

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION No.2300 of 2015

ORDER :

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This revision is filed by the petitioner/3rd defendant aggrieved by the dismissal order dated 24.04.2015 in I.A. No.957 of 2013 in O.S. No.532 of 2012 on the file of Senior Civil Judge, Kadapa under which the petitioner herein seeks to reject the plaint under Order VII Rule 11 C.P.C.

2) The suit filed was for the reliefs of declaration of title with consequential relief of possession and the second relief of mandatory injunction undisputedly. The plaintiff filed the market value certificate regarding the disputed plaint schedule property of Ac.0-26 cents and the plaint supra in para No.7 was valued as per the said market value for the first relief as contemplated by Section 25 of the A.P. Court Fees and Suits Valuation Act and for the second relief as contemplated under Section 26 of the said Act.

3) The 3rd defendant filed an application in I.A. No.957 of 2013 with a prayer to reject the plaint as the plaint is not maintainable and liable to be rejected within the scope of Order VII Rule 11(b) C.P.C. Needless to say whether cause of action existing or not whether limitation is properly made or not, whether plaint is barred by law or any prima facie to invoke rejection is only based on plaint averments and not by substitution of the proposed contest of the defendant.

Order VII Rule 11 is very clear in clauses (a) to (d), first one deals with cause of action, second one deals with the limitation even shown of a particular value but undervalued in showing the para and clause (c) deals with having valued properly paid deficit Court fees and failed to pay despite return, the remaining and clause (d) deals with barred by law.

4) The learned Senior Civil Judge, after hearing both sides from the strenuous contentions including with reference to the documents filed by the petitioner with his petition to reject the plaint regarding the valuation of the property showing as not properly valued, dismissed the application by saying it is premature to consider the said contention for rejection of the plaint.

5) It is for the reason that what the 3rd defendant/petitioner claims in the application is though the land is to be valued on square yards or square meters basis as per the valuation prevailing in that area and sale deeds are also filed therein in proof of it, that in the plaint the land in question was purposefully shown as agricultural land valued on acreage by filing the certificate by play fraud on Court.

6) In this regard, this Court finds that the remedy is left open to the defendant to file a written statement and enclose the documents by supply to the other side at the time of hearing of issues as contemplated under Order XIV C.P.C by asking the Court to frame any specific issue regarding

the proper valuation being a mixed question of fact and law to decide with reference to the documents, with which the defendants proposed to rely and to decide as a primary issue if necessary. Needless to say the power of the Court under Section 11 of the A.P. Court Fees and Suits Valuation Act to revise the valuation at any point of time till pronouncement of judgment as the Court has got discretionary power under Section 151 C.P.C merely because plaint is numbered but for after pronouncement of judgment. It is a different aspect, that once there is payment of deficit Court fees in the plaint and not paid till pronouncement of judgment, the subject decree is unexecutable and the limitation runs from the date of decree and not from the date of payment of deficit Court fees to impugn.

7) Having regard to the above, without prejudice to that contest, for no grounds before admission, this revision is disposed of. No costs. As a sequel, miscellaneous petitions pending, if any, in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23.06.2015
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