IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 18TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR. JUSTICE K NATARAJAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

REGULAR FIRST APPEAL NO.200102 OF 2016 (DEC)

BETWEEN:

JAGADESHWAR S/O SHARANAYYA KALAL (ILGER)
AGED ABOUT 56 YEARS, OCC: AGRICULTURE
R/O HUDA-B, TQ: SEDAM NOW RESIDING AT
BANTAL,
DIST: RANGAREDDY ANDHRA PRADESH

...APPELLANT

(BY SRI. VINAYAK APTE, ADVOCATE)

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

AND:

1. SABANNA S/O MAHADEVAPPA,
   AGE: MAJOR, OCC: AGRICULTURE,
   DIED BY LRS.

   a) NAGAMMA W/O LATE SABANNA
      AGE: 50 YEARS, OCC: HOUSEHOLD,

   B) MALLESH S/O LATE SABANNA
      AGE: 20 YEARS, OCC: AGRICULTURE,
      BOTH R/O DIGGAON TQ. CHITTAPUR,
      DIST. KALABURAGI.

2. TIPPANNA S/O MAHADEVAPPA
AGE: MAJOR, OCC: AGRICULTURE
DIED BY LRS.

a) LAXMI W/O LATE TIPPANNA
AGE: 55 YEARS, OCC: HOUSEHOLD,

B) MALLAMMA D/O LATE TIPPANNA
AGE: 25 YEARS, OCC: HOUSEHOLD,

C) MALLIKARJUN S/O LATE TIPPANNA
AGE: 20 YEARS, OCC: AGRICULTURE,

D) SAVITA D/O LATE TIPPANNA
AGE: 18 YEARS, OCC: HOUSEHOLD
ALL R/O DIGGAON TQ. CHITTAPUR
DIST. KALABURAGI-585211.

3. IRANNA S/O SABANNA
AGE: MAJOR, OCC: AGRICULTURE

4. MALSHETTAPPA S/O SUBASCHANDRA
AGE: MAJOR, OCC: AGRICULTURE
ALL RESPONDENTS NO.1 TO 4 ARE RESIDENTS OF
DIGGAON
TQ. CHITTAPUR DIST. KALABURAGI-585211

5. M/S. RAJESHREE CEMENTS
A UNIT OF GRASIM INDUSTRIES LIMITED
ADITYA NAGAR, MALKHED ROAD, SEDAM
DIST: KALABURAGI

…RESPONDENTS

(BY V/O DATED 16.10.2019 APPEAL ABATES AGAINST R-1;
SRI. SHARANABASAPPA K. BABSHETTY,
ADVOCATE FOR R3 AND R4;
V/O DATED 12.02.2024 NOTICE TO R1(b) IS HELD
SUFFICIENT
NOTICE TO R-1 (A), R2(A) TO R-2(D) ARE SERVED;
SRI. SACHIN M. MAHAJAN, ADVOCATE FOR
SRI. N. B. DIWANJI AND SRI. PRAMOD N. KATHAVI,
ADVOCATES FOR R5)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CODE OF CIVIL PROCEDURE, 1908 PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND DECREE (ORDER OF REJECTION OF PLAINT) DATED 25.10.2016 PASSED IN O.S.NO.133/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE AT CHITTAPUR.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K NATARAJAN)

This appeal is filed by the appellant under Section 96 of the CPC by challenging the order of rejection of the plaint of the plaintiff in O.S.No.133/2011 dated 25.10.2016 by exercising the power under Order VII Rule 11 (b) of CPC. The plaintiff has sought relief of declaration, declaring the sale deed dated 10.03.2010 in favour of the defendant No.5 is null and void and not binding on the plaintiff.

02. After issuance of summons, the defendant No.5 appeared and filed written statement disputing the Court fee paid is incorrect.

03. Based upon the pleadings, the Trial Court framed Issue No.7 and Additional Issue No.1 and rejected the plaint by exercising power under Order VII Rule 11 (b) of CPC, by impugned order, which is under challenge.

04. The learned counsel for the appellant submits that the Coordinate Bench of this Court has already considered the same in RFA.No.200100/2016 dated 16.02.2023 and matters are remitted back to the Trial Court.

05. The learned counsel for the respondents also fairly admits that this issue is already covered by the judgment of the Coordinate Bench in RFA.No.200100/2016 dated 16.02.2023.

06. Keeping the submission placed on record, we are of the opinion that there is no deviation in the present case on hand as well. This matter is already dealt with by the decision of the Coordinate Bench at paragraph No.5 of the judgment which reads as under:

> *"5. The plaintiff's stand is that he has a certain share in the suit property and that the alienation made by defendant nos. 1 to 4 in favour of defendant no.5 does not bind his interest. That means he claim to be having interest in the agricultural land. Though on the date of suit the suit property might have been converted for non-agricultural purpose, if the averments made in the plaint are considered, the plaintiff has stated that the land was agricultural in nature and in this view section 7 of the Karnataka Court Fees and Suits Valuation Act is very much applicable. If section 7 is applicable, question of making the payment of court fee on the market value does not arise. Therefore, the valuation made by the plaintiff is very much correct and in this view the trial court should not have directed him to pay court fee on the*

market value. So far as argument of Sri Sachin Mahajan that order, dated 21.10.2016 ought to have been challenged, is concerned, it may be stated that the impugned order was passed in furtherance of the order dated 21.10.2016, and the actual question is whether section 7 of the Karnataka Court Fees and Suits Valuation Act is applicable or not. If rejection of plaint is held to be incorrect, the order dated 21.10.2016 becomes redundant."

07. Accordingly, the same rule is applicable to the to the present case as well. Hence, we proceed to pass the following:

ORDER

i) The appeal is ***allowed***.

ii) The impugned order dated 25.10.2016 passed by the Trial Court in O.S.No.133/2011 rejecting the plaint is hereby set aside.

iii) The matter is remitted back to the Trial Court for fresh adjudication.

iv) The parties are directed to appear before the Trial Court without any further notice on 02.04.2025.

v) The Trial Court records shall be transmitted to the Trial Court along with the copy of this judgment forthwith.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

KJJ,MCR
LIST NO.: 1 SL NO.: 0
Ct:si