

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1495 of 2017

ORDER:

Heard the learned counsel for the petitioner.

2. This Revision Petition is filed challenging the docket order dt.23-11-2016 of the Principal Junior Civil Judge, Tadepalligudem in O.S.No.28 of 2013.

3. The petitioner is plaintiff in the suit. He filed for perpetual injunction restraining the respondents/defendants from interfering with his peaceful possession and enjoyment of (a) the plaint schedule property and (b) with the electrical service connection to the premises. He obtained it on lease from 1st respondent who is the landlord. He valued the two reliefs notionally at Rs.5,000/- each and paid Court Fee of Rs.411/- each and presented the suit.

4. By the impugned docket order dtd.23-11-2016, the Court below opined that Court Fee ought to have been paid under Section 40 (c) of the A.P. Court Fees and Suit Valuation Act, 1956 and not Section 26 (c) as was done by the petitioner. It observed that there was a lease agreement between the petitioner and 1st respondent, that the suit was filed for injunction against illegal dispossession and the only legal right for dispossession was vested with the 1st respondent. It observed that other respondents are in no-way connected with the

case and as a result only relationship of landlord and tenant is in existence warranting application of Section 40 (c) of the Act, 1956.

5. Section 40 (c) of the Act reads:

“Section 40 - Suits between landlord and tenant:

In the following suits between landlord and tenant namely :--

(a) for the delivery by a tenant of the counterpart of a lease or for acceptance of patta in exchange for a muchilika;

(b) for the enhancement of rent;

(c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchilika;

(d) for the recovery of possession of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or challenging a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over, fee shall be computed on the premium, if any and on the rent payable for the year next before the date of presenting the plaint.

Explanation :-- Rent includes also damages for use and occupation payable by a tenant holding over.

(3) In an appeal from a suit to contest a distraint under subsection (1) or sub-section (2) of Section 95 of the¹[Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908)] or to contest the right of sale under Section 112 of that Act, fee shall be charged on the amount of the arrears for which the distraint has been made or the sale is proposed to be held.”

6. A reading of the said provision indicates that the suit filed by the petitioner against the respondents does not fall any of the enumerated categories in the said provision.

7. Therefore, I am of the opinion that Court below is not correct in stating that the petitioner should pay Court Fee under Section 40 (c) of the Act, 1956.

8. The petitioner had rightly valued the suit by applying under Section 26 (c) of the Act and the Court below is therefore directed to number the plaint without raising any objection as to the payment of Court Fee and take further steps in the suit.

9. Accordingly, the Civil Revision Petition is allowed. No costs.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-04-2017

Note:-

Issue C.C. in three days.

B/o.

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