

(2018) 10 KAR CK 0014

Karnataka High Court

Case No: Writ Petition No. 8087 OF 2018 (GM-CPC)

Venkatesh R Desai

APPELLANT

Vs

Smt.Pushpa Hosmani

RESPONDENT

Date of Decision: Oct. 26, 2018

Acts Referred:

- Karnataka Court Fees and Suits Valuation Act, 1958 - Section 10, 11, 11(2)(5), 35, 35(2)
- Code of Civil Procedure, 1908 - Section 149, Order 14 Rule 2, Order 7 Rule 11
- Tamil Nadu Court Fees and Suits Valuation Act, 1955 - Section 12(2), 12(4)©, 25, 40

Hon'ble Judges: Dinesh Maheshwari, CJ; A.S.Bopanna, J; Aravind Kumar, J

Bench: Full Bench

Advocate: Veena J.Kamath, K.J.Kamath, K.Chandramohan, Jayakar Shetty

Final Decision: Disposed Off

Judgement

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1. This Larger Bench is constituted for determination of the question that has arisen in this writ petition as to the procedure to be adopted in a civil suit

when an issue of suit valuation and court fees is raised on the objection of the defendant. The question referred for determination by this Larger

Bench by one of us sitting Single (the Chief Justice) is as under:-

As to whether, by virtue of Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958, when an issue of valuation and court fees is

raised on the objections of the defendants, the same is invariably required to be tried as a preliminary issue and before taking evidence on other

issues?

The relevant statutory provisions

2. Having regard to the question placed before this Bench for determination, appropriate it would be to take note of the relevant statutory provisions at the outset. The relevant

provisions contained in Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958 (â€˜the Act of 1958â€™ hereafter) read as under:

â€œ11. Decision as to proper fee in courts.- (1) In every suit instituted in any Court, the Court shall, before ordering the plaint to be registered, decide

on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under section 10, the proper fee

payable thereon, the decision being however subject to review, further review, and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but,

subject to the next succeeding sub-section not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not

sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the

claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a

date before which the plaint shall be amended in accordance with the Courtâ€™s decision and the deficit fee shall be paid. If the plaint be not

amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just

regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-

matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided

before evidence is recorded affecting such defendant, on the merits of the claim, and if the court finds that the subject-matter of the suit has not been

properly valued or that the fee paid is not sufficient, the court shall follow the procedure laid down in sub-section (2).

Explanation.- Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on

record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4)(a) Whenever a case comes up before a Court of appeal, it shall be lawful for the Court, either on its own motion or on the application of any of the parties, to consider the correctness of any order passed by the Lower Court affecting the fee payable on the plaint or in any other proceeding in the Lower Court and determine the proper fee payable thereon.

Explanation.- A case shall be deemed to come before a Court of Appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of Appeal decides that the fee paid in the Lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the Lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the Lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the Lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim.

Explanation.- In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable, but inclusive of matters arising on pleas of *res judicata*, limitation and the like.
(underlining supplied for emphasis)

3. On the other hand, the relevant provisions contained in Rule 2 of Order XIV of the Code of Civil Procedure, 1908 ("CPC" hereafter), as to

the procedure to be adopted for the purpose of trial of the issues in a civil suit; and as to which of the issues could be tried at the first and before

settlement of other issues, read as under:-

â€œ2. Court to pronounce judgment on all issues â€" (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall,

subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an

issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues

until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.â€

(underlining supplied for emphasis)

4. Section 35 of the Act of 1958 having bearing on the subject matter in the present writ petition may also be taken note of as under:

â€œ35. Partition suits.-(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common,

by a plaintiff whose title to such property is denied, or who has been excluded from possession of such property, fee shall be computed on the market

value of the plaintiffâ€™s share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint

possession of such property, fee shall be paid at the following rates.-

Rupees fifteen, if the value of plaintiffâ€™s share is Rs.3,000 or less;;

Rupees thirty, if the value is above Rs.3,000 but not more than Rs.5,000;

Rupees one hundred, if the value is above Rs.5,000 but below Rs.10,000; and

Rupees two hundred, if the value is Rs.10,000 and above.

(3) Where, in a suit falling under sub-section

(1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement

computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under sub-section

(1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in Section 38 separate fee

shall be payable on the relief of cancellation in the manner specified in that section.â€

The relevant factual and background aspects

5. The relevant factual and background aspects leading to the writ petition involving the question aforesaid are as follows:

(a) The defendant No.3 in a suit for partition [O.S.No.7627/2014 in the Court of XXIX Additional City Civil Judge, Bengaluru] has preferred this writ

petition against the order dated 02.01.2018, as passed in the said suit, whereby the Trial Court rejected the application filed by him to treat and try the

additional issue No.4 regarding payment of court fees as a preliminary issue.

(b) The plaintiffs (respondent Nos.1 to 4 herein), have valued the aforesaid suit for partition at Rs.10 crores, while stating that the market value of the

schedule properties was Rs.16 crores and they were entitled for 1/7th share each. Further, with the averments that they were in joint possession of

the schedule properties, the plaintiffs presented the plaint on the fixed court fees of Rs.800/- as per Section 35(2) of the Act of 1958. The averments

in the plaint, regarding valuation and court fees, read as under:

â€œVII. VALUATION AND COURT FEE:

That the present Market Value of all the Schedule Properties is at Rs.16,00,00,000/-. The Plaintiffs are entitled for 1/7th share each. Hence, for the

purposes of the Court Fees and Jurisdiction the Suit is valued at Rs.10,00,00,000/-. Since the Plaintiffs are in joint possession of Schedule Properties,

fixed Court Fee of Rs.800/- (Rupees Eight Hundred only) as per Section 35 (2) of the Karnataka Court Fees and Suits Valuation Act,

1958. A separate Valuation Slip is enclosed herewith.â€

(c) The petitioner-defendant No.3 has stated certain preliminary objections in his written statement; and in relation to the valuation and court fees, the

objections as contained in paragraph 1(j) of the written statement read as under:

“Plaintiffs are not in possession, whether joint or otherwise, of the Schedule Properties and this Defendant is in possession. Hence the Plaintiffs

have not valued the suit properly and have paid insufficient Court Fees and on this ground also the suit is liable to fail.”

(d) Initially, the Trial Court has framed the material issues arising in the matter, including the issue as to whether the suit schedule properties are the

joint family properties of the plaintiffs and defendants; and they are in joint possession thereof. However, on the objections and pleadings of the

parties, additional issues were also framed on 18.07.2017; and additional issue No.4 as framed in this matter reads as under:

“4. Whether the plaintiffs prove that they have paid appropriate court fees for the prayer seeking partition and separate possession of the suit

schedule properties?”

(e) After framing of the issues as aforesaid, the petitioner-defendant No. 3 submitted, by way of an application (I.A.No.3) and with reference to

Order XIV Rule 2 CPC and Section 11 of the Act of 1958, that the issue concerning valuation and court fees was required to be determined as a

preliminary issue.

(f) By the impugned order dated 02.01.2018, the Trial Court rejected such an application moved by the petitioner with reference to the principles that

in law, a Hindu family is presumed to be joint and burden of proving separation is upon a person alleging it. The Trial Court further observed that when

joint possession is a presumption and so is the contention of the plaintiffs, without recording evidence on merit, the defendants’ contention about

want of joint possession cannot be considered at the preliminary stage. In this view of the matter, the Trial Court observed that such mixed question of

fact and law would be considered only after trial of the suit.

6. The referred question cropped up in the circumstances that while assailing the order so passed by the Trial Court, learned counsel for the petitioner

argued, with reference to a Division Bench decision of this Court in the case of Veeragouda and Ors. vs. Shantakumar @ Shantappagowda: ILR

2009 KAR 887, that the issue relating to court fees is invariably required to be tried as preliminary issue; and, therefore, the Trial Court has acted

wholly illegally in declining the application of the petitioner. Per contra, learned counsel for the contesting respondents (plaintiffs) contended, with reference to another Division Bench decision of this Court in the case of Nanjamma vs. Akkayamma and Ors.: 2015 (3) Kar.LJ 357 that the specific averment in the plaint that the plaintiffs are in joint possession of the schedule property is sufficient to bring the valuation of the suit within the ambit of Section 35(2) of the Act of 1958 and, therefore, taking of any evidence at this stage for the purpose of court fees would be of no effect or consequence. The learned counsel for the respondents further pointed out that the same view, as expressed in Nanjamma's case, was adopted and applied by the same Hon'ble Judge, who had been part of the Division Benches in Veeragouda as also in Nanjamma, while sitting Single, in the case of Renuka Manghnani vs. Peddakka and Ors.: 2015 (4) Kar.LJ 256 that the defendant's say in the written statement would be immaterial and value of the suit for the purposes of court fee and jurisdiction has to be decided on the basis of the plaint averments. The learned counsel for the respondents also referred to the decision in Jagannath Amin vs. Seetharama (Dead) by Lrs. and Ors.: 2007 (1) SCC 694, in support of her contentions that the valuation in such a suit is to be in accord with Section 35(2) of the Act of 1958.

7. Of course, during the course of submissions, it had been an admitted position of the parties that the question raised had only been as regards proper court fees and else, the question of pecuniary jurisdiction did not arise in this matter.

8. While dealing with the contentions aforesaid, it was noticed that, in the case of Veeragouda (supra), with reference to Section 11 of the Act of 1958 and Order XIV Rule 2 of CPC, the Division Bench of this Court had stated the law in the manner that when a plea is taken that the suit has not been properly valued or that the fee paid is not sufficient, the issue arising thereupon shall have to be heard and decided before evidence is recorded on merits of the claim; and that no discretion is left to the Court for postponing the decision regarding issue of court fee once such a plea is taken in the written statement. However, it was also noticed that in Nanjamma's case (supra), another Division Bench of this Court, though while dealing with

the matter in Regular Appeal, had referred to the question on determination of court fees in the suit for partition and held that a mere averment in the plaint that the plaintiff is in joint possession with the defendant in the schedule property was sufficient to bring the valuation of the suit within the ambit of Section 35(2) of the Act of 1958. It was yet further noticed that in the case of Renuka Manghnani (supra), this Court had approved the order passed by the Trial Court to the effect that when the plaintiffs had specifically pleaded that they were in joint possession of the property and were entitled for a share, the defendant's say in the written statement was immaterial; and value of the suit for the purpose of court fee and jurisdiction has to be decided on the basis of the plaint averments.

9. It was also noticed that in the case of Smt.Sujatha Narayana and Ors. vs. Smt. Leela Ramakrishna and Ors.: ILR 2006 KAR 4463, which was overruled in Veeragouda's case, another learned Single Judge of this Court had stated the law that when the pecuniary jurisdiction of City Civil Court was not questioned, the issue relating to the determination of court fees could be tried along with the other issues.

10. After taking note of the provisions contained in Section

11 of the Act of 1958; and apparent inconsistency in the aforesaid decisions of this Court on the question of procedure to be adopted in the case of

raising of an objection on valuation and/or court fees i.e., as to whether such an objection is invariably required to be tried as a preliminary issue; and

after doubting the propositions stated in absolute terms in Veeragouda's case, this reference was made for authoritative pronouncement by a

Larger Bench of this Court on the question aforesaid.

The submissions

11. Learned counsel for the petitioner has strenuously argued that by virtue of the mandate of sub-section (2) and sub-section (5) of Section 11 of the

Act of 1958, when the questions as regards valuation and court fees arise on the objections raised by the defendant, such questions are required to be

heard and decided before evidence is recorded on the merits of the claim and in fact, the suit could be proceeded further only after determination of

such questions.

These principles, as enunciated in Veeragouda's case (supra), according to the learned counsel, are in conformity with the decisions of the

Supreme Court in the case of J.Vasanthi and Ors. vs. N.Ramanikanthammal (dead) represented by legal representatives and Ors: (2017) 11 SCC 852

and A.Nawab John and Ors. vs. V.N.Subramaniam: (2012) 7 SCC 738.

12. Learned counsel has further submitted that the said decision in the case of Veeragouda has been consistently followed by this Court with

reference to the provisions contained in Section 11 of the Act of 1958 and the decisions of the Supreme Court. Learned counsel has referred to the

decisions of the Single Judges of this Court in Shivakumar & Ors vs. Smt.Jayamma and Ors.: W.P. No.5442 of 2012 decided on 18.10.2012 and

Abdul Salam vs. The District Automobile Workers Association and Anr.: ILR 2010 KAR 3018. Learned counsel would submit that the decision in the

case of Smt. Sujatha Narayana has been considered and has rightly been overruled by the Division Bench of this Court in

13. Per contra, learned counsel for the respondents has submitted that the provisions of Section 11 of the Act of 1958 and the law laid down in the

case of Veeragouda cannot be said to be laying down the proposition that even in the case where the plaintiff pleads joint possession and values the

suit under Section 35(2) of the Act of 1958, the evidence is yet required to be taken for the purpose of court fees. According to the learned counsel,

the law of procedure in this regard has rightly been clarified by the Division Bench of this Court in the case of Nanjamma (supra); and has rightly

been applied by the Single Judge in the case of Renuka Manghnani (supra) that a statement in the plaint about plaintiff being in joint possession is

sufficient to bring the valuation within the ambit of Section 35(2) of the Act of 1958. Learned counsel has further referred to and relied upon the

decision in Jagannath Amin (supra). The learned counsel has further contended that the principles enunciated in Nawab John's case (supra),

rather make it clear that there is no legal right in the defendant as regards the question of court fees and by merely raising objections, the defendant

cannot obstruct and prevent fair trial of the suit. Learned counsel has also referred to the decision in the case of Lakshmi Ammal vs.

K.M.Madhavakrishnan and Ors.:

(1978) 4 SCC 15 to submit that such issues need not detain the Court in the manner that the real issues on merit be not tried. Learned counsel has also referred to the decisions in Sujir Keshav Nayak vs. Sujir Ganesh Nayak: (1992) 1 SCC 731 and State of Harayana vs. Raghubir Dayal: (1995) 1 SCC 133.

14. Having regard to the questions involved in the matter, we have permitted the other learned counsel to make their submissions in assistance of the Court, if so desired. In response, the learned CGC and the learned AGA have also addressed the Court. The learned CGC has, inter alia, referred to the decisions in S.Rm.Ar.S.Sp. Sathappa Chettiar vs. S.Rm.Ar. Rm. Ramanathan Chettiar: AIR 1958 SC 245 and Rani Kusum (Smt) vs. Kanchan Devi (Smt) and Ors.: (2005) 6 SCC 705.

15. Having given anxious consideration to the submissions made at the Bar and having examined the law applicable to the case, we are clearly of the view that the blanket propositions as stated by a Division Bench of this Court in Veeragouda's case (supra) cannot be held applicable to each and every case where the objection as regards valuation and/or court fees is raised by the defendant; and in our view, when the question of pecuniary jurisdiction of Court trying the suit does not arise, the issue relating to valuation and/or court fees could be tried along with other issues. Suit Valuation and Court Fees: principles relating to procedure

16. In relation to the question arising for determination in this reference, we may observe in the first place that in a civil suit, the defendant may, of course, plead in his written statement that the subject-matter of the suit has not been properly valued or that the court fees paid is not sufficient.

Apparently, as per the language of sub-sections (2) and (5) of Section 11 of the Act of 1958, the questions arising on such pleas/objections of defendant are envisaged to be heard and decided before evidence is recorded affecting such defendant on the merits of the claim. If the expressions employed in sub-sections (2) and

(5) of Section 11 are to be read on their own, and detached from the object and the purpose thereof, it may be assumed as if in every case, whenever

the defendant raises an objection as regards valuation and/or court fees, no discretion is left with the Court and the issue arising on such a plea has to

be heard and decided before evidence is recorded on the merits of claim. The same had been the view taken by the Division Bench of this Court in

Veeragouda's case (supra).

17. We shall refer to the decision in Veeragouda's case as also the other decisions, wherein discordant notes from Veeragouda are evident, a little

later. At this juncture and in the first place, we may examine the principles concerning the law of procedure as regards suit valuation and court fees.

18. It remains trite that the questions relating to suit valuation and court fees are to be examined at the initial stage of the presentation of plaint; and

the defendant is usually not expected to be interested in such a dispute, unless such questions also involve the question of jurisdiction of the Court to

try the suit [vide Sathappa Chettiar (supra)].

19. The procedure envisaged by the Code of Civil Procedure makes it clear that at the time of initial examination, the Court may reject the plaint if the

relief claimed is under-valued and the plaintiff fails to correct the valuation within the time fixed by the Court; or where the relief claimed is properly

valued but the plaint is written on the paper insufficiently stamped, and the plaintiff fails to supply the requisite stamp paper within the time fixed by the

Court [vide Order VII Rule 11 CPC]. However, these are the matters essentially between the plaintiff and the Court. The same principles are

contained in Section 11 of the Act of 1958 wherein, as the matter of procedure, the Court is required to decide, before ordering the plaint to be

registered, on the basis of the materials and allegations contained in the plaint and the material contained in the statement, if any, filed under Section

10, about the proper court fees payable thereupon.

20. (a) In the case of A. Nawab John (supra), the question had essentially been of payment of deficit court fees beyond the period of limitation

prescribed for filing the suit and the jurisdiction of the Court to allow such payment of deficit court fees under Section 149 CPC. In the said decision

itself, the Supreme Court pointed out that the principle followed for a long time is that the question of court fees is essentially a matter between the

plaintiff and the Court. The Supreme Court, of course, took note of the provisions contained in the Tamil Nadu Court Fees and Suits Valuation Act,

1955 (the Tamil Nadu Act of 1955 hereafter), where Section 12(2) provides for the defendant's rights to raise the question of court fees;

but also referred to the decision in Sri Rathnavarmaraja vs. Smt. Vimla: AIR 1961 SC 1299, wherein the Court had, inter alia, held as under:

2. The Court-Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to

obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter

in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction

against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively

frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the

High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a

question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel

aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under S.115 of the Code of Civil Procedure is

strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or

assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the

exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right

to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. But counsel for the

defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a

right not only to contest in the trial court the issue whether adequate court-fee has been paid by the plaintiff, but also to move the High Court in

revision if an order contrary to his submission is passed by the court. Reliance in support of that contention is placed upon sub-sec. (2) of S. 12. That

sub-section, in so far as it is material, provides:

“Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim

plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be

heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the

suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance

with the court's decision and the deficit fee shall be paid.”

3. But this section only enables the defendant to raise a contention as to the proper court-fee payable on a plaint and to assist the court in arriving at a

just decision on that question. Our attention has not been invited to any provision of the Madras Court fees Act or any other statute which enables the

defendant to move the High Court in revision against the decision of the court of first instance on the matter of court-fee payable in a plaint. The Act,

it is true by S. 19, provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or

whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to

make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court fee due from the litigant

is manifest from the detailed provisions made in Ch. III of the Act, but those provisions do not arm the defendant with a weapon of technicality to

obstruct the progress of the suit by approaching the High Court in revision against an order determining the court-fee payable.”

(underlining supplied for emphasis)

(b) Having noticed the aforesaid and other, and having examined the question as had arisen in the matter, the Supreme Court observed as under:

“39. The question whether there is a deficit of court fee paid with respect to a plaint depends on two factors: (1) the valuation of the suit, and (2)

the determination of the appropriate court fee payable thereupon. There can occur an error (either advertently or otherwise), on either of the

abovementioned counts. Under Section 12(1) of the Tamil Nadu Act (which is relevant for our purpose), primarily it is the obligation of the court to examine all the relevant material and determine whether the proper fee payable on the plaint is paid or not. As already noticed, under Section 12(2) of the Tamil Nadu Act, the defendant can also raise objections to either the valuation of the suit or the determination of the court fee payable. The determination of the accuracy of the valuation of the suit and/or the appropriate court fee payable thereon, in either of the contingencies mentioned above, is required to be made by the court. If the court reaches the conclusion that the appropriate court fee is not paid, the consequences stipulated in Sections 12(2) to (4) should follow.â€

(c) In this case of A.Nawab John, the Supreme Court pointed out the operation of Section 12 (4)(c) of the Tamil Nadu Act of 1955, as follows:

â€œ26. â€¦It can be seen, that Section 12(4)(c) of the Tamil Nadu Act, 1955 provides for the dismissal of only the appeal in case of the failure to make good the deficit of court fee if the same pertains to that portion of the decree by which a portion of the plaintiff's claim stood dismissed by the trial court. However, in the case of the default in making good the portion of the court fee pertaining to the decree in favour of the plaintiff, the section only mandates the recovery of the amount by resorting to the Revenue Recovery Act but does not command the suit to be dismissed. Obviously the legislature did not intend to give any advantage to the defendants on account of the payment of the inadequate court fee by the plaintiffs.

27. Therefore, the law is clear that though a defendant is entitled under the Tamil Nadu Act, 1955 to bring it to the notice of the court that the amount of court fee paid by the plaintiff is not in accordance with law, the defendant cannot succeed in the suit only on that count. But the dispute of the second defendant is not regarding the amount of the court fee but the acceptance of the court fee after the expiry of the period of limitation applicable to the suit.â€

21. In the case of J.Vasanthi (supra), the question had been about the court fees payable in the suit for declaration that the sale deeds were fabricated and void with reference to the provisions contained in Section 40 and Section 25(d) of the Tamil Nadu Act of 1955. The Supreme Court again

examined the decision in Nawab John as also the above quoted passage in Rathnavarmaraja (supra) and pointed out the distinction as to why the said decision was not applicable to the case at hand in the following:

“27. On a perusal of the decision in Rathnavarmaraja, we find that the controversy had arisen with regard to proper valuation and the stand of the defendant was that the court fee had not been properly paid and in that context, the Court has held what as we have reproduced hereinabove. The issue being different, the said decision is distinguishable. We may reiterate that proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the Revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.”

22. The aforesaid decisions in Nawab John and J.Vasanthi, as relied upon by learned counsel for the petitioner, do not support the submissions sought to be made in the present case as regards the interpretation of Section 11 in the manner that every case, whenever the question of court fees and suit valuation is raised, the same would invariably displace the suit from the course of regular trial; and the suit has to be shunted to the backyard for a trial over the question of court fees alone.

On the contrary, the observations in Rathnavarmaraja (supra), make it clear that such enactment relating to court fees is essentially for the purpose of collection of revenue for the benefit of the State and not to arm the contesting party with a weapon of defence to obstruct the trial of an action.

23. We may, at this juncture, take note of the procedure envisaged by the Code of Civil Procedure that governs the trial of the suit in the Court of civil jurisdiction. Rule 2 of Order XIV CPC, as standing earlier, provided that where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it would try those issues first and for the purpose, may postpone the settlement of issues of fact until the determination of the issues of law. The said provision was amended, by way of amendment of the

year 1976, and in its present form provides (as noticed at the outset) that even when a case may be disposed of on a preliminary issue, the Court would pronounce judgment on all the issues involved in the suit, but subject to the requirement that the Court may try such issue of law on which the Court is of opinion that the case or any part thereof may be disposed of and if that issue relates to:

(a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force; and for that purpose, it may postpone settlement of other issues.

24. In the case of *Lakshmi Ammal (supra)*, the Supreme Court expressed the desirability of trial of the case on merits rather than the peripheral issues, while observing as under:

“2. It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, the court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser court fee alone be paid.”

(underlining supplied for emphasis)

25. In the case of *Sujir Keshav Nayak (supra)*, the Supreme Court summed-up the law applicable in such matters in the following:

“The law on this aspect, thus, should be taken to be as under:

(1) Where the question of court fee is linked with jurisdiction a defendant has a right to raise objection and the court should decide it as a preliminary issue.

(2) But in those cases where the suit is filed in court of unlimited jurisdiction the valuation disclosed by the plaintiff or payment of amount of court fee on relief claimed in plaint or memorandum of appeal should be taken as correct.

(3) This does not preclude the court even in suits filed in courts of unlimited jurisdiction from examining if the valuation, on averments in plaint, is arbitrary.â€

26. On a comprehension of the principles in the decisions aforesaid, it is more than apparent that the law relating to the court fees and suits valuation has never been intended to provide a tool to the defendant or any party to the litigation to avoid the decision on the merits of the case and to elongate the life of the suit in the name of raising the questions regarding valuation and/or court fees.

27. Of course, when the question of suit valuation relates to and has implication on the jurisdiction of the Court, it may be determined as a preliminary issue as envisaged by Order XIV Rule 2 CPC; and else, the matter simplicitor of valuation and/or court fees, though raised by the defendant, could be decided along with other issues, if it does not otherwise relate to the jurisdiction of the Court. This has been the reason that in the case of Nanjamma (supra) and Renuka Manghnani (supra), this Court made it clear that in the suit relating to the partition of joint property, the plaint averments of joint possession takes it within the periphery of Section 35(2) of the Act of 1958 and when it does not relate to jurisdiction, such an issue is not to be tried as a preliminary issue. In Renuka Manghnani the learned Single Judge said, and in our view rightly so that,-

“2. The Trial Court after considering the rival contentions was of the view that when in the plaint the plaintiff has specifically pleaded that they are in joint possession of the property and are entitled for a share, what the defendantsâ€™ say in the written statement is not material, value of the suit for the purpose of Court fee and jurisdiction has to be decided on the basis of the plaint averments. In this view of the matter, the Trial Court has rightly held that issue in favour of the plaintiff. I do not see any justification to interfere with the said order, which is in accordance with law.

Accordingly, petition is dismissed.â€

(underlining supplied for emphasis)

The decision in Veeragoudaâ€™s case is flawed

28. As noticed, in Veeragoudaâ€™s case, a Division Bench of this Court has stated the law in absolute terms. On a literal reading, an application of

the said statement of law would practically mean that irrespective of any other law applicable, every civil suit, upon raising of the question of valuation

and/or court fees, has to be taken up for determination of valuation and court fees by way of evidence in view of sub-sections (2) and (5) of Section

11 of the Act of 1958. The Division Bench of this Court has observed and laid down as under:-

“13. A perusal of the said provision makes it clear that an obligation is cast on the Court even before ordering the plaint to be registered, to decide

on the materials and allegations contained in the plaint, what is the correct fee payable on the plaint. The said decision however is subject to review,

further review, corrections in the manner specified in the succeeding sub-sections. Sub-section (2) of Section 11 provides, a defendant may, by his

written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim, plead that the subject matter of the

suit has not been properly valued or that the fee paid is not sufficient. If such a plea is taken, naturally the Court has to frame an issue. Sub-section (2)

further provides all questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of

the claim. In other words, it mandates, if an issue regarding court fee is raised, the said issue shall be decided before recording evidence on other

issues. Therefore, the mandate of law is very clear. No discretion is left to the Court for postponing the decision regarding issue of court fee once

such a plea is taken in the written statement or before the evidence is recorded.

14. The issue regarding court fee normally would be a mixed question of law and fact. Evidence is to be recorded. Merely because evidence is to be

recorded on the said issue that is not a ground to direct trial on that issue along with other issues on which also evidence is necessary. If the issue

regarding court fee is held against the plaintiff and the plaintiff does not pay the court fee prescribed by the Court in the order, the law mandates that

the Court shall reject the plaint, so that the precious time of recording evidence on other issues is saved and the defendant is not harassed in the form

of trial. Therefore, this Section is based on good public policy and it has nothing to do with the Bangalore City Civil Court Act or its jurisdiction to try

the suits before it. Incidentally, the issue regarding court fee may also involve question of pecuniary jurisdiction. In answering the said issue, if the

Court holds that the subject matter of the suit is more than the value over which the said Court has jurisdiction, it has to return the plaint for presentation to the proper Court.

15. Order XIV Rule 2 of the CPC is the general provision of civil law relating to trial of suits and issues including any issues as preliminary issue. The

Karnataka Court Fees and Suits Valuation Act, is a special law. It has received the assent of the President of India. It prevails over the general law.

It is well settled when a special mode has been prescribed by a special law to do a particular job or to exercise the power in relation to subject

thereunder, then special law has to prevail over the general law and the mode so prescribed by special law would have to be followed in respect of

matters covered therein. Section 11 of the Act, specifically deals with decision as to proper fee in Courts. It gives a special direction to the Court to

decide the issue relating to valuation and Court fee, before recording of evidence on merits of the case. Therefore, in so far as the issues relating to

valuation and Court fee are concerned, Order XIV Rule 2 of the CPC has to yield to Section 11 of the Act. Therefore, all questions arising with

reference to valuation and Court fee payable shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the

claim. This aspect has been affirmed and re-affirmed in sub-Sections (2), (3) and (5) of Section 11. Therefore, the intention of the legislature is

manifest. The words "shall be heard" repeatedly used in the aforesaid provisions, makes it clear that this provision is mandatory. In order to

decide the said issue whether any evidence is to be recorded or not is immaterial. It is also immaterial to find out whether the issue regarding valuation

and Court fee is a pure question of law or a mixed question of law and fact or a pure question of fact. When once a plea is taken that the suit has not

been properly valued or that the fee paid is not sufficient, issue arising on such pleas shall be heard and decided before evidence is recorded on merits

of the claim."

29. It appears that the Division Bench dealing with Veeragouda's case only looked at the expression "shall" occurring in sub-sections (2)

and (5) of Section 11 of the Act of 1958 and, while taking it to be decisive of the matter, laid down the law that irrespective of anything else, once a plea of valuation or court fees is taken, the issue has to be heard and decided before recording evidence on merits of the claim. With great respect, we are unable to approve the law as stated in absolute terms in Veeragouda's case. We are clearly of the view that the aforesaid provisions in Section 11 *ibid.* cannot be read to mean that irrespective of the law applicable to the case, mere raising of question by the defendant regarding valuation and/or court fees would be sufficient to displace a suit from its regular trial and, first of all, the exercise is invariably required to be carried out for determination of such question of valuation and/or court fees.

30. The approach in Veeragouda's case is flawed for the fundamental reason that on a literal interpretation, it has been observed that the expression "shall" could only mean a mandate and nothing else. With respect, the Division Bench appears to have overlooked the basic principle that the word

"shall" as occurring in statute even when is *prima facie* taken as mandatory yet, the function of the Court is to ascertain its real intention by examination of the whole scope of the statute and to construe the expression that relates to the context in which it is used and the purpose it seeks to serve. These salutary principles have been reiterated in the case of Raghubir Dayal (*supra*) as follows:

¶5. The use of the word "shall" is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word "shall" *prima facie* ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word "shall", therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word "shall" as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of

enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.â€

31. In the case of Rani Kusum (supra), in relation to such construction in the matters of law of procedure, the Supreme Court has referred to the

principles enunciated in the case of Salem Advocate Bar Association vs. Union of India (II): (2005)

6 SCC 344 as follows:

â€œ 20â€|â€| The use of the word â€~shallâ€™™ in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or

directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of

the word â€~shallâ€™™ is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard

to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it.

The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and

prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict

interpretation would defeat justice.â€

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 clearly of the view that the expression â€~shallâ€™™ 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 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.

LB reference in

36. The writ petition may now be placed for final hearing before the concerned Bench.