HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP.No.528 OF 2016

ORDER:

This revision petition is filed by the petitioner/respondent against the order dated 19.08.2015 passed by the II Additional District Judge, Kurnool at Adoni in CMA No.15 of 2012, which was allowed setting aside the order dated 29.12.2011 in IA.No.1053 of 2011 in OS.No.302 of 2010, wherein the Court below returned the plaint to the plaintiff for presentation before proper Court.

2. The facts which are necessary for disposal of revision are that the respondent/plaintiff filed suit in OS.No.302 of 2010 on the file of Senior Civil Judge's Court, Adoni, for partition and separate possession of his share in the plaint schedule mentioned property against the petitioner, who is the 14th defendant in the Suit, and others. The respondent/plaintiff filed the suit mentioning that the value of the suit property as certified by the sub-registrar is Rs.1,03,950/-; that the actual value of the said property at present is around Rs.4,40,000/- and the plaintiff's 1/4th share works out to Rs.1,10,000/- and that the same is the value of the suit for the purpose of Court fee and jurisdiction. Basing on the same, the suit was numbered and the petitioner/respondent filed a petition under Order-7, Rule 10(1) read with Section 151 CPC, stating that though the market value of the subject property as per the certificate issued by the Sub-registrar, Adoni was Rs.1,03,950/-, the respondent/plaintiff had shown his own valuation at Rs.4,40,000/-, which is not permissible as the Government of A.P. issued G.O.Ms.No.30, Home (Courts-D) Department dated 02.02.1987 to the effect that the market value of the land in the

suits falling under various Sections of A.P.Court Fees and Suits Valuation Act, 1956 shall be deemed to be the value of the immoveable property both in Urban and Rural areas as fixed by the Registration and Stamps Department and pleaded to return the plaint to the plaintiff. He also contended that there was no provision in A.P.Court Fee and Suit Valuation Act, which permits a person to make his own valuation except under Section 26 of the Act which deals with notional value in case of injunctions. Basing on the same, the Court below allowed the said IA and directed to return the plaint to the plaintiff for presentation before proper Court.

3. Aggrieved by the same the respondent/plaintiff filed CMA.No.15 of 2012 and the trial Court allowed the same stating that there is no bar if the plaintiff values the suit more than the value fixed in the said G.O.30 dated 02.02.1987. The said G.O was issued only to see that the suits are not under valued. The appellate Court also stated that Section 7 of the A.P.Court Fees and Suit Valuation Act clearly envisages that the fee payable under the Act depends on the market value of the property and such value shall be determined as on the date of presentation of the plaint. Basing on the same, the appellate Court allowed the CMA. Against the same, present CRP is filed.

4. Learned counsel for the petitioner/defendant submits that the plaintiff cannot value the suit notionally and the same has to be valued as per G.O.Ms.No.30 dated 02.02.1987 and that the trial Court has rightly returned the plaint but the appellate Court erroneously allowed the appeal.

5. On the other hand learned counsel for the

respondent/plaintiff submits that there is no bar for valuing the suit but the same has to be paid as determined under Section 7 of the Act. He also submits that while upholding the G.O.Ms.No.30, dated 02.02.1987, this Court in

Bar Council of Andhra Pradesh v. The Government of Andhra Pradesh [1] held that there is no bar compelling the parties to value the suit as per the said G.O only, and it can be more also.

6. In the present case, the respondent/plaintiff valued the suit property at Rs.4,40,000/-, though the Sub-registrar valued the property and issued certificate determining the market value of the suit property as Rs.1,03,950/-. The valuation made by the respondent/plaintiff is disputed by the petitioner/defendant. Rule-3 of the A.P.Court Fees and Suits Valuation Rules, 1987 narrates that the plaint has to be accompanied by a certificate in the Form prescribed containing the value of the said immovable property from the local Registering Officer. But, nowhere, it has prohibited the plaintiff from valuing the suit more than the value fixed by the said Registering Officer. In the present case it is to be seen that the plaintiff in para 8 of the plaint has valued the suit which reads as follows;

> "The value of the suit property as certified by the Sub-Registrar is Rs.1,03,950/-. The actual value of the land at present is around Rs.4,40,000/- and the plaintiffs one fourth share works out to Rs.1,10,000/-. This is the value of this suit for the purpose of Court fee and jurisdiction. Hence this Honourable court has pecuniary jurisdiction to entertain the suit."

7. Section – 7 of the A.P.Court Fees and Suits Valuation Act, 1956 reads as follows:

> "Determination of market value:- Save as otherwise provided, where the fee payable under this Act depends

> on the market value of any property, such value shall be determined as on the date of presentation of the plaint."

8. Section 7 of the Act only provides for determination of market value. As per Section 7 of the Act, fee payable under the Act depends on the market value of the property which shall be determined as on the date of presentation of the plaint. In the present case, according to plaintiff, the present market value of the suit property is Rs.4,40,000/- and his 1/4th share works out to Rs.1,10,000/-.

9. Rule-3 of the A.P.Court Fees and Suits Valuation Rules, 1987 reads as follows:

> "Determination of Market Value:- Based on the basic Registers maintained by the Registration Authority, the market value of land in suits falling under various sections of the Act shall *prima facie* be taken to be the value of the immoveable property both in Urban and Rural areas fixed by the Registration and Stamps Department……
>
> Provided a party filing a suit shall take a certificate in the form prescribed containing the value of the said immovable property from the local registering officer and file it along with the suit."

10. Even Rule-3 does not say that market value as fixed by the Registration and Stamps Department is final. It is only a prima facie value. It also envisages that the party filing the suit shall take a certificate in the form prescribed containing the value of the said immoveable property and file it along with the suit.

11. Neither Section 7 of the Act nor Rule-3 of the Rules prohibits a party from valuing the suit property more than the value fixed in G.O.Ms.No.30.

12. The Judgment relied on by the respondent/plaintiff in ***Bar Council of A.P.'s case (*** *supra 1)* reads as follows;

> "7. It is true, prima facie, that the rights of the parties and the power of the Court are sought to be trenched upon by framing this Rule 3 and depriving thereby the rights of the parties to get the value properly fixed and the power of the Court to determine the same. Apart from the intention of the rule-makers which could be gathered from the rules it is made clear in the counter-affidavit that the words shall be deemed to be the value of the immovable property occurring in Rule 3 must be subjected to such canon of construction, which tried to preserve the intention of the rule-making authority instead of extinguishing or frustrating, by striking down the statutory provision, and so adopting the said rule of construction, the words must be so construed as to have harmony with the provisions of the Act, and not holding that the rule is repugnant to the provisions of the Act. This principle of interpretation is within the exigencies of the case, built on the experience, in this field of litigants showing the value of the immovable property in the plaint, more often deliberately undervaluing the same so as to escape the advalorem Court fee. This proviso under Rule-3 has the further object of reducing to a great extent the time consumed by the Court in the process of determining the value. Nextly, the value so arrived at by the Registration Authority 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. Hence, the effect of the words shall be deemed to be the value of the land should be so read down to convey that, the said value will however be subject to being challenged either by the parties or being taken up by the Court suo motu, as the case may be. So construed, the rule cannot be held to be in excess of or repugnant to the provisions of the Act or offensive to Article 14 or Art.21 of the Constitution of India, as sought to be canvassed by the

learned counsel for the petitioner.

8. If the above is borne in mind, there cannot be any quarrel with the enunciation made in the case law cited on behalf of the petitioner and so they cannot be of any assistance to them.

9. It was held in *J.Jogannatham v. Revenue Divisional Officer, Adilabad* that

"To curb the tendency on the part of persons to recite a low value in registering documents, the government have prepared market value registers indicating the values of different lands in a particular area and made it obligatory on the parties to pay the stamp duty and registration expenses on the basis of such values. Ex.B7 is the market value register wherein the entry Ex.B15 is relied upon to show that during the year 1975, a Sq.Yard in ward No.5, block No.7 was directed to be valued at Rs.300/-. It appears Rs.300/- rate relates to sites sold for shops but the rate is Rs.150/- per Sq.yard if the site is sold for residential purposes. Subsequently, there was a representation that such rates as were noted in the market value register were too high and yielding to such representation, the rates were correspondingly reduced to Rs.250/- or Rs.75/- per Sq.Yard, depending upon whether the sites were sold for shops or for residential purposes. In his evidence as RW3 the Sub-registrar, Adilabad made it clear that the valuations noted in the market value register were not based on comparative sales and that such valuation was based on primarily the property tax assessments. Property tax assessment is naturally based on the annual rental value. If it is a shopping area, the annual rental value will be more and naturally the property tax assessment would also be at a higher level. As such values were based only on the municipal assessment, they do not reflect the market value obtaining in the locality and more so, when the values so noted in the market value register were not based on any comparative sales. In fixing the market value, the Court has to take into account the price which a willing purchaser is prepared to pay to a willing vendor. The valuation noted in the market value register were not admittedly based on such consideration which a willing party was paying to a willing vendor. We cannot therefore, fix the market value on the basis of the valuations noted in the market value register. This was also the view expressed by a Division Bench of this Court in *Land Acquisition Officer v. Venkateswara Prasad in Appeal No.880/80, dated 11.11.1981.”*

13. In view of the above, the appellate Court rightly held that the pecuniary jurisdiction is a mixed question of fact and law and it can be decided only by framing an issue and by leading evidence. Since there is no finality in the suit now it is for the defendant to lead evidence to show that the valuation given by the plaintiff is not correct. The Court below after framing an issue can decide the same considering the evidence led by the parties.

14. In view of the above findings, I do not see any error in the order dated 19.08.2015, passed by the appellate Court in CMA.No.15 of 2012. Accordingly, the CRP is dismissed. No order as to costs.

15. As a sequel thereto, miscellaneous petitions, if any, pending in the CRP shall stand closed.

A.RAJASHEKER REDDY, J

22.03.2016
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[1] 1990 (1) An.W.R.348