IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH 2017

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

WRIT PETITION NO.39031/2013 (GM-CPC)

BETWEEN:

ASUNTHA D'SOUZA
W/O LATE JOACHIM D'SOUZA
AGED ABOUT 64 YEARS
R/O DOOR NO.1-346
PEDAMALE HOUSE
PEDAMALE POST, NEERMARGA
MANGALORE, D.K.DISTRICT – 575 008 ... PETITIONER

(BY SRI G.RAVISHANKAR SHASTRY, ADVOCATE)

AND:

1. JOYCE PASKINA D'SOUZA NEE D'MELLO
W/O FELIXIN STANY D'SOUZA
AGED 39 YEARS

2. FELIX STANY D'MELLO
S/O RAMAN D'MELLO
AGED 47 YEARS

BOTH ARE R/O "ASUNTHA COTTAGE"
PEDAMALE POST, NEERMARGA VILLAGE
MANGALORE TALUK
D.K.DISTRICT – 575 008 ... RESPONDENTS

(BY SRI S.VISHWAJITH SHETTY, ADVOCATE FOR R1;
NOTICE TO R2 HELD SUFFICIENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 14.8.2013 IN O.S.NO.581/2013 PASSED BY THE

COURT OF II ADDL. CIVIL JUDGE & JMFC, MANGALORE VIDE ANNEXURE-A.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

H.G.RAMESH, J. (Oral):

1. *How Court fee payable for the relief of cancellation of a gift deed in a suit filed for its cancellation is to be computed? This is the question that requires to be answered in this case.*

2. This writ petition is by the plaintiff and is directed against an interlocutory order dated 14.08.2013 passed by the trial Court in the suit in O.S.No.581/2013. By the impugned order, the trial Court, by relying on Section 38 of the Karnataka Court-Fees and Suits Valuation Act, 1958 ('the Act' for short), has directed the petitioner to pay the Court fee on the market value of the plaint schedule property which is the subject matter of the registered gift deed dated 29.03.2007. The suit is filed by the petitioner to cancel the aforesaid gift deed executed by her and to declare it as null and void and not binding upon the plaintiff

and for certain other reliefs. The relief for cancellation of the gift deed is valued under Section 24(d) of the Act.

3. I have heard the learned counsel for the parties and perused the record. Learned counsel appearing for the petitioner submitted that the trial Court has erred in law in directing the petitioner to pay the Court fee under Section 38 of the Act on the market value of the plaint schedule property which is the subject matter of the gift deed. He submitted that it ought to have accepted the Court fee paid as per Section 24(d) of the Act.

4. To examine the question raised in this petition, it is relevant to refer to Section 38 of the Act which reads as follows:

> "**38. Suits for cancellation of decrees, etc.—** (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be—
>
> If the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed ;

> If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.
>
> (2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less."

5. Having regard to the language employed in Section 38 of the Act extracted above, in a suit for cancellation of a gift deed, the plaintiff has to pay Court fee on the value of the property for which the gift deed was executed. The value stated in the gift deed shall be deemed to be the value of the property. If the value of the property gifted is not stated in the gift deed, then Court fee has to be paid on the market value of the property as on the date of execution of the gift deed and the market value has to be computed as per the provisions of the Act. It is relevant to state that Section 24 of the Act has no application to suits filed for cancellation of the kind of documents referred to in Section 38 of the Act.

6. In the present case, it is stated that the value of the property is not stated in the gift deed. If it be so, as per

Section 38 of the Act, the petitioner has to pay the Court fee on the market value of the gifted property as on the date of execution of the gift deed. The market value has to be computed as per the provisions of the Act. The petitioner is accordingly granted three months' time to pay the requisite Court fee, if the Court fee already paid is not sufficient. The writ petition is disposed of in the above terms in modification of the order impugned herein.

Petition disposed of.

Sd/-
JUDGE

LB