
(2010) 03 KAR CK 0081
In the Karnataka High Court
Case No : Writ Petition No. 11959 of 2008

Shabira Bi and Others

APPELLANT

Vs

A. Abdul Rehman (since dead) by L.Rs

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Mysore Court-fees and Suits Valuation Act, 1958 — Section 11, 26 (a)

Citation : (2010) 3 KarLJ 186

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : S.V. Prakash, for the Appellant; Hanumantharayappa, Government Pleader, G. Lakshmeesh Rai and G.S. Balagangadhar, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Malimath, J.—The petitioners filed a suit seeking for a declaration that the Will dated 9-1-1978 is valid and 13 other consequential reliefs including declaration etc. An application u/s 11 of the Karnataka Court Fees and Suits Valuation Act, 1958 (for short "the Act"), read with Order 7, Rule 11 of the Civil Procedure Code, 1908 was filed by the defendants seeking determination and payment of the appropriate Court fee in the plaint. The Trial Court by the impugned order allowed the application and directed the petitioners-plaintiffs to value the suit u/s 26(a) of the Act. Hence, the present petition.

2. Sri S.V. Prakash the learned Counsel appearing for the petitioners by referring to the plaint averments contends that the suit has been properly valued in terms of Section 26(c) of the Act. The Trial Court misdirected itself in concluding that the relief sought for by the plaintiff is declaratory and hence the suit was required to be valued u/s 26(a) of the Act. In support of his contentions, he relies on the judgment in Neelavathi and Others Vs. N. Natarajan and Others, with reference to paragraph 6 which reads as follows.-

On reading of the plaint as a whole, we are unable to agree with the view taken

by the High Court. It is settled law that the question of Court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits.

Therefore, he contends that the impugned order is bad in law and is liable to be set aside.

3. Sri Hanumantharayappa, learned Government Advocate defends the impugned order and submits that no interference is called for in the impugned order.

4. Heard learned Counsels.

5. A plain reading of the exhaustive plaint averments will leave no hesitation that the title of the plaintiffs having been denied, the suit seeking for a decree of declaration and for possession would attract the provisions of Section 26(a) of the Act and not u/s 26(c). Hence, the title of the petition being denied, for which a relief of declaration is sought, the provisions of Section 26(a) of the Act is attracted. Therefore, irrespective of the stand of the defendants in the written statement, a reading of the plaint averments would disclose what is stated above. The Trial Court has rightly come to the conclusion that the suit requires to be valued u/s 26(a) and not u/s 26(c) of the Act, I do not find any error committed by the Trial Court in passing the impugned order.

For the aforesaid reasons, the petition being devoid of merits is rejected.

Rule discharged.