

Anjanappa Vs. Krishnappa

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Court : Karnataka

Decided On : Aug-24-2021

Judge : N S Sanjay Gowda

Appeal No. : WP 57930/2015

Appellant : Anjanappa

Respondent : Krishnappa

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE24H DAY OF AUGUST,2021 BEFORE THE HONBLE MR.JUSTICE N.S.SANJAY GOWDA W.P.No.57930/2015(GM-CPC) BETWEEN: ANJANAPPA, S/O LATE KONDANAHALLI CHIKKA MUNISWAMAPPA, AGED ABOUT63YEARS, RESIDING AT CHENNENAHALLI VILLAGE, JALA HOBLI, BANGALORE NORTH ADDL. TALUK, BANGALORE URBAN DISTRICT - 560 013. PETITIONER (BY SRI. K.N.JAGADISH, ADV.) AND:

1. KRISHNAPPA, S/O LATE NARASIMHAPPA ALIAS NARASIMHAIHAH, AGED ABOUT50YEARS, 2. NARAYANASWAMY, S/O LATE NARASIMHAPPA, ALIAS NARASIMHAIHAH, AGED ABOUT37YEARS, BOTH ARE RESIDING AT CHENNENAHALLI VILLAGE, JALA HOBLI, BANGALORE NORTH ADDL. BANGALORE URBAN DISTRICT - 560 013.

3. THOTTADA MUNIYAMMA, W/O LATE JAYAPPA, AGED ABOUT 62 YEARS, 2 R/AT CHENNENAHALLI VILLAGE, JALA HOBLI, BANGALORE NORTH ADDL. BANGALORE URBAN DISTRICT - 560 013

4. R.SIDDAPPA, S/O LATE REDDAPPA ALIAS HULIYAPPA, R/AT 5H CROSS, VASANTHAPPA BLOCK, GANGANAGAR, BANGALORE -32.

5. SMT. RUKMANIYAMMA, W/O R.KRISHNAPPA, AGED ABOUT 55 YEARS, R/AT No.105, 4TH CROSS, GANGANAHALLI, BANGALORE -32.

6. R.NARAYANA, S/O LATE HULIYAPPA ALIAS REDDEPPA, AGED ABOUT 72 YEARS, R/AT LAKSHMINARYANANA NILAYA, 2ND MAIN ROAD, GANGANAGAR, BANGALORE - 560 032. RESPONDENTS (BY SRI. B.S.GURUDATH, ADV., FOR R-4; NOTICE TO R-1 TO R-3 AND R-5 AND R-6 ARE SERVED BUT UNREPRESENTED) THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT IN THE NATURE OF THE CERTIORARI PASSED BY THE TRIAL COURT IN O.S.No.808/2008 DATED 06.06.2015 ON THE FILE OF ADDITIONAL CIVIL JUDGE AND JMFC, DEVANAHALLI, THE PRELIMINARY ISSUE 6 AND 7 REGARDING COURT FEE VIDE ANNEXURE-A. THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

3.

ORDER

1 The plaintiff is the writ petitioner, who is challenging an order of the trial Court, by which, he has been directed to file a fresh valuation slip and pay proper Court fee as per Section 35(1) of the Karnataka Court - Fees and Suits Valuation Act, 1958 (for short the 1958 Act).

2. The petitioner filed a suit for partition in respect of four agricultural properties and claimed 1/3rd share in the said properties.

3. In the plaint, the petitioner valued the suit in the following manner. 12. The Suit Schedule Properties are valued as per the annexed valuation slip and the value of

the share of the Plaintiff in the suit Schedule Properties is Rs.1,50,000/- and the Plaintiff is in joint possession of the suit Schedule Properties and in accordance with Section 35(2) of the Karnataka Court Fees and Suits Valuation Act. Fixed Court fee of Rs.200/- is affixed for the purpose of payment of Court fee and jurisdiction, the suit is valued under section 50(2) of the Karnataka Court Fees and Suits Valuation Act, as the Plaintiffs share is together valued at Rs.4,50,000/-. 4 4. Defendant Nos.4 and 5 put forth the plea that the suit was not properly valued and the Court fee paid was insufficient. They claimed that since they had purchased the suit property from defendant Nos.1 to 3, the alleged coparceners of the plaintiff, their possession was exclusive and therefore, the Court fee would have to be paid on the market value of the plaintiffs share.

5. The trial Court accepted the said plea and directed the petitioner to file a fresh valuation slip and pay the Court fee as per Section 35(1) of the 1958 Act i.e., on the market value of the plaintiffs share. It is this order which is impugned in this petition.

6. It is not in dispute that the defendant Nos.1 to 3 who had sold the properties in question to defendant Nos.4 and 5 were alleged to be the coparceners of the plaintiff. It was the clear averment of the plaintiff in the plaint that he was in joint possession of the suit properties. In view of this averment in plaint, the payment of Court fee under Section 35(2) of the 1958 Act on the premise that he was in joint possession cannot be found fault with. 5

7. The further contention of the defendants that the plaintiff was required to pay the market value on the plaintiffs share under Section 35(1) of the 1958 Act, since the 4th defendant pursuant to the purchase was in exclusive possession cannot also be accepted.

8. Before embarking on the said issue, a brief analysis of the provisions relating to determination of Court fee and computation of the fee payable under the Act would be necessary.

9. Section 10 of the 1958 Act makes it obligatory for the plaintiff, along with the plaint, to file a statement in the prescribed form, of particulars of the subject matter

of the suit and its valuation thereof.

10. Thus, at the very inception of the suit, it is for the plaintiff to state the subject matter of the suit and its valuation and also the Court fee determined on the said basis. At this stage, obviously, the defendant has no role to play. 6

11. Section 11(1) of the Act casts a burden on the Court, even before ordering the plaint to be registered, to decide on the basis of the allegations contained in the plaint and on the materials contained in the statement (if filed under Section 10 of the 1958 Act) whether proper fee was paid.

12. Thus, what would be germane at the time of registering the plaint is the allegations contained in the plaint and the materials contained in the statement filed under Section 10 of the 1958 Act.

13. This determination by the Court before registering the plaint, is however, not final. Section 11(2) of the 1958 Act confers a right on the defendant to plead that suit is not properly valued or that the fee paid is not sufficient. If such a plea is raised by the defendant, it would be necessary for all such questions arising out of such pleas to be decided before evidence is recorded affecting the defendant on the merits of the claim.

14. The said sub Section goes on to state that if the Court decides that the suit is either not properly valued or the fee paid is insufficient, the Court is required to fix a date, by 7 which the plaintiff would be required to amend the plaint in accordance with the decision of the Court and pay the deficit fee.

15. If the plaint is not amended or the deficit fee is not paid within the time fixed by the Court, the plaint shall be rejected. The Court is also empowered to pass such orders as it thinks regarding the costs of the suit.

16. Sub Section (3) of Section 11 of the 1958 Act provides for a similar procedure to be followed if a defendant is added after issues have been framed and he raises a plea regarding valuation of the suit, or the Court fee paid. The explanation, however, makes it clear that such a right is not available to the persons who are added as successors or representatives in interest of the original plaintiff.

17. Sub Section (4) of Section 11 of the 1958 Act states that if the case comes up in appeal, it would be open for the Court to either suo moto or on application by any of the parties to consider the correctness of the order passed by the Court of the first instance which affected the Court fee payable and determine the proper fee payable. 8

18. Thus, the provisions of the Act, contemplates a three- stage process for determination of the valuation of the suit or proper fee payable on the plaint.

19. The first stage is before the plaint is ordered to be registered. At that stage, the Court is required to decide the valuation and proper fee payable, only on the basis of the allegations made in the plaint and the details in the statement of the plaintiff.

20. The second stage is when the defendant raises a plea regarding the valuation or proper fee payable. If such a plea is raised by the defendant, the Court is required to determine all such questions before recording of the evidence which affects the defendant.

21. The third stage is when the case comes up in an appeal. The Appellate Court is empowered either on its motion or at the instance of any party to decide on the correctness of the decision made by the Court of the first instance regarding the determination of the fee payable and if comes to the conclusion that the order was incorrect, proceed 9 to determine the fee payable and either require the plaintiff to pay the proper fee or also refund the excess fee paid.

22. Section 12 of the 1958 Act states that if a party becomes liable to pay additional fee by reason of any issue framed in the suit, the procedure contemplated under Section 11 of the 1958 Act would have to be followed.

23. Section 13 of the Act enables the plaintiff, when called upon to pay additional fee, to relinquish a part of his claim. The said Section also states that a plaintiff who has relinquished a part of his claim will not be permitted to add the claim at any later stage of the suit.

24. Chapter IV of the 1958 Act deals with the Computation of Fee and the Court fee payable on different kinds of suits and in respect of appeals.

25. Section 35 of Chapter IV of the 1958 Act prescribes the Court fee payable in respect of a suit for partition.

26. Sub Section (1) of Section 35 of the 1958 Act states that in a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in 10 common, filed by the plaintiff, if the title of the plaintiff to such property is denied or if the plaintiff had been excluded from possession of the property, Court fee would have to be computed on the market value of the plaintiffs share.

27. To put it differently, in a suit for partition and separate possession of a share of a joint family property, if the title of the plaintiff to such joint family property is denied or if the plaintiff has been excluded from possession of such property, Court fee is liable to be paid on the market value of the property.

28. Having regard to Section 11 (1) of the 1958 Act, before the plaint is registered, it is only the allegations made in the plaint and the statement made by the plaintiff in the prescribed form under Section 10 of the 1958 Act, which would be germane for determination of the Court fee by the Court.

29. In other words, it is only if the plaintiff in his plaint admits that his title has been denied or that he has been excluded from possession, would he become liable for 11 payment of Court fee computed on the market value of the plaintiffs share.

30. Section 35(2) of the 1958 Act states that in a suit for partition and separate possession by a plaintiff who is in joint possession, fee is required to be paid depending on the monetary value of the plaintiffs share. The maximum being Rs.200/- if the value of the plaintiffs share is more than Rs. 10,000/-.

31. Section 35(3) of the 1958 Act states that, if a defendant, in a suit for partition filed either under Section 35(1) or 35(2) of the 1958 Act were to also claim partition and separate possession of his share, fee would have to be computed on half the market value of his share or at half the rates specified in Section 35(2)of the 1958 Act.

32. Section 35(4) of the 1958 Act states that in a suit for partition, if the plaintiff seeks for cancellation of a decree or other document of the nature specified in Section 38 of the 1958 Act, separate fee shall be paid on the said relief of cancellation in the manner specified in Section 38 of the 1958 Act. 12

33. Thus, in a suit for partition, only if the plaintiff states in plaint that his title has been denied or that he has been excluded from possession, he is required to pay fee computed on the market value of the property.

34. It is not the case of the plaintiff in his plaint that his title had been denied or that he had been excluded from possession of the property. It is no doubt true that the purchasers contend that they were in exclusive possession and by virtue of their exclusive possession, the plaintiff has been excluded from possession. This plea of the defendants, however, cannot be determinative of the matter of possession and the Court fee payable.

35. It is to be noticed that the defendants being the purchasers have basically stepped into the shoes of the alleged coparceners of the plaintiff. If the plaintiff was in joint possession along with the vendors of the defendants, the defendants who had purchased the property would become successors in interest and that cannot tantamount to excluding the plaintiff from possession of the property. 13

36. In my view, the question as to whether plaintiff was excluded from possession would have to be adjudicated during the trial and cannot be decided while deciding whether appropriate Court fee had been paid under Section 11 of the 1958 Act, which is essentially based on the plaint averments and the plea raised by the defendants.

37. Moreover, in the present suit, which is the one for partition, the question of payment of Court fee based on the market value of the property would be of little relevance since the lands in question are admittedly the lands which are paying land revenue.

38. To elaborate further, Section 35(1) the 1958 Act, contemplates payment of Court fee on the market value of the plaintiffs share.

39. Section 7 of the 1958 Act provides for determination of market value for the purposes of the Act.
40. Section 7(1) of the 1958 Act states that when the fee payable under the 1958 Act depends on the market value, 14 such value would have to be determined as on the date of presentation of the plaint.
41. Section 7(2) of the Act declares that in respect of 14 categories of suits mentioned therein, there would be a deemed market value of the land. In other words, in respect of these 14 categories of suits, irrespective of the actual market value of the property, for the purposes of the 1958 Act, the law declares that there would be a deemed value.
42. Section 7(2) of the 1958 Act also contains four sub Sections which stipulate the Court fee payable depending on certain parameters.
43. Section 7(2)(a) of the 1958 Act deals with following three categories of lands.
a. Land forming an entire estate paying annual revenue to Government or
b. Land forming a definite share of an estate, paying annual revenue to Government or
c. Land which forms a part of an estate and is separately recorded in the Deputy 15 Commissioners register as separately assessed to such revenue which is permanently settled. (emphasis supplied)
44. In respect of these three categories of lands for which revenue is permanently settled, the Section stipulates that twenty-five times the revenue so payable on the land would be deemed to be the market value of the land.
45. Section 7(2)(b) of the 1958 Act also deals with three categories of lands, which are like the lands contemplated under Section 7(2)(a) of the 1958 Act. These are:
a. Land forming an entire estate paying annual revenue to Government or
b. Land forming a definite share of an estate, paying annual revenue to Government or
c. Land which forms a part of an estate and is separately recorded in the Deputy Commissioners register as separately assessed and such revenue is settled, but not permanently settled. (emphasis supplied)
- 16 46. Thus, while Section 7(2)(a) of the 1958 Act deals with the lands in respect of which the land revenue is settled permanently, Section 7(2)(b) of the 1958 Act deals with lands in respect of which

revenue is settled but which is not settled permanently.

47. In other words, the only difference between Section 7(2)(a) and Section 7(2)(b) of the 1958 Act is that in respect of the lands described in Section 7(2)(a) of the 1958 Act, the revenue for the land is permanently settled while in respect of lands described in Section 7(2)(b) of the 1958 Act, the revenue for the land is not settled permanently.

48. To put it in plain words, if the revenue to the lands are settled permanently, the market value of the lands is deemed to be twenty five times the revenue payable and if the revenue to the lands are settled but not permanently, the market value of the lands is deemed to be twelve and half times the revenue payable.

49. Thus, for the purposes of determination of market value under Sections 7(2)(a) and (b) of the 1958 Act, the only criteria would be the annual land revenue payable to the 17 Government. If the land revenue to the said lands is settled permanently, the deemed market value would be twenty five times and if the land revenue to the lands is not settled permanently, the deemed market value would be twelve and half times.

50. In other words, for the purposes of determination of market value under Sections 7(2)(a) and (b), the actual value that the land fetches in an open market would be irrelevant in respect of both lands for which land revenue is settled permanently and lands for which revenue is not permanently settled.

51. Section 7(2)(c) of the 1958 Act deals with land in respect of the following three categories of lands: a. Land pays no revenue or b. Land which has been partially exempted from such payment or c. Land which is charged with any fixed payment in lieu of such revenue 18 52. In respect of these three categories of lands, the market value of the land is deemed to be fifteen times the net profits that the lands may fetch in the year preceding the filing of the plaint or it is deemed to be thirty times the land revenue payable on similar extent of land in the neighborhood. It is also made clear that lower of these two value would have to be taken as the market value.

53. Thus, in respect of the land for which no land revenue is payable or is exempt from paying land revenue or is charged with any fixed payment as land revenue, the law stipulates that the market value shall be deemed to be fifteen times the net profits that the land fetched in the preceding year, or the market value is deemed to be thirty times the revenue that is payable for a similar extent of land in the neighborhood. The lower of the said two values shall be the market value of the land for the purposes of Section 7 of the 1958 Act.

54. What is to be noticed in Sections 7(2)(a) to (c) is that the market value of the land for the purposes of the Act is primarily based on the land revenue that is liable to be paid 19 to the Government. This, therefore, leads to the inference that the actual value that the land fetches in the open market would be of no significance for the payment of Court fee in respect of the 14 categories of suits that is mentioned in Section 7(2) of the 1958 Act.

55. The common perception of market value of a land or the perception of market value of land for the purposes of the Stamp Act cannot be imported into the 1958 Act in respect of the 14 categories of suits mentioned in Section 7(2) of the 1958 Act. It is to be kept in mind that unlike the Stamp Act, the Court Fees Act is not a statute enacted for raising resources for the State, though both statutes are fiscal statutes.

56. To put it differently, the Stamp Act contemplates levying a duty whenever a transfer is effected which normally results in a financial consequence to one or both parties. The Court Fees Act, however, intends to levy a fee for a person who desires determination of a legal right in a Court. The perception of market value is thus designedly different and this marked difference in determination of market value in 20 totally different ways under the two Acts will have to be accepted since the two statutes operate in different context. It is to be stated here that the perception and definition of a market value of land under the Stamp Act cannot be made applicable to the suits filed under the Court Fees Act by virtue of Section 7 of the 1958 Act.

57. The illustration for this would be lands which are used for agriculture. It cannot be in dispute that under Section 80 of the Karnataka Land Revenue Act (KLR, for

short) all lands which are used for agricultural purposes or other purposes are liable for payment of land revenue, except those exempted from the provisions of the Act.

58. Section 83 of the KLR Act provides for the manner of assessment and commutation of non-agricultural assessment and prohibition of use of land for certain purposes. It declares that land revenue leviable on any land under the Act, shall be assessed with reference to use of the land for the purpose of agriculture.

59. Thus, if a suit were to be instituted under any one of the 14 categories mentioned in Section 7(2) of the 1958 Act, the market value of the lands, the fee payable under the Act would be dependent on whether the land revenue is settled permanently or not permanently settled.

60. If the revenue is permanently settled, the market value of the land would be twenty five times the land revenue payable. If the revenue is not permanently settled, the market value of the land would be twelve and half times the revenue payable.

61. To put it in even more simple words, lands which are used for agricultural purposes and for which land revenue is assessed and payable, the market value of the land would be either 25 times the land revenue payable or 12 times the land revenue payable, based on the manner in which the revenue is settled (i.e., either permanently or not permanently).

62. If, however, no land revenue is payable for the land or is partially exempted from paying land revenue or is charged with any fixed payment, the deemed market value of the land would be either 15 times the net profits that the land fetched in the year preceding the plaint or 30 times the land revenue payable for similar extent of comparable lands in the neighborhood, whichever is lower.

63. The illustration for lands for which no land revenue payable would be lands which are permitted to be used for non-agricultural purposes under Section 95 of the KLR Act. This is because on permission for using lands for non-agricultural purposes being granted, Section 95(7) of the KLR Act mandates that no

assessment shall be leviable on the said land, save for cases coming within the ambit of Section 83(2) of the KLR Act (i.e., lands which are permitted to be used for non-agricultural purposes, but which are used for agricultural purposes).

64. Thus, since there is a clear prohibition on an assessment being levied on lands which are permitted to be used for purposes other than agriculture under Section 95 of the KLR Act and as a consequence, no land revenue becomes payable, those categories of lands would come under the purview of Section 7(2)(c) of the 1958 Act.

65. As a further consequence, the market value of such lands would be either 15 times the net profits the land fetch 23 in the year preceding the presentation of the plaint or 30 times the land revenue payable on similar extent of lands in the neighborhood, whichever is lower.

66. In other words, in respect of lands which are permitted to be used for non-agricultural purposes, for which no land revenue is payable (commonly termed as non-agricultural lands or converted lands), the market value of the lands for the purposes of Section 7 of the 1958 Act would be 15 times the profits the land fetched in the year preceding the filing of the plaint or 30 times the revenue of comparable lands in the neighborhood, whichever is lower. Thus, even in respect of lands which are permitted to be used for purposes other than agriculture, Court fee is not liable to be paid on the actual and prevailing market value of the land.

67. Section 7(2)(d) of the 1958 Act deals with lands with the following four other categories of lands: a. Lands other than those described in Section 7(2) (a) to Section 7(2)(c) of the 1958 Act. b. Lands which are either garden lands or 24 c. The land is a house site whether assessed to revenue or not; d. the land is not within the foregoing description of lands in Section 7(2) of the 1958 Act.

68. In respect of these four categories of lands, it is only the actual market value of the land that would be the criteria for determination of the Court fee payable in respect of the 14 categories of lands mentioned under Section 7(2) of the 1958 Act.

69. Thus, in the ultimate analysis, a. In respect of lands for which revenue is settled, either permanently or is settled but not permanently, the market value for the purposes of suits mentioned in Section 7(2) of the 1958 Act, would be either 25 times or 12 times the land revenue payable respectively. b. In respect of lands for which no land revenue is payable, the market value would be either 15 times of the net profits that the land fetched in 25 the year preceding the presentation of the plaint or 30 times the land revenue payable for comparable lands in the neighborhood, whichever is lower. c. It is only in respect of other lands, garden lands and house sites, the actual market value of the land would be the basis for computation of the market value.

70. It is to be noticed that an argument that whenever the term market value is used in the Act, the actual market value will have to be taken into consideration for payment of Court fee, cannot really succeed. This is because, the legislature in the Act, has consciously and deliberately provided for different methods of computing the market value.

71. As stated above, Section 7(2)(a) to (c) of the 1958 Act, provides for a deemed market value, which is based solely on the land revenue that is payable to the Government on the land. The very fact that a deeming provision is made for determination of the market value in respect of lands coming within the purview of Section 7(2)(a) to (c) of the 26 1958 Act, by itself, indicates that the Legislature did not intend to consider the actual market value in certain categories of suits for payment of Court fee.

72. Chapter V of the 1958 Act provides for valuation of suits. Section 50 of the 1958 Act deals with suit for which no provision has been made and it states that in respect of suits whose value for the purposes of jurisdiction is not specifically made or is not otherwise made, the value for the purpose of determining the jurisdiction would also be the value for computing the Court fee.

73. However, the proviso to Section 50 of the 1958 Act makes it abundantly clear that notwithstanding whatever was stated in Section 7(2) of the 1958 Act, the value of the lands in respect of lands specified in sub Sections (a), (b) or (c), for the purposes of determining jurisdiction of the Court, shall be the market value of the

land. Thus, the Act provides two kinds of market value of land even in respect of lands specified in 7(2)(a), (b) or (c), one for the purposes of determining the jurisdiction of the Courts and one for 27 determination of market value for the purposes of payment of Court fee.

74. For the purposes of determining the jurisdiction of the Court, the actual market value of the land would be the deciding factor, even if the deemed market value for the purposes of payment Court fee under Section 7(2)(a) to (c) of the 1958 Act was a different value much lesser than the actual market value.

75. The two distinct ways provided for considering the market value under the 1958 Act, one for determining the jurisdiction of the Courts and another for determining the proper Court fee payable, makes it clear that the Legislature did not intend to make the actual market value of the land, the criteria for payment of Court fee and it wanted to create a deemed market value based on the land revenue payable on the land.

76. In the instant case, admittedly the lands in question are the lands assessed to revenue and it is not the case of anyone that the suit lands were permitted to be used for purposes other than agriculture. Therefore, as per the 28 discussion stated above regarding Section 7 of the 1958 Act, the way the land revenue is settled would be the only criteria for determination of the market value and not the actual market value of the land.

77. Thus, whether the plaintiff was in joint possession or was excluded from possession or his title to the joint family property was denied, the market value of the suit land would depend on the manner in which the revenue is settled and its actual market value would be of no consequence.

78. In fact, as stated above, even if the lands are lands which were permitted to be used for non-agricultural purposes under the Section 95 of the KLR Act, the market value of the land would be either 15 times the net profits the lands fetched in the year preceding the filing of the plaint or 30 times the land revenue payable for comparable lands in the neighborhood and the actual market value of the land would be of no consequence.

79. Since, admittedly, the plaintiff contended that he was in joint possession and the defendants were successors in interest of the plaintiffs coparceners, the plaintiff had rightly paid Court fee by claiming to be in joint possession under Section 35(2) of the 1958 Act.

80. The reasoning of the Trial Court that as per the sale deeds produced by the plaintiffs, the defendants were in possession and therefore joint possession of the plaintiffs cannot be believed, cannot be accepted simply because the defendants by virtue of the sale had merely stepped into the shoes of defendant Nos.1 to 3, the coparceners of the plaintiffs and that cannot amount to an admission by the plaintiffs that they were excluded from possession as envisaged under Section 35 (1) of the 1958 Act.

81. As stated above, since the suit lands are admittedly lands assessed to revenue, there is a deemed market value created under Section 7 of the 1958 Act in respect of a suit filed both under Section 35(1) and Section 35(2) of the 1958 Act, the question of calling up on the plaintiff to pay the Court fee under Section 35(1) of the 1958 Act i.e., by paying Court fee based on the actual market value of the property would not arise. 30

82. The impugned order passed by the trial court is therefore unsustainable and the same is set aside. It is held that the proper Court fee has been paid on the plaint by the plaintiff. The writ petition is accordingly allowed. Sd/- JUDGE GH

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