

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.708 of 2015

-
27.02.2015

Between:

M.Rama Rao and another

...Petitioners

And

Smt.B.Manjula and others

...Respondents

Counsel for the petitioners: Sri O.Manohar Reddy

Counsel for respondents: --

The Court made the following:

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ORDER:

This civil revision petition arises out of the order, dated 24.10.2014, in I.A.No.130 of 2013 in O.S.No.27 of 2013 on the file of learned Additional District Judge, Vikarabad, Ranga Reddy District.

Respondent Nos.1 and 2 herein filed the aforementioned suit against respondent Nos.3 and 4 and the petitioners herein, being defendant Nos.1 to 4 respectively, for partition and separate possession of the suit schedule lands.

The case of respondent Nos.1 and 2 - plaintiffs appears to be that being the daughters of the common ancestor, they have shares along with respondent Nos.3 and 4 - defendant Nos.1 and 2. As the petitioners have purchased the property from respondent Nos.3 and 4, they are also impleaded as defendant Nos.3 and 4. Respondent Nos.1 and 2 have paid the Court fee under Section 34(1) of the Andhra Pradesh Court Fees and Suit Valuation Act, 1956 Act (for short 'the Act') as if they have been in joint possession of the property. Defendant Nos.3 and 4 filed the aforesaid I.A. under Section 151 C.P.C. seeking dismissal of the suit on the ground that respondent Nos.1 and 2 have failed to pay proper Court fee payable under Section 34(2) of the Act. In support of this plea, they have relied upon the following sentence in para 4 of the plaint:

“The defendant Nos.3 and 4 have no right and title in respect of suit lands and the defendant Nos.3 and 4 are neither lawful owners nor lawful possessors of suit lands.”

The lower Court has, however, rejected the plea of the petitioners and dismissed the I.A. by the order under revision.

At the hearing, Sri O.Manohar Reddy, learned counsel for the petitioners, has strenuously contended that by the above reproduced sentence, respondent Nos.1 and 2 have clearly admitted that his clients are in possession of the suit schedule lands, though the same is described as not lawful and that therefore, respondent Nos.1 and 2 are liable to pay Court fee under Section 34(2) of the Act.

In para 4 of the plaint, after making the above reproduced averment, respondent Nos.1 and 2 have further pleaded as under:

“The plaintiff and the defendant Nos.1 and 2 are in joint possession of the suit lands.”

The valuation of the suit schedule lands needs to be determined on the averments made in the plaint. It is well accepted principle of law that a plaint has to be read as a whole and a few averments in the plaint cannot be read in isolation. Both the sentences mentioned in para 4 of the plaint, which are extracted hereinbefore, need to be read together in order to understand the purport of the plaint. So construed, respondent Nos.

1 and 2 pleaded that they are in joint possession. If such a construction of the plaint is made, it cannot be said that respondent Nos.1 and 2 have admitted that they are out of possession.

Ordinarily, even if a co-parcener or joint owner is not in physical possession of the property, still he can claim constructive possession along with the persons, who are in physical possession. However, this aspect needs to be adjudicated in the suit after framing an issue relating to payment of Court fee based on the evidence that may be adduced by the parties.

For the aforementioned reasons, I do not find any illegality or jurisdictional error in the order of the lower Court.

Accordingly, the Civil Revision Petition is dismissed with the

direction to the lower Court to frame an issue as to whether the Court fee paid by respondent Nos.1 and 2 - plaintiffs is correct or not.

As a sequel to dismissal of the Civil Revision Petition, C.R.P.M.P.No.935 of 2015 filed by the petitioners for interim relief also stands dismissed.

(C.V.NAGARJUNA REDDY, J)

27th February, 2015

GHN