

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5443 of 2011

ORDER :

The plaintiff maintained the suit against the two defendants for partition of the plaint schedule property by claiming in joint possession which consists of 220 square yards site with terraced building therein. The valuation certificate shows value of the building as Rs.7,23,600/- and of the vacant site as Rs.4,65,74/-, total Rs.11,89,340/-. If it is plaintiff out of possession, the question of paying Court fees *advolerum* on the market value that arises and in case of joint possession fixed Court fees is enough. On the aspects as to how value of jurisdiction and court fees to be arrived is answered by this Court in C.R.P. No.5306 of 2015, dated 08.12.2015 in ***Syed Nazinnunnisa V. Syed Azmathullah*** relying upon the full bench expression of this Court in ***Kalla Yadagiri V. Kotha Bal Reddy***^[1] by differing to the full bench expression of the Kerala High Court in ***Pamban Kayakkar Valsalan V. Pamban Kayakkal Koumudi***^[2], apart from other earlier expressions of this Court.

2) Leave it as it is a reading of the plaint averments including the cause of action para is crystal clear which are decisive to determine Court fees, of the plaintiff is in joint possession of the property. Once such is the case, as per

Section 34 of the A.P.Court Fees and Suits Valuation Act, where plaintiff is in joint possession payment of fixed Court fees of Rs.200/- in the partition suit is enough and otherwise advolerum Court fees to be paid on value of plaintiffs share in the suit claim. It is no doubt, the contest of the defendant in filing the application in I.A. No.36 of 2011 under Section 11 of the Andhra Pradesh Court Fees and Suits Valuation Act read with Section 151 C.P.C is that plaintiff is not in joint possession and calculation made in the valuation para for the purpose of jurisdiction and Court fees is not correct. It is not defence of defendants but plaintiff averments that are criteria. Even taken from the suit is pending in Senior Civil Judge as on the date of filing in 2004, the valuation for the purpose of jurisdiction i.e., $\frac{3}{4}$ of Rs.11,89,340/- is below Rs.10.00 lakhs which is within the jurisdiction of the Senior Civil Judge's Court for up to Rs.10.00 lakhs and above by then only within the jurisdiction of the District Court.

3) Once, such is the case from the valuation shown even mistakenly it will not change the jurisdiction of the Senior Civil Judge to District Judge/District Court. Now, so far as Court fees concerned, this calculation even wrongly made but for to give opportunity to the plaintiff to correctly reflect by seeking appropriate amendment, it does not enable the Court to say plaintiff is liable to pay under Section 34(1) of the Andhra Pradesh Court Fees and Suits Valuation Act advolerm Court fees on $\frac{3}{4}$ th of the value

arrived for the purpose of jurisdiction; when it is a specific plea in the plaint of plaintiff is in joint possession. Even contest of the defendant taken into consideration, it is only for assistance to the Court apart from the very Section 11 enables the Court from date filing of the suit till pronouncing of the judgment if at all to direct for payment of any deficit Court fees and if at all found ultimately of plaintiff not in joint possession and is excluded from possession. The lower Court did not properly advert to the aspect in appreciating the position of law as to even a person in joint possession in seeking the relief of joint possession entitled to seek separate possession of the rights to be defined in preliminary decree, to be worked out in final decree. Thereby, it can be said that what the plaintiff pleaded in its entirety in all the parts including in cause of action para of plaint joint possession cannot be ignored. What plaintiff asked for partition and separate possession does not mean plaintiff not in joint possession.

4) Having regard to the above, the impugned order under revision is not sustainable and is liable to be set aside while directing the trial Court, if necessary, to frame a specific issue on Court fees also to decide ultimately on merits. Needless to say that the plaintiff is at liberty from the duty to show correctly the value for the purpose of jurisdiction and show what is the Court fees payable under Section 34(1) of the Act and fixed Court Fees paid from

joint possession under Section 34(2) of the Act.

5) In the result, the revision is allowed, setting aside the order dated 10.10.2011 in I.A. No.36 of 2011 in O.S. No.313 of 2004 on the file of I Additional Senior Civil Judge, Guntur. No order as to costs. Pending miscellaneous petitions, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

22.08.2016

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[\[1\]](#) 1994 Law Suit AP 387

[\[2\]](#) AIR 1982 Kerala 304