 31 (DB): AIR 1990 Kant. 149 (DB), had occasion to go into the question of valuation in a suit for partition of joint family properties (Hindus governed by Mithakshara School). In that case, plaintiffs were not in possession of properties. Therefore, it was contended that their suit for partition would fall under sub-section (1) of Section 35 of the Karnataka Court Fees and Suits Valuation Act. After considering a number of decisions including the ones to which I have referred earlier., the Division Bench held that in such suits where plaintiffs sued for partition and separate possession of their shares, notwithstanding that the plaintiffs may not be in possession of the properties, the valuation will be only under sub-section (2) and not under sub-section (1). To that Judgment of the Division Bench, I am a party. In the course of that Judgment, I have made reference to decision rendered by me in C.R.P. No. 985 of 1988 on 6-10-1988 reported in ILR 1989 Kar. 1049. The facts of these three Revision Petitions not being dissimilar to the facts with which Division Bench was concerned, notwithstanding the decision relied upon by the learned counsel for the respondent in C.R.P. No. 6451 of 1990, I am bound to allow these Revision Petitions holding that in a partition suit, plaintiffs must value the suit only in accordance with their pleadings and the Court should abide by such valuation unless ouster of possession is established by the defendants. Till such ouster is established, question of paying deficit Court fee does not arise. Therefore, whether it is a question of rendering accounts or seeking possession, it would still be within the discretion of the Court to entertain the suit in terms of the plaint allegation and not with reference to the objections taken by the defendants.

In the result, these petitions are allowed and orders impugned in these petitions are set aside with a direction to entertain the suits on the valuation made by the plaintiffs subject to taxation in the final decree proceedings in accordance with law.

Order accordingly.

 