HC-KAR

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 29TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.200733 OF 2022 (GM-CPC)

BETWEEN:

1. CHANNAPPA S/O MANIKAPPA AMBALGE,
   AGE: 64 YEARS, OCC: AGRICULTURE,

2. RAVINDRA S/O MANIKAPPA AMBALGE,
   AGE: 57 YEARS, OCC: PRIVATE SERVICE,

3. PRASHANT S/O MANIKAPPA AMBALGE,
   AGE: 52 YEARS, OCC: PRIVATE SERVICE,

4. RAJENDRA S/O MANIKAPPA AMBALGE,
   AGE: 59 YEARS, OCC: AGRICULTURE,

5. ANITABAI W/O SANGAPPA AMBALGE,
   AGE: 59 YEARS, OCC: AGRICULTURE AND HOUSEHOLD,
   PETITIONER 2 TO 5 ARE REPRESENTED THROUGH THEIR SPECIAL POWER OF ATTORNEY HOLDER,
   CHANNAPPA S/O MANIKAPPA AMBALGE,
   I.E. PETITIONER NO.1 HEREIN.
   ALL ARE R/O VILLAGE MATALA,
   TQ. BASAVAKALYAN, DIST. BIDAR.

Digitally signed by SWETA KULKARNI
Location: HIGH COURT OF KARNATAKA

...PETITIONERS

(BY SRI. GANESH SUBHASHCHANDRA KALBURGI, ADVOCATE)

AND:

1. MALLIKARJUN S/O SANGAPPA HARKUDE,
AGE: 76 YEARS, OCC: AGRICULTURE,

1(A) NAGAMMA W/O LATE MALLIKARJUN HARKUDE
AGED ABOUT 75 YEARS, OCC: HOUSEHOLD,

1(B) KASHAMMA W/O LATE SANGAPPA HARKUDE
AGED ABOUT 55 YEARS, OCC: HOUSEHOLD,

1(C) MAHADEV S/O LATE SANGAPPA HARKUDE
AGED ABOUT 36 YEARS, OCC: AGRICULTURE,

1(D) ASHARANI D/O LATE SANGAPPA HARKUDE
AGED ABOUT 34 YEARS, OCC: HOUSEHOLD,

1(E) KARABASAPPA @ ABHIJIT
S/O LATE SANGAPPA HARKUDE
AGED ABOUT 32 YEARS, OCC: AGRICULTURE,

1(F) CHADRAKANTH
S/O LATE MALLIKARJUN HARKUDE
AGED ABOUT 55 YEARS, OCC: AGRICULTURE,

ALL R/O VILLAGE MATALA, TQ: BASAVAKALYAN,
DIST: BIDAR.

2. SIDRAM S/O KARBASAPPA HARKUDE,
AGE: 57 YEARS, OCC: AGRICULTURE,

3. VAIJINATH S/O MONAPPA PANCHAL,
AGE: 51 YEARS, OCC: CARPENTER,
ALL ARE R/O VILLAGE MATALA,
TQ. BASAVAKALYAN, DIST. BIDAR.

…RESPONDENTS

(BY SRI. SACHIN M. MAHAJAN, ADVOCATE FOR R3;
V/O DATED 07.03.2025 NOTICE TO R1 (A) TO (B)
IS HELD SUFFICIENT;
R1 (C), R2 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) QUASH THE ORDER DATED 5.1.2022 PASSED IN O.S NO.1/2016 ON THE FILE OF CIVIL JUDGE BASAVAKALYAN, THE CERTIFIED COPY OF WHICH IS AT ANNEXURE-G, B) PASS ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION AS THIS HON'BLE COURT MAY DEEM FIT TO GRANT IN THE CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the plaintiffs in OS No.01/2016 is directed against the impugned order dated 05.01.2022 passed by the Trial Court, whereby the Trial Court directed the petitioners-plaintiffs to value the suit in terms of Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958 (for short the 'Act of 1958') and pay ad valorem court fee on the said relief.

2. A perusal of the material on record will indicate that the petitioners-plaintiffs instituted the aforesaid suit against the respondents-defendants seeking the following reliefs.

"a) It be declared that the plot No. 68 shown in the layout of the defendants No. 1 and 2 as a part and parcel of Sy. No. 234/2 measuring East-West: 40 ft., North-South: 30 ft., is in fact a part and parcel of land Sy. No. 241 measuring 18 acres 18 guntas of village Matala, Tq. B. Kalyan, and not the part and parcel of the NA and layout Sy. No. 234/2 of village Matala, belonging to the defendants No. 1 and 2, bounded as: East: Plot No. 69, West: Plot No. 67, North: Govt. Land & Nala, South: Road.

b) The sale deed executed by the defendants No. 1 & 2 in favour of the defendant No. 3 in respect of the suit plot bearing No. 68 through document No. 405/96-97 dated 15.05.1996 be declared as null and void and not binding on the rights of the plaintiffs in respect of the land Sy. No. 241 of village Matala, Tq. B. Kalyan, and be treated as cancelled.

c) Actual possession be given to the plaintiffs of the plot No. 68, as shown in Relief 'a', by dispossessing the third defendant from the suit plot in vacant possession, which is in illegal possession.

d) Any other relief be granted to the plaintiff for which the plaintiff is entitled for."

3. It is relevant to extract the valuation slip filed by the petitioner which is as hereunder:

"VALUATION SLIP

1. Serial No. of the property in plaint	*: One.*
Schedule.	
2. The clause of Sec. 7(2) of the K.C.F. and S.V. Act.	*: Under Sec. 24(a) of the .KCF and SV Act*
3. The amount of Revenue of other basis for valuation	*:As per Sec. 24(a) at Rs.4,875/-.*
4. Method adopted to arrive at	*: As per Sec. 24(a) of the KCF and SV Act, the total Court fee of Rs.4,875/- is paid.*
5. Valuation Arrived at	*: Rs. 75,000/-."*

4. As can be seen from the aforesaid valuation slip filed by the petitioners-plaintiffs, the petitioners-plaintiffs have valued the reliefs of declaration and recovery of

possession under Section 24(a) of the said Act of 1958. However by the impugned order, the Trial Court came to the conclusion that prayer No.2 sought for by the petitioners-plaintiffs relates to sale deed dated 15.05.1996 executed by defendants No.1 and defendant No.2 in favour of defendant No.3, which amounts to cancellation of the said sale deed, thereby warranting payment of ad valorem quote fee on the market value of consideration set forth in the said sale deed. In my considered opinion, it is relevant to state that it is well settled that so long a person is not a party to a document, he not only need not seek cancellation of the said document, but also need not pay court fee on the market value of the said document and suit for declaration that the said sale transaction was not binding upon by valuing the same under Section 24(a) of the Act of 1958 as held by the Hon'ble Apex Court in the case of ***Suhrid Singh@ Sardool Singh v. Randhir Singh and Ors*** reported in ***AIR 2010 SC 2807*** and followed by the subsequent judgment in the case of

Hussain Ahmed Choudhry and Or. v. Habibur Rehman (dead) through Lrs and Ors. reported in ***2025 SCC Online SC 982***, wherein it is held as under:

> *"29. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed under Section 31 of the Act, 1963. But if a non-executant seeks annulment of a deed, he has to only seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' - two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non est/illegal and he is not bound by it. In essence, both may be suing to have the deed set aside or declared as non-binding. [See: Suhrid Singh alias Sardool Singh v. Randhir Singh, (2010) 12 SCC 112]*
>
> *30. As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to*

sue for Its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him. We have to our advantage two very old erudite judgments of the Madras High Court and one of the Privy Council on the subject.

31. In Unni v. Kunchi Amma, 1890 SCC OnLine Mad 5, the legal position has been thus explained:

"If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed. It is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist.

(Emphasis supplied)

32. The same principle has been distinctly laid down by the Privy Council In Bijoy Gopal Mukerji v. Krishna Mahishi Debi, 1907 SCC OnLine PC 1, where the jural basis underlying such transactions was pointed out. In that case, the reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and also for khas possession. It was objected that the omission to set aside the lease by a suit Instituted within the time limit prescribed by Article 91 of the Indian Limitation

Act, 1877 was fatal to the suit. The following observations which are equally applicable to the case at hand, are apposite:

"A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may allenate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reverslonary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court elther to set aside or cancel as a condition precedent to the right of action of the reverslonary heir. It is true that the appellants prayed by their plaint for a declaration that the Ijara was inoperative as against them, as leading up to their prayer for delivery to them of khas possession. But It was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (If they could) prove the circumstances, which they relied on, for showing that the ijara of any derivative dealings with the property

were not in fact voidable, but were binding on the reversionary heirs."

33. In fact, it is logically Impossible for a person who is not a party to a document or to a decree to ask for Its cancellation. This is clearly explained by Wadsworth, J., In the decision rendered in Vellayya Konar (Died) v. Ramaswami Konar, 1939 SCC OnLine Mad 149, thus:

"When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared vold 'In toto', and his suit is in substance a suit for the cancellation of the decree or leed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he Is not in a position to get that decree or that deed cancelled 'In toto'. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is Invalid so far as he himself is concerned and he must therefore sue for such a

declaration and not for the cancellation of the decree or deed."

(Emphasis supplied)

34. Therefore, filing a suit for cancellation of a sale deed and seeking a declaration that a particular document is inoperative as against the plaintiff are two distinct, separate suits. The plaintiff in the present case, not being the executant of the sale deed dated 05.05.1997 executed in favour of the respondent no. 1 (original defendant no. 14), was therefore, not obligated to sue for its cancellation under Section 31 of the Act, 1963. The question that remains is whether the plaintiff ought to have sought for a declaration that the sale deed dated 05.05.1997 was inoperative in so far as he is concerned or is not binding on him."

5. In the instant case, it is an undisputed fact and a matter of record that the petitioners are not a party to the aforesaid sale deed nor an executant to the said sale deed dated 15.05.1996, executed by defendant No.1 and defendant No.2 in favour of defendant No.3 and being a non-executant/party, the petitioners seek declaration that

the said sale deed is null and void and not binding upon them and consequently, the question of directing the petitioners to value the suit said relief under Section 38 of the Act, 1958 and pay ad valorem court fee on the market value of the sales consideration set forth in the said sale deed would not arise in the fact and circumstances of the instant case. As such, the impugned order passed by the Trial Court deserves to be set aside.

6. In the result, I pass the following:

ORDER

i. The writ petition is ***allowed***. The impugned order dated 05.01.2022 in OS No.01/2016 is hereby set aside.

ii. The Trial Court is directed to accept the valuation slip filed by the petitioners and proceed further in the matter.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

NJ
LIST NO.: 1 SL NO.: 34/CT:SI