THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A.NO.974 OF 2014

JUDGMENT:

This appeal is filed by the plaintiffs-appellants against the order dated 18-09-2014 passed in I.A.No.904 of 2014 in O.S.No.54 of 2014 by the Senior Civil Judge, Wanaparthy, wherein the Court below allowed the application filed by the 3rd defendant-1st respondent herein, under Order 7, Rule 10 of CPC, for return of plaint and for presentation before proper Court, on the ground of pecuniary jurisdiction.

2. Facts stated are:-plaintiffs-appellants filed suit OS No.54 of 2014 for partition of suit schedule properties. The plaintiffs claimed 1/3rd share which comes to Ac.2-50 cent from out of the suit schedule property. At the time of institution of the suit, plaintiffs valued the suit property coming to their share at Rs.2,50,000/- basing the valuation certificate issued on 20-03-2014 by the Sub-Registrar, Wanaparthy. As per the valuation certification issued by the SRO, Wanaparthy, Rs.1,00,000/- per acre was the valuation of the suit property as per the records maintained by the registering authorities and accordingly the plaintiffs paid Court fees thereon by calculating the suit land at

Rs.1,00,000/- per acre. While the matters stood thus, the 3rd defendant-1st respondent herein in the suit, filed the instant application to return the plaint on the ground that the Court has no pecuniary jurisdiction to try the suit. The ground raised was that the value of the land, as per the valuation certificate issued by the Sub-Registrar, Wanaparthy, is Rs.24,20,000/- per acre and, therefore, and even if the claim of the plaintiffs is for Ac.2-50 cents, the same crosses the pecuniary jurisdiction of the Court below and accordingly sought to return of the plaint, which was allowed by the impugned order.

3. Learned counsel for the plaintiffs-appellants strenuously contended that before recording a finding that the Court has no pecuniary jurisdiction, the Court below ought to have gone into the averments made in the plaint itself rather than making a roving enquiry based on the averments made in the affidavit filed by the 3rd defendant-1st respondent herein. Learned counsel further contended that while considering the application under Order 7, Rule 11, the stand of the defendants in the written statement and other evidence produced to show that the Court has no territorial or pecuniary jurisdiction need not be considered. It is also submitted that the Court should not assess its jurisdiction by the probable out come of the suit on

merits. Reliance is placed in support of his contention on the decision of the Apex Court in S.Rm.Ar.S.Sp. ATHAPPA CHETTIAR vs. S. Rm.Ar.Rm. RAMANATHAN CHETTIAR[1] & BHAU RAM VS. JANAK SINGH[2].

4. On the other hand, the learned counsel for the 3rd defendant-1st respondent herein submits in a suit filed by the 3rd defendant for specific performance of agreement of sale, being suit OS No.2 of 2005 on the file of Addl. District Judge, Mahabubnagar, against the father of the plaintiffs, valuation certificate dated 29-03-2015 issued by the Sub-Registrar, Wanaparthy, in respect of the subject suit property was produced wherein the market value of the suit schedule land is reflected as Rs.24,20,000/- per acre and if that valuation is applied, the Court below lacks pecuniary jurisdiction. It is contended that the father of the plaintiffs against whom the said suit was filed, in his chief examination deposed that there was an agreement of sale for total consideration of Rs.46-00 lacs and they have received the total consideration amount of Rs.80-00 lacs. Learned counsel submitted that in view of these evidences indicating that the value of the share of the land claimed by the plaintiffs is far exceeding the pecuniary limits of the Court below, he filed the present application which

was rightly allowed by the Court below and there are no grounds in the appeal and the same it is liable to be dismissed.

5. The point that arises for consideration in this appeal is whether the order of the Court below rejecting the plaint on the ground of lack of pecuniary jurisdiction is sustainable in law ?

6. In BAR COUNCIL OF AP, HYDERABAD vs. THE GOVERNMENT OF AP, Rule 3 of the AP Court Fees and Suits Valuation Rules, 1987, (for short 'the Rules') issued in GO Ms.No.30, dated 02-02-1987, was challenged in a *public interest writ petition* on the ground that it *ultra vires* and offending Article 14 of the Constitution of the India, being arbitrary and unreasonable. The grounds urged in that case were that the market value of the land in suits to be filed as per Rule 3 of the Rules shall be deemed to be the value of the immovable property as fixed by the Registration and Stamps Department, would foreclose the real value of the said property being established by the plaintiff, which was hitherto available to the parties and the rule foreclose the establishment of true market value and, therefore, it needs to be struck down as *ultra vires* the AP Court Fee and Suits Valuation Act. Rule 3 of the Rules was upheld by this Court on the reasoning that the value

of the immovable property as fixed by the Registration and Stamps Department can be challenged and the Rule reduces the Courts time in determining the value of the immovable property. It was also held that the value so arrived at by the registering authorities is not based on any conjectures, but is based on the data collected by virtue of survey, inspection and assessment and so forth which approximates, if not to the precise valuation, to the market value on the date when the plaint is presented. In T. NARSINGH RANI vs. S. KISHEN RAO (1995 (3) ALD 439) also this Court held that compliance of Rule 3 of the Rules is a necessary requirement for the purpose of payment of Court fee at the time of presenting the plaint, though it may cause considerable hardship to the parties seeking urgent reliefs from the Court.

7. In the this case, *prima facie,* the plaintiffs-appellants have filed the valuation certificate issued by the SRO, Wanaparthy, wherein the value of the suit property is shown as Rs.1,00,000/- per acre. Likewise the valuation certificate issued by the same SRO, Wanaparhty, shows the value of the suit property at Rs.24,20,000/- per acre. Both the valuation certificates filed are in compliance of Rule 3 of the Rules.

8. The Apex Court in ***Sathappa Chettiar's*** case (1 supra) held thus:

> "..It is conceded that the question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits….."

9. Similar view is expressed by the Apex Court in ***Bhau Ram's*** case (2 supra) which read thus:

> ".......The law has been settled by this Court in various decisions that while considering an application under Order 7, Rule 11 CPC, the Court has to examine the averments in the plaint and the plea as taken by the defendant in the written statement would be irrelevant (vide C. Natrajan vs.Ashim Bai, Ram Prakash Gupta vs. Rajiv Kumar Gupta, Hardesh Ores (P) Ltd. vs. Hede & Co., Mayar (H.K.) Ltd. vs. Vessel M.V.Fortune Express, Sopan Sukhdeo Sable vs. Asstt. Charity Commr. & Saleem Bhai v. State of Maharashtra).

10. Same view has been once again reiterated in the recent decision of the Apex Court in ***PV Guru Raj Reddy vs. P. Neeradha Reddy*** wherein it held thus:

> "Rejection of the plaint under Order 7, Rule 11 CPC is a drastic power conferred in the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7, Rule 11, therefore, are stringent and have been consistently held to be so by the Courts. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7, Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred

under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

11. In the instant case, it is the specific case of the 3rd defendant-1st respondent herein that in the valuation certificate obtained by him on 29-03-2015 by from the SRO, Wanaparthy, the market value of the suit property is shown as Rs.24,20,000/- per acre. Whereas in the valuation certificate obtained by the plaintiffs on 20-03-2014 from the very same SRO, Wanaparthy, the market value of the suit property is shown as Rs.1,00,000/- per acre. It is also the contention of the 3rd defendant that the suit schedule land is no longer an agricultural land and it is converted into non-agricultural and the suit land is made into housing plots and also for construction of B.Ed College.

12. It is pertinent to note that the 3rd defendant nowhere stated that the valuation certificate filed by the plaintiffs is false and not a genuine one. It is clear from the ratio laid down the Apex Court in the decisions noted above, that the Court has to make an enquiry from the plaint averments itself to know whether Court fees paid based on valuation of the suit claim is proper or not and whether the Court has pecuniary jurisdiction or not and for that purpose averments made in written

statement or the final decision of the suit on the merits would not be a criteria for rejection of plaint. It is no doubt true that Order XIV, Rule 2 CPC mandates that the Court should pronounce the judgment on all the issues, but in this case both the valuation certificates filed by the parties are in compliance of Rule 3 of the Rules and as such preliminary issue is required to be farmed to decide as to the pecuniary jurisdiction of the Court and for that purpose no further recording of evidence or enquiry into the market value of the suit land is required as the evidence already available on record would be sufficient.

13. In view of the above analysis of the facts and law, it is to be held that the Court below erred in returning the plaint by taking into consideration the averments made and evidences produced by the 3rd defendant, which is impermissible in law. In the circumstances, the impugned order is set aside. However, it is observed that there is substantial variation in the valuation certificates filed by the plaintiffs as also by the 3rd defendant in respect of the suit property issued by the very same registering authority at Wanaparthy, the Court below to frame a preliminary issue as to its pecuniary jurisdiction in the light of the two valuation certificates where there is substantial variation as to the valuation of the suit land and, after recording a finding

thereon, proceed in accordance with law, if it is concluded that the Court has pecuniary jurisdiction to adjudicate upon the suit. Till the Court below takes up the suit for hearing and decides the matter, status quo obtaining as on today shall be maintained by both the parties. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dated : 03.12.2015
TJS

<u>THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY</u>

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[1]) AIR 1958 SC 245 (1)

[2]) 2012 (8) SCC 701