

RESERVED ON 25TH AUGUST 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.4837 OF 2026 (GM-CPC)

C/W

WRIT PETITION NO.10577 OF 2026 (GM-CPC)

IN W.P. NO.4837/2026:

BETWEEN:

SMT. VASANTHI
W/O LATE L. NARAYANSWAMY
AGED ABOUT 46 YEARS,
RESIDING AT NO.36, 2ND CROSS,
NEW BYAPPANAHALLI EXTENSION,
INDIRANAGAR POST,
BANGALORE - 560038.

...PETITIONER

(BY SRI. DHANANJAY JOSHI, SENIOR ADVOCATE FOR
SRI. VACHAN H.U., ADVOCATE)

Digitally
signed by C
K LATHA
Location:
High Court
of Karnataka

AND:

1. SHRI MUNIRAJU
S/O LAKSHMAIAH,
AGED ABOUT 55 YEARS,
2. SHRI. MANJUNATH
S/O MUNIRAJU,
AGED ABOUT 30 YEARS,
3. SMT. LALITHA
W/O MUNIRAJU,
AGED ABOUT 49 YEARS,

ALL THE RESPONDENTS ARE
CURRENTLY RESIDING AT

NO.160, 2ND CROSS,
NEW POLICE STATION ROAD,
K.R. PURAM, BANGALORE – 560038.

...RESPONDENTS

(BY SRI. GAGANDEEP E., ADVOCATE FOR
SRI. AJIT P.B., ADVOCATE FOR R-1 TO R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 03.02.2026 IN O.S.NO.5166 OF 2024, PASSED BY THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-36), IN SO FAR AS IT RELATES TO ISSUE NO.2 WHEREBY THE HON'BLE TRIAL COURT HAS DIRECTED THE PETITIONER TO PAY THE DEFICIT COURT FEE OF RS.75,587/- WITHIN A PERIOD OF 15 DAYS FROM THE DATE OF IMPUGNED ORDER AS PER SECTION 29 OF THE KARNATAKA COURT FEES AND SUITS VALUATION ACT, 1958 (ANNEXURE-A) AND ETC.,

IN W.P. NO.10577/2026:

BETWEEN:

1. SHRI MUNIRAJU
S/O LAKSHMAIAH,
AGED ABOUT 58 YEARS,
2. SHRI MANJUNATH
S/O. MUNIRAJU,
AGED ABOUT 31 YEARS
3. SMT. LALITHA
W/O. MUNIRAJU,
AGED ABOUT 52 YEARS,

ALL PETITIONERS ARE
RESIDING AT NO.160, 2ND CROSS,
NEW POLICE STATION ROAD,
K.R. PURAM, BENGALURU – 560008.

...PETITIONERS

(BY SRI. GAGANDEEP E., ADVOCATE FOR
SRI. AJIT P.B., ADVOCATE)

AND:

SMT. VASANTHI
W/O. LATE L. NARAYANSWAMY,
AGED ABOUT 49 YEARS,
R/AT NO.36, 2ND CROSS,
NEW BYAPPANAHALLI EXTENSION,
INDIRANAGAR POST,
BENGALURU – 560038.

...RESPONDENT

(BY SRI. DHANANJAY JOSHI, SENIOR ADVOCATE FOR
SRI. VACHAN H.U., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 03.02.2026 (ANNEXURE-A), PASSED BY THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-36), IN O.S. NO. 5166/2024, ON ISSUE NO.3 AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDERS WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. ORDER

1. Both the writ petitions are taken up together for consideration and disposed of by this common order as they arise of the same suit.

2. For the sake of convenience, the parties are referred to as per their rankings in the suit.

3. The petitioner in W.P.No.4837/2026 is the plaintiff and in W.P.No.10577/2026 the petitioners are the defendants. They challenge the order dated 03.02.2026 passed by the XXXV Additional City Civil and Sessions Judge, Bengaluru [**Trial Court**]

in O.S No.5166/2024. The plaintiff is aggrieved by the finding on issue No.2, whereby the Trial Court held that the court fee paid by the plaintiff was not proper and sufficient and directed her to pay a deficit court fee of ₹ 75,587. The defendants are aggrieved by the finding on issue No.3, whereby the Trial Court held that the suit without seeking the relief of declaration is maintainable.

BRIEF FACTS

4. The plaintiff instituted suit, O.S.No.5166/2024 seeking mandatory injunction directing the defendants to vacate and hand over vacant possession of the residential house comprising of ground, first, second, third and fourth floors built on Assessment Khata No.160, BBMP Serial No.195, KR Puram Sub Division, BBMP, situated at Krishnarajapuram Village, KR Hobli, Bangalore East Taluk, BBMP Ward No.52 (present address No.160, 2nd Cross, New Police Station Road, Krishnarajapuram, Bangalore [**suit schedule property**], together with permanent injunction restraining interference with her possession and alienation of the suit schedule property. The plaintiff claims to be the absolute owner of the suit schedule property and contend that the defendants were permitted to reside therein temporarily during COVID-19 pandemic.

5. The defendants, who are the relatives of the plaintiff's late husband, dispute her exclusive ownership. They contend that the property was purchased from the joint family income in the names of the plaintiff and her husband and that they have an alternative claim over the suit schedule property. They further contend that the suit though styled as one for mandatory injunction, is in substance, a suit for recovery of possession and is not maintainable without seeking declaration of title. The Trial Court framed five issues and treated issue Nos.2 and 3 as preliminary issues. By order dated 19.07.2024, the Trial Court had earlier held that the court fee paid under 26 (c) of the Karnataka Court Fees and Suits Valuation Act, 1958 [**KCF&SV Act**] was proper and sufficient and had overruled the registry's objections. However, by the impugned order, issue No.2 regarding the court fee paid by the plaintiff was held in the negative and issue No.3 regarding the suit without seeking relief of declaration is maintainable was held in the affirmative.

Contentions

6. The learned Senior Counsel for the plaintiff contends that the nature of reliefs claimed are decisive for determining the court fee. It is submitted that the suit is one for mandatory injunction and

the valuation under Section 26 (c) is proper. It is further contended that earlier order dated 19.07.2024 which had accepted the valuation and overruled the registry objections, could not have been reopened in the absence of any change in the pleadings or the reliefs sought.

7. Per contra, the learned counsel appearing for the defendants would submit that the plaintiff is seeking recovery of possession under the guise of mandatory injunction and the suit is therefore liable to be valued under Section 29 of the KCF&SV Act. He further contends that in view of the dispute regarding their alternative claim over the suit schedule property, the plaintiff ought to have sought for relief of declaration.

Reasons and conclusions

8. The plaintiff's suit is founded on assertion of ownership and the defendants allege permissive possession. The reliefs sought are for delivery of vacant possession and permanent ownership. The defendants denial of the plaintiff's title does not by itself alter the nature of the reliefs claimed. The question of court fee must be determined with reference to the substance of the plaint and reliefs sought therein. The Trial Court framed the following issues.

“1. Whether the plaintiff proves that the defendants are in permissive possession of the suit property and inspite of issuing the legal notice they are not vacating the suit property?

2. Whether the court-fee paid by the plaintiff is proper or sufficient?

3. Whether the suit without seeking the relief of declaration is maintainable?

4. Whether the plaintiff is entitled for the reliefs claimed in the plaint?

5. What order or decree?

9. Issue Nos.2 and 3 were taken as preliminary issues.

The Trial Court by its earlier order dated 19.07.2024 considered and held that the court fee paid under Section 26 (c) was proper and sufficient. The said order reads as under :

“Heard Advocate for plaintiff on office objections:

Advocate for plaintiff filed memo with original Sale Deed and khata certificate. Keep the original documents in the safe custody. 1st office objection complied.

Heard Advocate for plaintiff regarding payment of court-fee.

According to Advocate for plaintiff, the plaintiff is the owner and possessor of property consisting of 4 floors building bearing Khata No.160, BBMP Sl.No.195, situated in K.R.Puram Village, K.R.Puram Hobli, Bengaluru East Taluk, BBMP ward No.52, with specific measurements and boundaries as mentioned in the plaint.

The plaintiff has sought mandatory injunction directing the defendants to vacate and hand over vacant possession of the suit property and other permanent reliefs. He has filed valuation slip along with the plaint, he had

valued the suit property as per Section 26(c) of Karnataka Court-fee & Suit Valuation Act, for each prayer he has paid Rs.25/-, in all Rs.75/- is paid as court-fee on three reliefs. Office has raised objection - suit ought to have been valued under Section 29 of Karnataka Court-fee & Suit Valuation Act. The facts involved in the case is the defendants are graciously residing in the 1st floor and 2nd floor of the building during the COVID period. Section 29 of Karnataka Court-fee & Suit Valuation Act, states that the suit for possession of immovable property not otherwise provided for shall be computed on market value of the property or on Rs.1,000/- whichever is the higher. There is no agreement between the plaintiff and defendants in respect of the rent or lease. Under these circumstances, Section 29 of Karnataka Court-fee & Suit Valuation Act, is not applicable. Section 26 of Karnataka Court-fee & Suit Valuation Act, dealing with the suit for injunctions sub-section 'c' of Section 26 states that in any other case whether the subject matter of the suit has market value or not fee shall be computed on the relief sought is valued in the plaint or on Rs.1,000/- whichever is higher.

Advocate for plaintiff has filed two decisions reported in (2022) 8 SCC 333 in case of Bharath Bhushan Gupta V/s. Pratap Narayan Varma and another and contended that the nature of relief claimed in the plaint is decisive for determination of suit valuation. The market value of the property does not become decisive of suit valuation merely because of the immovable property is the subject matter. In the same line, the learned counsel for plaintiff relied celebrated judgment of Hon'ble Supreme Court of India in Maria Margarida Sequeira V/s. Erasma Jack De Sequeira in (2012) 5 SCC 370. In this judgment, the role of caretaker is discussed. At this juncture the court-fee paid by the plaintiff appears to be proper and sufficient. Hence, 2nd objection raised by the office not sustainable.

Heard Advocate for plaintiff on I.A.No. 1.

Call on 20-07-2024, for orders."

Emphasis supplied

10. The said order has not been challenged. In the absence of any changed circumstances, the Trial Court could not

have re-opened the question merely because the defendants disputed the plaintiff's title. The impugned order does not disclose any sufficient reason for departing from the earlier finding. There is a categorical finding recorded by the Trial Court in its order dated 19.07.2024 that Section 29 of the KCF&SV Act is not applicable. The said order having attained finality, the Trial Court was therefore not justified in directing plaintiff to pay deficit court fee of ₹ 75,587 under Section 29 of the KCF&SV Act. The finding on issue No.2 is accordingly liable to be set aside.

11. As regards issue No.3, the defendants' contention is that the suit is not maintainable without seeking declaration of title. However, the plaintiff's claim on ownership is based on a registered sale deed and seeks possession from the persons who were permitted to reside in the property. Mere denial of title by the defendants does not, in facts of the present case, make a prayer for declaration necessary. The Supreme Court in **Anathulla Sudhakar vs P. Buchi Reddy (dead) by L.Rs and Others**¹ has held as under :

"13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with

¹ (2008) 4 SCC 594

injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the

defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper

course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

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21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and

straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

Therefore, the challenge in the Writ Petition No.10577/2026 is without merit.

12. For the foregoing reasons, W.P.No.4837/2026 is allowed. The order dated 03.02.2026 in O.S No.5166/2024 insofar as issue No.2 is concerned is set aside and the direction to the plaintiff to pay deficit court fee of ₹ 75,587 is quashed. The earlier order dated 19.07.2024 accepting the valuation under Section 26 (c) of the Karnataka Court Fees and Suits Valuation Act,1958, stands. W.P.No.10577/2026 is hereby dismissed. The finding of the Trial Court on issue No.3 holding that the suit is maintainable without seeking relief of declaration is affirmed.

Sd/-

JUSTICE K.S. HEMALEKHA

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