



CNR: KAHC010704672025

NC: 2026:KHC:37047
WP No. 32728 of 2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 32728 OF 2025 (GM-CPC)

BETWEEN:

1. SRI Y.RAJANNA
S/O LATE YELLAPPA
AGED ABOUT 64 YEARS

2. SMT. V. ANUSUYA
W/O Y. RAJANNA
AGED ABOUT 61 YEARS

3. SRI.R.MAHESH
S/O Y.RAJANNA
AGED ABOUT 39 YEARS

ALL ARE RESIDING AT
NO.51, BEHIND MANGALA BEKARU
RAMAGONDANAHALLI VILLAGE
VARTHUR MAIN ROAD
BENGALURU-560 066

...PETITIONERS

(BY SRI. VIJAYA SHEKARA GOWDA V., ADVOCATE)

AND:

SRI Y.NARAYANASWAMY
S/O LATE YELLAPPA
AGED ABOUT 56 YEARS
RESIDING AT NEW NO.169,
OLD NO.120, 4TH STREET,
1ST MAIN, RAMAGONDANAHALLI
BENGALURU-560 066

...RESPONDENT

(BY SRI. SHRAVAN S LOKRE, ADVOCATE)



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER DATED 10.10.2025 PASSED ON PRELIMINARY ISSUE NO.3 TO 5 BY CIVIL JUDGE AND JMFC, KRISHNARAJAPURAM, BANGALORE RURAL DISTRICT, BANGALORE OR ANY NATURE OF WRIT, SETTING ASIDE THE IMPUGNED ORDERS DATED 10.10.2025 PASSED IN O.S. NO.460/2025 (OLD O.S.NO. NO.879/2021) BY THE CIVIL JUDGE AND JMFC, KRISHNARAJAPURAM, BENGALURU RURAL DISTRICT AT BENGALURU PASSED ON PRELIMINARY ISSUES 3 TO 5 AS PER ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 09.06.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

Aggrieved by the order dated 10.10.2025 in O.S. No. 460/2025, passed on preliminary issues Nos.3 to 5 by the Civil Judge and JMFC, Krishnarajapuram, Bangalore Rural District, the defendant is before this Court.

2. The respondent herein has filed a suit seeking a Judgment and Decree of Declaration declaring that the Schedule B property is meant for utility purposes and for the ingress and egress of the plaintiff and the users. The second relief is a grant of a Mandatory Injunction directing the defendants to remove



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the constructions put up in the Schedule 'B' property, as shown in the photographs produced with the plaint and also the sketch at their costs and expenses, in case the defendants fail to permit the plaintiff to demolish and remove the illegal constructions made by the defendants in the Schedule B property at the defendants' cost and expense exclusively. Thirdly, grant an order of Permanent Injunction restraining the defendants, their henchmen, agents, servants, legal heirs, or any person claiming under or through the defendants from interfering with the Schedule B property and from putting up any construction, either pucca or tentative nature, that may obstruct the ingress or egress of the plaintiff or the users in any way or any manner. Basing on the rival pleadings of the parties, 9 issues were framed for consideration. Among them, Issue Nos. 3 to 5 were treated as preliminary issues, which read thus:

"Issue No. 3 to 5:

- 3. Whether the Court fee paid and valuation made by the plaintiff is proper?***
- 4. Whether this Court has pecuniary jurisdiction to try the suit?***
- 5. Whether the suit of the plaintiff is maintainable?"***



3. The trial Court held that the suit filed by the plaintiff is maintainable before the Court, that the plaintiff has properly valued the suit and paid the appropriate Court fee, and that the Court has the pecuniary jurisdiction to adjudicate the matter. While passing the order, the trial Court observed that, in the present suit, the plaintiff is not seeking any declaration of title over the Schedule 'B' property, which is alleged to be a road. Instead, he is claiming only an easementary right-of-way over the said property, based on a Gift Deed allegedly executed by his father.

4. It is the case of the defendants that the Schedule B property has a market value of Rs.1,92,45,000/-, and therefore the plaintiff ought to have paid Court fees based on this market value, in accordance with Section 24(a) of the Karnataka Court Fees and Suits Valuation Act (hereinafter referred to as 'Act'). The Court observed that in a suit concerning easementary rights, the valuation for the purpose of Court fees and jurisdiction must be based on the relief claimed, rather than on the market value of the property over which the easement is claimed. It is also



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observed that, since the relief sought is limited to the declaration of an easementary right of way to access his land and not a declaration of ownership or title, the Court fee has been rightly computed under Sections 24(d), 26(a), and 30 of the Karnataka Court Fees and Suits Valuation Act. The trial Court observed that the valuation adopted by the plaintiff is legally sound, and the objection raised by the defendants regarding pecuniary jurisdiction, based on market value, is misplaced and unsustainable in light of the legal principle.

5. Learned counsel appearing for the defendant submits that the trial Court has failed to examine the documents produced by the plaintiff. When the defendant/petitioners are the absolute owners of over 16 guntas of converted land, the suit property, admittedly, is full of residential buildings, service station, bakery, hotel building, and labour house, and there is no symptom of any internal road available at any point of time to any person either on its western side, southern side, or from any direction. The trial Court apparently erred in passing the order on preliminary issues 3 to 5, holding that the plaintiff's suit is maintainable and that the Court has pecuniary jurisdiction. It is



submitted that the ruling of the Court is contrary to settled law. It is submitted that the Court failed to consider preliminary issues 3 to 5, ignored the basic principles in dealing with the point of jurisdiction, together with the valuation of the suit, payment of Court fees, and the provisions of the Court fee, and thereby gave perverse findings based on assumptions and presumptions, without looking into the contents raised by the petitioners in their memos and I.A.2, and the valuations filed by the respondent/plaintiff, Court did not verify the documents relating to the respondent/plaintiff's alleged rescheduled property. It is submitted that the order passed by the Court is bereft of reasons and the same is liable to be set aside.

6. Learned counsel appearing for the petitioner relied on the judgments in the case of ***U. Sadananda Udupa vs. Smt. T. Kusuma Shedthi***¹ arising out of **CRP.No.253/2011** dated 19.09.2011. Learned counsel relied on the judgment in the case of ***Mr. Vikram Ravi Menezes Vs. Mr. Victor Goveas*** and relied in paragraph Nos.11 and 12 which reads thus:

¹ ILR 2013 KAR 3885



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"11. Since the plaintiff has no title to the property and is not a party to the sale deed, the said sale is not binding on him. The declaration that a particular sale deed is not binding on the plaintiff would become necessary only when a person who has interest in the property, but is not a signatory to the document, and some other person purports to convey the said title. The plaintiff would in no way be bound by the document, though registered, when he is not a party to the said instrument. In such an event, he can seek declaration. If the plaintiff has no right or interest in the property, the question of granting declaration that the said alienation is not binding on him, would not arise.

12. In view of the provisions to Section 24, as referred to above, if a plaintiff's title to the property is disputed, if his possession is sought to be disturbed, or if he is not in possession and wants forever possession, Section 24(a) and (b) provides for valuing such suits and the Court fee payable. It is only when the case does not fall under Section 24(a) and (b), Section 24(d) is attracted as in the instant case. The plaintiff cannot seek a declaration that he is the owner of the suit schedule property as admittedly he is not the owner. Admittedly, he is not in possession. Therefore, the question of seeking a decree of injunction, would not arise. He can seek for delivery of possession provided he has title, which he does not possess as on the date of the suit. Therefore, his invoking Section 24(d) in those circumstances, does not stand to reason."

He relied on the judgment in the case of ***Shri Sunil and Others Vs. M/s. Hotel Arpan and Others*** and relied on paragraph No.11 to 13, which reads thus:

"11. Unless there is any ambiguity or apparent inconsistency, the principles of interpretation of statutes suggest that the provision has to be considered based on its plain meaning. The plain meaning of the language in Section 28 makes it clear that all suits filed under Section 9 of the Specific Relief Act have to be valued as per Section 28 by computing



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the fee on one-half of the market value of the property or on Rs. 1,000/- whichever is higher.

12. The fee payable for the suits valued under Section 28 of Court Fees Act is higher than the one payable under Section 41(1)(d). In the instant case, merely because plaintiff is required to pay higher Court fee, he cannot be permitted to value the suit under Section 41(1)(d), because the law does not give him a choice to value the suit either under Section 28 or under Section 41(1)(d). The Trial Court has failed to take note of the purport and intent of the Legislature in enacting Section 28. Therefore, order passed by the Trial Court is erroneous. The plaintiff is required to value the relief sought under Section 28 by paying Court fee on one-half of the market value of the property or on Rs. 1,000/- whichever is higher.

13. Coming to the application filed for return of the plaint, a could be seen from the orders of the Court below, there is no finding recorded with regard to the market value of the property involved in the suit. The Trial Court has to record a finding by providing opportunity to both parties regarding actual market value of the suit property which will decide the question regarding quantum of Court fee to be paid and the pecuniary jurisdiction. If the market value of the suit property were to be more than Rs. 5,00,000/-, the Court below has to return the plaint to be presented before the Court having jurisdiction. If it is less than Rs. 5,00,000/- then the Court below will have jurisdiction to proceed with the case, after providing an opportunity to the plaintiffs to pay proper Court fee. The point raised is answered accordingly."

Learned counsel relied on the judgment in the case of

Venkatesh R Desai Vs. Smt. Pushpa Hosmani and Others

and relied on paragraph No.32 to 35, which reads thus:

"32. In the context of the Karnataka Court Fees and Suits Valuation Act, 1958, on the principles aforesaid and for the purpose for which the provision is enacted, we are



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clearly of the view that the expression 'shall' as used in sub-Sections (2) and (5) of Section 11 of the Act of 1958 is required to be construed as directory in nature and not mandatory. In other words, the determination of the questions envisaged by sub-Sections (2) and (5) of Section 11 of the Act of 1958 may be undertaken by the Court before the evidence is recorded on the merits of the claim in its discretion; and such a discretion would obviously be conditioned by the requirements of Rule 2 of Order XIV CPC. Tersely put, in our view, if the Court finds that the question of valuation and/or Court fees as raised by the defendant relates to the jurisdiction of the Court, it may try such an issue first and before the evidence is recorded on the merits of the claim; and in other eventualities, the Court may examine such a question of valuation and/or Court fees, but not necessarily as a preliminary issue or before the evidence on other issues.

33. In fact, the principles which we have indicated above had been applied, though without stating in specific terms, by the other Division Bench of this Court in the case of Nanjamma (supra), when it was held that the plaint averment, of the property being in joint possession, was sufficient to bring the valuation of the suit within the ambit of SECTION 35(2) of the Act of 1958; and taking of any evidence at the preliminary stage for the purpose of Court fees would be of no effect or consequence. The same principle was applied in the case of Renuka Manghnani (supra) too. The other decisions by the Learned Judges sitting singly, which have essentially been rendered by following the decision in Veeragouda's case, cannot be approved.

34. For what has been observed hereinabove, we need not dilate further on the decision of Smt. Sujatha Narayana (supra).

Conclusion

35. Accordingly, and in view of the above, we are clearly of the view that by virtue of Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958 read with Order XIV Rule 2 of the Code of Civil Procedure, 1908, when an issue of valuation and/or Court fees is raised in a civil suit on the objection of the defendant, the same is



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not invariably required to be tried as a preliminary issue and before taking evidence on other issues; but could be tried as a preliminary issue if it relates to the jurisdiction and the Trial Court is of the view that the suit or any part thereof could be disposed of on its determination. The reference stands answered accordingly."

He also relied on the judgment in the case of **Vasanthi**

Shettigarthi and Others Vs. K. Balachandra Rao and relied

on paragraph No.15 and 16, which reads thus:

"15. From a bare reading of the aforesaid provision, it is apparent that the Court is required to independently determine the market value and it could not have arrived at the market value in the manner and methodology adopted by the Trial Court. The Trial Court was required to conduct a conscious exercise in terms of Section 7 of the KCF & SV Act and determine as to whether the market value has to be determined in terms of sub-Section (1) or sub-Section (2) of Section 7 of the KCF & SV Act. It is apparent that the KCF & SV Act applies to both urban and rural properties. Clause (a) of sub-Section (2) provides that where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government and such revenue is permanently settled in terms of the Revenue Act, then the Court fee payable is fixed at 25 times the revenue so payable. Clause (b) of sub-Section (2) refers to a land, in respect of which revenue is settled, but not permanently, then the Court fee payable is fixed at 1214 times the revenue so payable. Thus, the provisions of Section 7 of the KCF & SV Act provides for various types of properties and it was incumbent upon the respondent who has raised the question of inadequacy of Court fee and jurisdiction, to demonstrate a case that the market value as required to be determined under Section 7, is of a higher valuation and is beyond the pecuniary jurisdiction of the Court as stipulated under Section 17 of the Karnataka Civil Courts Act, 1964.

16. Upon a bare reading of the impugned order, it is seen that the Trial Court has not conducted any inquiry as



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required and mandated under Section 7 of the KCF & SV Act. It is no more res integra that when a legislation provides for a particular act to be performed in a particular manner, then the same is required to be performed in the said manner only. In the instant case, admittedly the Trial Court has not conducted any exercise nor is there any material forthcoming to demonstrate the fact that the defendant, on whom the onus rests to demonstrate that the Court has no pecuniary jurisdiction or the Court fee paid is insufficient, has failed to place any material in corroboration of his contentions. The reliance by the Trial Court on the body of the plaint without reference to the valuation slip is, in the considered opinion of the Court, vitiated by arbitrariness. In that view of the matter, the relief sought by the petitioners in this writ petition requires to be considered liberally."

Based on these judgments, it is submitted that the order passed by the trial Court is not a well-considered order.

7. Learned counsel appearing for the respondent submits that the trial Court has rightly considered that the suit is filed for an easementary right and that the respondents are not seeking any declaration regarding the title of the property. The trial Court has considered all relevant aspects and rightly held that the Court fee has been paid and that the Court has pecuniary jurisdiction. It is submitted that there are no grounds to interfere with the well-considered order passed by the trial Court.

8. Having heard the learned counsel on either side, perused the material on record. The plaintiff sought for a



declaration of an easementary right and removal of the obstruction over the said pathway. The plaintiff has valued the declaratory relief under Section 24(d) and the mandatory injunction under Section 26(e) of the Karnataka Court Fees and Suits Valuation Act. The defendants contend that the suit is substantially for a declaration of right in immovable property and therefore the Court fee ought to have been paid under Section 24(a) of the Act on the market value of the property. In the light of the submissions, the question that falls for consideration is:

“Whether a suit seeking a declaration of an easementary right of ingress and egress, coupled with a mandatory injunction for removal of the obstruction, is liable to be valued under Section 24(a) or under Sections 24(d) and 26(c) of the Karnataka Court Fees and Suits Valuation Act?”

The question of Court fees must be determined with reference to the averments contained in the plaint and the reliefs claimed therein. The defense raised by the defendant or the probable result of the litigation is wholly irrelevant while determining the Court fee. The Court must examine the plaint as it stands and ascertain the true nature and substance of the relief sought. It is equally well settled principle that the substance of the relief, not the language employed in the prayer,



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is decisive. However, while examining the substance of the suit, the Court cannot attribute to the plaintiff a relief which he has consciously not sought. The Courts must determine the legal character of the relief on the basis of the pleadings and not on the basis of the possible consequences flowing from the decree. The plaintiff in the present case does not seek ownership of the B schedule property nor does he seek recovery of possession thereof. The plaint does not assert that the 'B' schedule property belongs to the plaintiff. On the contrary, the case pleaded is that, irrespective of ownership, the property is meant to be used as a passage for ingress and egress to the plaintiff's property. The declaration sought is thus confined to recognition of the right of easement. The right claimed by the plaintiff is nothing but an easementary right.

9. Section 4 of the Indian Easements Act, 1882 defines easement as a right possessed by the owner or occupier of certain land for the beneficial enjoyment of that land to do or continue to do something, or to prevent something from being done, upon certain other land not his own. Thus, an easement is not ownership of the servient heritage; it is merely a limited



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right of user over another's property for the beneficial enjoyment of the dominant heritage. The distinction between ownership and easement assumes considerable significance in determining Court fee. Ownership is a proprietary right in the property itself, whereas an easement, on the other hand, is only an incorporeal right annexed to the enjoyment of another property. The holder of the easement neither acquires title nor possession over the servient heritage. The ownership and possession continue to vest with the owner of the servient heritage, subject only to the limited burden imposed by law. Once this distinction is appreciated, the contention advanced by the petitioners becomes difficult to sustain. Section 24(a) of the Karnataka Court Fees and Suits Valuation Act contemplates suits where a declaration of proprietary rights in immovable property is coupled with consequential relief. The valuation under that provision proceeds on the footing that the declaration directly concerns the property itself. In contrast, the present suit is not directed against the title of the defendants, nor does the plaintiff seek possession of the plaint 'B' schedule property. The decree, if granted, would merely recognize the plaintiff's right to use the property as a



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passage and direct the removal of the obstruction preventing such use. The defendants would continue to remain owners and purchasers of the servient property, subject only to the plaintiff's easementary right. An easementary right, being an incorporeal right, is incapable of valuation on the market value of the servient heritage. The plaintiff does not acquire the property nor any proprietary interest thereon. What is sought to be protected is merely the beneficial enjoyment of the dominant heritage. Consequently, the basis for valuation contemplated under Section 24(a) of the Act has no application. The relief of mandatory injunction directing removal of the obstruction is intended only to make the declaration effective. Not every mandatory injunction necessarily converts a declaratory suit into one attracting Section 24(a) of the Act. Where the mandatory injunction merely facilitates enjoyment of an easementary right and does not result in delivery of possession or a declaration of ownership, the relief remains within the ambit of Sections 24(d) and 26(e) of the Act. It is submitted that the decree would affect valuable rights of the defendants cannot, by itself, determine the question of Court fee. Every decree, by its very nature, affects



legal rights. The relevant consideration is the nature of the right asserted by the plaintiff, not the extent to which the defendant may feel aggrieved by the decree. If the contention of the petitioner is accepted, it would virtually equate every easementary suit with a suit for declaration of title. Such an interpretation would obliterate the distinction between proprietary rights and easementary rights recognized both under the Indian Easement Act and the Karnataka Court Fees and Suits Valuation Act. The legislature has consciously maintained that distinction, and the Court cannot ignore it by adopting an interpretation inconsistent with the scheme of the statute.

10. The trial Court has rightly appreciated that the plaintiff has not sought a declaration of ownership or possession, but only recognition of a right of ingress and egress. The valuation adopted under Section 24(d) for the declaratory relief and Section 26(e) of the Act for the mandatory injunction is therefore in accordance with the statutory scheme.

11. In the considered opinion of this Court, the trial Court has rightly reached its conclusion, and this Court finds no reason to interfere with the well-considered order passed by the trial



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Court. The issue is answered in favour of the respondent. In that view of the matter, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed.***
- ii. Pending I.As., in this petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**

TS
List No.: 1 Sl No.: 2