



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**  
**DATED THIS THE 14<sup>TH</sup> DAY OF FEBRUARY, 2024**  
**BEFORE**  
**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**  
**WRIT PETITION NO. 100870 OF 2024 (GM-CPC)**

**BETWEEN:**

K.H. MALLIKARJUNA S/O. PK HEMLA NAIK,  
AGE: 45 YEARS, OCC: AGRICULTURE,  
R/O. THALEBASAPUR THANDA,  
CHILAKANAHATTI POST,  
TALUKA: HOSAPETE,  
DISTRICT: VIJAYANAGARA-587201.

...PETITIONER

(BY SRI. SRINIVAS B. NAIK &  
SRI. K. Y. MANJUNATH, ADVOCATES)

**AND:**

1. SMT. MAHABUNNI W/O. AJAMATHULLA,  
AGE: 35 YEARS, OCC: HOUSEHOLD WORK,  
R/O. C/O. PEER MOHIDDIN,  
5<sup>TH</sup> WARD, BICHUGATTI ONI,  
NEAR SHOP OF MALAPPA,  
HUVINAHADAGALI,  
TALUKA: HADAGALI,  
DISTRICT: VIJAYANAGARA-587201.
2. BANADA NANNE SAB S/O. LATE AJAMATHULLA,  
AGE: 28 YEARS, OCC: AGRICULTURE,  
R/O. C/O. BANADA AJMU SAB,  
5<sup>TH</sup> WARD, BICHUGATTI ONI,  
NEAR SHOP OF MALAPPA,  
HUVINAHADAGALI,  
TALUKA: HADAGALI,  
DISTRICT: VIJAYANAGARA-587201.
3. SMT. ASHA BEE W/O. MOHAMMED RAFIQ,  
AGE: 34 YEARS, OCC: HOUSEHOLD WORK,  
R/O. 22<sup>ND</sup> WARD, BEHIND KSRTC DEPOT,  
RAJAJINAGAR, TALUKA: HOSAPETE,  
DISTRICT: VIJAYANAGARA-587201.





4. SMT. NEHA BANU W/O. G. SHAFIULLA  
AGE: 33 YEARS, OCC: HOUSEHOLD WORK,  
R/O. 9<sup>TH</sup> WARD, GANDHIGERI ONI,  
KAMALAPUR, TALUKA: HOSAPETE,  
DISTRICT: VIJAYANAGARA-587201.
5. SMT. KARISHMA W/O. REDDY DAVAL SAB  
AGE: 27 YEARS, OCC: HOUSEHOLD WORK,  
R/O. DOOR NO.236,  
NARAYANADEARAKERE VILLAGE,  
MARABBIHAL POST,  
TALUKA: HB HALLI,  
DISTRICT: VIJAYANAGARA-587201.
6. SMT. HINA KOUSAR M W/O. MOHAMMED RAFIQ  
AGE: 23 YEARS, OCC: HOUSEHOLD WORK,  
R/O. DOOR NO.30, 15<sup>TH</sup> WARD,  
HUVINAHADAGALI, TALUKA: HADAGALI,  
DISTRICT: VIJAYANAGARA-587203.
7. SRI. RAMA NAIK S/O. PEERYA NAIK  
AGE: 57 YEARS, OCC: AGRICULTURE,  
R/O. TALEBASAPUR THANDA,  
CHILAKANAHATTI POST,  
TALUKA-HOSAPETE,  
DISTRICT: VIJAYANAGARA-587201.

...RESPONDENTS

(NOTICE TO RESPONDENT IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND SET ASIDE THE ORDER DATED 23/01/2024 PASSED IN OS (FR) NO.10/2024, ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, HAGARIBOMMANAHALLI, VIDE ANNEXURE-C IN THE ENDS OF JUSTICE AND EQUITY.

THIS PETITION IS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

1. Notice to respondents is dispensed with since no notice had been ordered on them in O.S.(FR) No.10/2024.
2. The petitioners are before this Court seeking for the following reliefs:
  - a. *Issue a Writ in the nature of Certiorari and set aside the order dated 23/01/2024 passed in OS (FR) No.10/2024, on the file of Senior Civil Judge and JMFC, Hagaribommanahalli, vide Annexure-C in the ends of justice and equity.*
  - b. *Any other relief as this Hon'ble Court deems fits under the facts and circumstances of the case.*
3. A suit in O.S.(FR) No.10/2024 had been filed by the petitioner seeking for specific performance of contract dated 19.07.2021, which was valued by the petitioner under Section 40(A) of the Karnataka Court Fees and Suit Valuation Act (hereinafter referred to as 'the Act' for brevity) and a sum of Rs.2,67,125/- was paid as Court Fee for the relief of specific performance. In the said suit, an additional prayer having been sought for being a declaration



that two other sale deeds are null and void and not binding on the plaintiff, the office of the Senior Civil Judge and JMFC Hagaribommanahalli put up an office note that Court Fee would also have to be calculated as regards the declaration of sale deeds to be null and void in terms of Sub-Section (2) of Section 38 of the Act, 1958.

4. The matter being adjourned to hear on the same noticing that the petitioner was not represented, was adjourned to 23.01.2024 and on that date noticing that plaintiff was again not represented, the suit came to be dismissed as not maintainable. It is challenging same that the aforesaid reliefs have been sought for.
5. The issue of Court Fee being appropriate or not is not one which touches on the maintainability of a suit. At the most, the aspect of proper Court Fee not being paid would be one which is to be determined in terms of Order 7 Rule 11(b) of the Code of Civil Procedure,



which provides for - where the relief claimed is undervalued, the plaintiff on being required by the Court to correct the valuation within the time fixed by the Court, failing to do so, then in that event the plaint could be rejected. It is this principle which the Trial Court ought to have applied, calculated the deficit Court Fee and called upon the plaintiff to make payment of the said deficit Court Fee within the time fixed by the Court and it is only in the event of the said deficit Court Fee not being paid, then the plaint could be rejected.

6. In the present case, even Order 7 Rule 11(b) of CPC would not be applicable for the reason that the plaintiff has sought for the relief of specific performance as also for declaration of sale deeds to be null and void and insofar as specific performance is concerned, proper Court Fee has been paid since no objection has been raised in that regard by the office of the Court.



7. Such being the case, there can be no partial rejection of the plaint. At the most, the relief sought for could have been refused by the Court on account of non-payment of Court Fee which would have to be done after registering the case and following the due procedure. In the present case, the suit is dismissed as not maintainable on account of non-payment of Court Fee in terms of Sub-Section (2) of Section 38 of the Act, 1958, which for the aforesaid reason is not permissible. Hence I pass the following:

**ORDER**

- i) Writ petition is allowed.
- ii) A certiorari is issued, the order dated 23.01.2024 passed by Senior Civil Judge in JMFC, Hagaribommanahalli in O.S.(FR) No.10/2024 is set-aside. The suit in O.S.(FR) No.10/2024 is restored. The Trial Court is directed to register the case and proceed with



the said case in terms of the observations made  
above.

**Sd/-**  
**JUDGE**

AM  
List No.: 1 Sl No.: 60