

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1634 of 2009

ORDER :

Heard Sri B. Chandrasen Reddy, counsel for petitioners, and Sri Deepak Bhattacharjee, counsel for 3rd respondent. None appears for respondent nos.1 and 2, even though the name of Sri Ashwat Goud is printed in the cause-list.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.02.2009 in I.A.No.28 of 2009 in O.S.No.892 of 2005 of the XIII Additional Senior Civil Judge, City Civil Court, Secunderabad.

3. The petitioners herein are plaintiffs in the above suit.

4. They filed the suit against respondents for declaring notices dt.29.08.2005, 25.10.2005 and 27.10.2007 issued by respondent nos.1 and 2 under the Provisions Act of 40 of 1977 as *ultra vires*, invalid and not binding on them; and for a perpetual injunction restraining them from interfering with peaceful possession and enjoyment of plaint schedule property.

5. Respondent nos.1 and 2 filed a common written statement, and 3rd respondent filed a separate written

statement.

6. The respondents filed I.A.No.1358 of 2006 seeking rejection of plaint on the ground that the Court Fee paid was less. After contest, the said petition was allowed in part and petitioners were directed to pay Court Fee on Rs.7,34,53,522/-, which they claimed as damages from 2nd respondent under a notice dt.29.08.2005. The said order was passed on 21.03.2007 in the suit itself, and petitioners were directed to pay deficit Court Fee of Rs.3,80,800/- on or before 04.04.2007.

7. Thereafter, the petitioners filed I.A.No.619 of 2007 on 11.04.2007 under Order 6 Rule 17 C.P.C. seeking amendment of plaint to delete sub-para (A) of para no.31 of plaint by re-numbering of sub-paras as (a) (b) (c) in para no.31 and by deleting the date 29.08.2005 in sub-para (a) of para no.35 while retaining the other dates and sentences. In doing so, the petitioners sought to give up their claim in respect of their notice dt.29.08.2005 claiming the sum of Rs.7,34,53,522/- from respondents by way of damages. They placed reliance on Section 12 of the Andhra Pradesh Court Fee and Suit Valuation Act, 1956 (for short, 'the Act') and contended that they are at liberty to relinquish this claim.

8. Respondent nos.1 and 2 opposed this application and contended that without complying with the order passed in I.A.No.1358 of 2006 and paying the deficit court

fee, the petitioners had filed this application with an intention to avoid payment of court fee. They also contended that if the petitioners are permitted to amend the plaint as sought, they would be withdrawing the challenge to notice and it would also amount to withdrawing the entire case. They contended that a party who is not willing to pay the court fee has to be declared as one playing fraud on the Court.

9. The 3rd respondent also filed a counter contending that plaintiff is intending to take away the right accrued to defendants under the provisions of law, and if the amendment is allowed, it would cause substantial prejudice to defendants.

10. By order dt.09.04.2008, the Court below dismissed the said application. It referred to Section 11 of the Act as well as Section 12 of the said Act and held that neither of these provisions is discussed in the other provision and that no authority was placed before the Court by petitioners that they are entitled to benefit of Section 12 of the Act. It observed that the application is not maintainable under Order 6 Rule 17 C.P.C. It further held that without preferring appeal with regard to payment of deficit court fee, the present application has been filed, and it is not at all maintainable. It observed that if parties were allowed to delete the portions as per their wish, the orders passed by the Court for collection of deficit court

fee cannot be enforced at all; and that if a party did not pay the deficit court fee as directed by the court, the plaint itself has to be rejected.

11. The petitioners thereupon filed I.A.No.28 of 2008 under Order 47 Rule 1 CPC read with Section 114 CPC to review the said order.

12. The respondents also filed a counter contending that the Review Petition was not maintainable, and that it was filed to drag on the proceedings without complying with the orders of the Court.

13. In the application filed seeking Review, it was contended by petitioners that the court had not considered the scope of Section 12 of the Act and that when the provision of Section 12 is very clear, the Court cannot insist that precedents also should be cited.

14. By order dt.04.02.2009, the trial court rejected I.A.No.28 of 2009 holding that the scope of Review is limited and that it was the petitioners who had misunderstood its earlier order and they have not made out even a single ground for seeking review of its earlier order under Order 47 Rule 1 C.P.C.

15. Challenging the said order, this Revision is filed.

16. The counsel for petitioners contended that the court below erred in dismissing I.A.No.28 of 2009 seeking review of its order dt.09.04.2008 in I.A.No.619 of 2007;

that it erred in holding that no ground is made out for review of said order; and the conclusion of court below that petitioners cannot be allowed to abandon a portion of their suit claim runs contrary to Order 23 Rule 1 (1) C.P.C. and also to the clear language in Section 12 of the Act.

17. Sri Deepak Bhattacharjee, counsel for 3rd respondent, on the other hand, contended that there is no error in the order passed by Court below and that if the deficit court fee has not been paid as per provisions of Section 11 of the Act, the Court has no option but to reject the plaint.

18. Order 23 Rule 1 (1) C.P.C. states :

“R.1. Withdrawal of suit or abandonment of part of claim : (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim :

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 or Order XXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.”

19. Section 11 of the Andhra Pradesh Court Fee and Suit Valuation Act, 1956 states :

“11. Decision as to proper fee :

(1) (a) In every suit the Court shall, before ordering the plaint to be registered decide on the allegation contained in the plaint and on the materials furnished by the plaintiff the proper fee payable thereon.

(b) *The decision of the Court under clause (a), regarding the proper fee payable shall be subject to review, from time to time, as occasion requires.*

(2) *Any defendant may 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 the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908). If the Court decides that the subject-matter of the suit is not properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the subject-matter of the suit shall be valued in accordance with the Court's decision and the deficit fee shall be paid. If within the time allowed, the subject-matter of the suit is not valued in accordance with the Court's decision or if the deficit fee is not paid, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.*

(3)(a) *A Court of Appeal, in which an appeal is filed may, either of its own motion or on the application of any party, consider the correctness of any order passed by the lower Court regarding the fee payable on the plaint or written statement or in any other proceeding in the Lower Court and determine the proper fee payable thereon.*

(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 appellate 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 of proper fee, the Court shall direct the refund of the excess of the party who is entitled to it.*

(4) *Any question relating to the value for the purpose of*

determining the jurisdiction of Courts shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908)."

20. Section 12 of the said Act states :

"12. Relinquishment of Portion of claim : -

A plaintiff who has been required to pay additional fee may relinquish a part of his claim and apply to have the plaint so amended that the fee paid is sufficient for the claim made in the plaint as amended. The Court may permit the plaintiff at any later stage of the suit to add to the claim the part so relinquished on payment of the additional fee."

21. It is trite that a plaintiff who seeks relief or reliefs in the plaint should pay the court fee for the said purpose as per the provisions of the said Act. If he does not do so, it is open to the defendant to file an application under Order 7 Rule 11 (b) to reject the plaint on the ground that the relief claimed therein is undervalued. The issue of court fee being matter of Revenue to the State, Section 11 mandates the court to decide the said issue even before ordering the plaint to be registered and such a decision as per Section 11 (i) (b) is subject to review from time to time as the occasion requires. If the defendant raises a plea that court fee has not been properly paid and the court determines that the court fee has not been properly paid it should fix a date before which the subject matter of the suit should be valued in accordance with the court decision and the deficit court fee paid. If not, the plaint is liable to be rejected. However, Section 12 entitles a plaintiff, who has been required to pay additional fee to

relinquish part of claim, and apply to have the plaint so amended that the fee paid is sufficient for the claim made in the plaint as amended. Section 12 is thus consistent with Order 23 Rule 1 (1) C.P.C. which permits the plaintiff to abandon a part of his claim at any time after institution of the suit.

22. Admittedly, on 21.03.2007, the trial court had directed plaintiff to pay deficit court fee of Rs.3,80,800/- in regard to the relief sought in the plaint regarding the challenge to notice dt.29.08.2005 of respondents claiming Rs.7,34,53,522/- by way of damages from them and directing the petitioners/plaintiffs to pay the said amount on or before 04.04.2007. Since the plaintiff felt that continuing with the said claim would make him liable to pay Rs.3,80,800/- as additional court fee, the plaintiff was entitled under Section 12 of the Act to relinquish that part of his claim, which if retained, would compel him to pay the said court fee. The option to relinquish the claim can be exercised by plaintiff as per Section 12 after he was required to pay the additional court fee. Therefore, the court below was not right in ignoring Section 12 of the Act as well as Order 23 Rule 1(1) C.P.C. and in holding that unless the plaintiff prefers an appeal with regard to payment of the deficit court fee, he is not entitled to seek amendment of plaint for giving up the claim with regard to damages for Rs.7,34,53,522/- as well as the notice dt.29.08.2005. Its reasoning that “if parties were allowed

to delete portions as per their wish, the orders passed by the court for collection of deficit court fee cannot be enforced at all” is clearly contrary to Section 12 of the Act.

23. No doubt, Section 11 (2) of the Act states that if a party does not pay deficit court fee as ordered in the plaint, the plaint is liable to be rejected. But that provision would operate only in a situation where the plaintiff, instead of abandoning a claim for which he has been asked to pay the deficit court fee, insists on the court deciding the suit claim, i.e., in a situation where the plaintiff does not invoke the option available to him under Section 12 of the Act. But where the plaintiff exercises the option given to him by Section 12, it is not open to court to refuse to permit the plaintiff to abandon a claim on which he was asked to pay additional court fee, on threat of rejection of the entire plaint invoking Section 11 (2) of the Act.

24. When the petitioners/plaintiffs filed I.A.No.28 of 2009 under Order 47 Rule 1 C.P.C. seeking review of the order dt.09.04.2008 in I.A.No.619 of 2007 specifically taking the stand that the court had not considered Section 12 of the Act and had wrongly insisted on petitioners’ submitting precedents in spite of the fact that the language in Section 12 is clear, the Court below ought not to have rejected I.A.No.28 of 2009 by the impugned order dt.04.02.2009. It, no doubt, referred to Order 47 Rule 1 C.P.C., but its view that there is no mistake or error apparent on the face of record in its order dt.09.04.2008 in

I.A.No.619 of 2007 is clearly wrong.

25. As rightly contended by the counsel for petitioners, the court below had not kept in mind the provisions of Order 23 Rule 1 (1) C.P.C. (entitling the plaintiff to abandon any portion of his claim at any time) as well as Section 12 of the Act, (entitling him to relinquish any portion of his claim and seek amendment of plaint in that regard so as to make the court fee already paid sufficient for the claims to be retained in the plaint after amendment).

26. I, therefore, do not agree with the trial court that the petitioners had not raised even a single ground as required by Order 47 Rule 1 C.P.C. I hold that the grounds raised by petitioners are sufficient for the court below to have invoked Order 47 Rule 1 C.P.C. to set aside its order dt.09.04.2008 in I.A.No.619 of 2007.

27. Since there is a clear error apparent on the face of record in the said order as mentioned above, and for the above reasons, the Revision is allowed. The order dt.04.02.2009 in I.A.No.28 of 2009 in O.S.No.892 of 2005 of the XIII Additional Senior Civil Judge, City Civil Court, Secunderabad is set aside; I.A.No.28 of 2009 is allowed; consequently the order dt.09.04.2008 in I.A.No.619 of 2007 is set aside; and I.A.No.619 of 2008 is also allowed. Accordingly, the Revision is allowed. No order as to costs.

28. The court below is directed to permit petitioners to amend the suit claim by filing an amended plaint within thirty (30) days from the date of receipt of a copy of this order; permit the respondents to file amended written statement, if they so choose, within thirty (30) days thereafter; and then proceed to decide the suit in accordance with law as expeditiously as possible, preferably within six (06) months from the date of receipt of a copy of this order.

29. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-06-2015

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