

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.5026 OF 2015

ORDER:

Heard Mr.T.Lakshmi Narayana, learned counsel for petitioners and Mrs.Jonna Ramani, learned counsel for respondents.

Defendants 1 to 3 in O.S.No.140 of 2013 are the revision petitioners. The revision is directed against the order dated 04.07.2015 in I.A.No.241 of 2014 in O.S.No.140 of 2013. The revision petitioners filed I.A.No.241 of 2014 with the following prayer:

“This petition is filed by the petitioners under Order 7 Rule 11 (c) of CPC to direct the respondents 1 and 2 to deposit the deficit court fee of Rs.1,42,092/- in respect of the reliefs prayed in the plaint within the time fixed by this Court, failing which to reject the plaint and for costs.

The trial Court, while rejecting the prayer, has recorded the following finding:

“In the present case, the plaintiffs have contended that it is a triable issue which is to be decided after full-fledged trial whether the schedule “A to C” properties are self acquired properties or joint family properties. The contention raised by the respondents counsel appears to be correct and the issue framed by this Court requires full-fledged enquiry. Decision cited by the respondents 1 & 2 counsel is applicable to the facts of the present case, as such I hold that the petition deserves no consideration and is liable to be dismissed.”

I have perused the order under revision and also the issues framed for trial in O.S.No.140 of 2013. Issue No.4 reads as follows:

“Whether the Court fee paid is insufficient?”

Learned counsel for the petitioners by placing reliance upon the decisions reported in **N.R.GOVINDARAJAN v. V.K.RAJAGOPALAN**

AND OTHERS^[1] and **PARVATHAMMA AND ORS v. Y.TULSIRAM AND**

ORS^[2] contends that the payment of Court fee ought to have been decided as a preliminary issue by the trial Court. He contends that having regard to the facts and circumstances of the case the said issue should have been taken up as a preliminary issue and appropriate orders are passed by the trial Court.

On the other hand, learned counsel for respondents/plaintiffs contends that the issue of payment of Court fee, having regard to the comprehensive issues settled for trial, cannot be considered and taken up by the trial Court as a preliminary issue. According to her, if the frame of suit and payment of fixed Court fee is not in accordance with law while granting appropriate relief, the trial Court certainly directs the plaintiffs to pay the proper Court fee. It is further contended that by insisting upon deciding the preliminary issue of payment of Court fee there are going to be two trials in the matter and to avoid the same, the trial Court has rightly rejected the application. Learned counsel prays for dismissal of the revision.

Perused the material available on record.

The trial Court has framed the following point for consideration while deciding the instant application:

“Whether the respondents 1 and 2 are liable to pay *ad valorem* Court fee of Rs.1,42,092/- in respect of the plaint schedule property?”.

The averments in the plaint are considered and as already noticed, the trial Court held that as an issue is framed on the very same point, the same can be adjudicated upon after a full-fledged enquiry. The payment of court fee by the plaintiffs is not accepted by the trial Court, as an issue is framed.

After perusing the averments in the plaint and written statement,

I am of the view that the trial Court has rightly declined to consider the payment of Court fee as preliminary issue, as the same requires trial and enquiry. The decisions relied upon by the revision petitioners are distinguishable and hence are not relied upon.

The revision fails and is accordingly dismissed. The trial Court is directed to expedite the trial of the suit as early as possible, preferably within a period of six months from the date of receipt of a copy of this order and dispose of the suit.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

22nd January, 2016
Lrkm

[\[1\]](#) (2005)12 SCC 363

[\[2\]](#) 1997(1) ALD 443