THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5042 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful plaintiffs/respondents is directed against the order, dated 25.07.2017, of the learned XI Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.1538 of 2016 in O.S.no.540 of 2016 filed by the petitioners/defendants 22, 23 and 24 under Section 11 of the Court Fees and Suits Valuation Act, 1956, ['CF & SV Act' for brevity].

2. I have heard the submissions of *Sri B.Shashidhar*, learned counsel appearing for the petitioners/plaintiffs, and of *Sri K.K.Waghray*, learned counsel appearing for the respondents/defendants.

2.1 The parties in this revision shall hereinafter be referred to as the plaintiffs and defendants for convenience and clarity. I have perused the material record.

3. At the outset, it is to be noted that the defendants 22, 23 & 24 filed the afore-stated application requesting the trial Court to determine the Court-Fees payable on the value of the suit claim or the relief claimed in the suit by the plaintiffs as the plaintiffs are not in possession or joint possession of the suit schedule property. The said application was resisted by the plaintiffs. On merits and by the orders impugned in this revision, the trial Court allowed the petition of the said defendants and directed the plaintiffs to value the suit under Section 34(1) instead of under Section 34(2) of the CF & SV Act and directed the plaintiffs to pay the court fee within two weeks from the date of the said order.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5. The case of the defendants 22, 23 and 24, in brief, is this:

The plaintiffs filed the speculative suit for partition even without a cause of action for filing the suit. The suit property was sold under a registered sale deed in the year 1960 by late A.K.Naiker. Therefore, the suit ought not to have been numbered and the plaint ought to have been rejected on the sole ground of non-disclosure of caution of action and as barred under Order VII Rule 11(a) & (d) of the Code of Civil Procedure, 1908. These defendants reserve the right to file a separate application for rejection of the plaint. Originally, the plaint schedule property was the self-acquired property of the said A.K.Naiker. He got it by way of assignment in the year 1958 as he was an army person. He being the absolute owner of the property sold the same to one G.V.L.Somayajula Sarma, the father of the defendants 22 and 23, by virtue of a registered sale deed bearing Document no.1159/1960 and delivered possession of the property to the said G.V.L.Somayajula Sarma. Thus, A.K.Naiker sold the property, way back in the year 1960 and delivered possession of the same; and, from then onwards A.K.Naiker was in no way concerned with the suit schedule property. The property continued in possession and enjoyment of the said Somayajula Sarma; and, the property was also mutated in his name in the revenue records and he paid the revenue/tax regularly. The said Somayajula Sarma died, on 08.02.1975, leaving behind two Sons, namely, G.V.Mohan and G.Surya Kumar, the defendants 22 and 23, as his legal heirs and successors to the property. The defendants 23 and 24 along with defendant no.22 became joint owners and possessors of the property and the property was also mutated in their names in the revenue records in the year 1976 and pattadar pass books were also issued to them. The father of the defendants 22 and 23 also owned, apart from the suit schedule property, Ac.6.00 guntas of land in Survey nos.105, 110,113 & 114 situated at Yousufguda having purchased the said property under two registered sale deeds, in the year 1960, bearing Document nos.1155/1960 and 1569/1960. The said Somayajula Sarma erected fencing around the entire land of about Ac.16.00 guntas and was residing therein. Since his death, the defendants 22 and 23 are residing in the said property. The petitioners/defendants 22 and 23 being joint owners of the suit schedule property also declared the same in a declaration filed under Urban Land Ceiling Act. By proceedings under the said law, they were declared as excess landholders to an extent of 47,860 square meters. The defendants 22 and 23 pursued remedies before the appellate authority under the said law and before this Court by filing W.P no.2658 of 1984 and W.P.No.9198 of 2001 and Writ Appeal no.1150 of 2010, and were successful throughout in all the proceedings. While so, the petitioners/defendants 22 and 23 entered into a Development Agreement-cum-irrevocable General Power of Attorney with M/s. Srinivasa Associates (Projects) Works Limited for development of the property in an extent of 7064.16 square meters and the said deed was registered as document no.2992/2001. The said developer obtained NOC from the District Collector, Hyderabad, and building sanction from the GHMC for construction of cellar, Stilt + 5 upper floors, that is, for construction of 105 residential flats. In fact, building permission was granted by the GHMC in File no.0536/CSC/JP5/2002, dated 28.03.2003. A big complex was constructed and the flats were sold to various persons; and, the respective purchasers of the flats are in possession of their respective flats. While so, the plaintiffs/respondents 1 to 6 herein suppressed the material facts and filed the suit by joining 153 purchasers of flats as party defendants, however, without claiming any relief against the said defendants with regard to possession. The plaintiffs 1 to 6 were never in possession of the property and admittedly, the entire extent of Ac.10.20 guntas in Sy.no.149/3, Yousufguda, Hyderabad, was sold in the year 1960 by A.K.Naiker and possession was delivered to the father of the defendants 22 and 23. Therefore, the question of plaintiffs 1 to 6 being in possession or in joint possession does not arise and the allegation that the plaintiffs are in joint possession of the plaint schedule property is false. Not even a single document is filed to show their joint possession. The property value was mentioned in the plaint as Rs.304,92,38,000/-. To avoid payment of the court fee on the market value, the plaintiffs 1 to 6 mislead the trial Court and paid a fixed court fee of Rs.200/-, though the suit is to be valued under Section 34(1) of the CF & SV Act; and not under Section 34(2) of the said Act. The court fee is payable on the 3/4th of the market value of the property of the suit schedule property included in the plaintiffs' share. The court fee payable accordingly works out to Rs.3 crores or more. The suit is frivolous and speculative. The suit is not properly valued. The court fee paid is incorrect. Therefore, it is necessary to determine the court fee payable on the reliefs claimed in the suit as per Section 34(1) of the Act. This Court is having power and jurisdiction to decide the issue with regard to payment of proper court fee and determine the same at any stage as all such questions that arise on such plea have to be heard and decided before hearing of the suit. If the plaintiffs are allowed to pursue the suit by paying a fixed court fee of Rs.200/- even though they are not in possession or in joint possession of the property, not only the defendants

22 and 23 but all the flat owners who have purchased the flats would suffer serious and irreparable loss.

5.1 Per contra, the case of the plaintiffs as stated in the counter affidavit of the 1st plaintiff, in brief, is this:

The material allegations in the affidavit filed in support of the petition of the defendants 22 to 24 are all false and frivolous. The same are denied. The application of the defendants is not maintainable. While questioning the joint possession of the plaintiffs, the defendants maliciously and deliberately avoided to make the other defendants as parties to the interlocutory application though they are proper and necessary parties to the present interlocutory application. The trial Court ought not to have registered the interlocutory application. The allegations that the suit is a false, frivolous and vexatious suit and that the plaintiffs are not entitled to seek partition of the plaint schedule property as late A.K.Naiker sold the subject property in the year 1960 under registered sale deed to the father of the defendants 22 and 23, by name, Somayajula Sarma, and that the plaint is liable for rejection for non-disclosure of cause of action, improper valuation of the relief and for non-payment of required court fee are all false and concocted allegations. The said allegations and the conduct of the defendants 22 to 24 in filing the present interlocutory application reflect their *mala fide* intention. The alleged sale deed of the year 1960 has not seen the light of the day till today. If there was any sale deed of the year 1960 executed by A.K.Naiker, the defendants 22 to 24 ought to have filed the same into Court along with the written statement. The allegation that Somayajula Sarma was in possession and enjoyment of the suit schedule property since the year 1960 and that the property was mutated in his name are all false. The allegations that the said Somayajula Sarma, apart from the aforesaid Ac.10.20 guntas, also purchased and owned Ac.6.00 guntas of land in Survey nos.105, 110, 113 and 114 situated at Yousufguda, having acquired the same under two registered sale deeds bearing document nos.1155/1960 and 1569/1960 and that he erected a fencing around the entire land of 16 acres and resided in the said property till his death and that the property was mutated in his name and that on his death, the defendants 22 to 24 became joint owners and their names were mutated in the revenue records in the year 1976 and pattadar pass books were also issued to them and that they continued to reside in the property are all false. The non-filing of the documents, including the alleged sale deeds creates any amount of suspicion about the contentions of defendants 22 to 24. The defendants 22 to 24 failed to give any valid reasons for non-filing of the documents, if any, along with the present interlocutory application. The allegations that the defendants 22 and 23 entered into a Development Agreement-cum-irrevocable General Power of Attorney with M/s. Srinivasa Associates (Projects) Works Limited for development of the property in an extent of 7064.16 square meters and that the said developer obtained NOC from the District Collector, Hyderabad, and building sanction from the GHMC for construction of cellar, Stilt + 5 upper floors for construction of 105 residential flats and sold away the flats to various purchasers are all false. The alleged documents are created only to grab the suit schedule property from the plaintiffs and defendants 1 to 21. The application is filed by the defendants 22 to 24 on trial and error basis. The plaintiffs have not suppressed any material facts with regard to possession. The allegation that the plaintiffs have not claimed any relief against the other 123 defendants and that the cause of action is silent on that aspect is false. The defendants 22 to 24 are only guilty of suppression of facts and their claims are *mala fide* whereas, the claims of the plaintiffs are honest claims. As evident from the plaint, the plaintiffs 1 to 6 impleaded all the parties concerned, that is, the parties, whose names are appearing in respect of the Suit Schedule Property in the records of the title documents available with the registration authority; the plaintiffs did so to avoid possible loss to the persons, who lack the knowledge of the acts committed by the defendants 22 to 24 to grab the suit schedule property from the ownership and possession of the Plaintiffs & the defendants 1 to 21 and also the offences committed to grab the Suit Schedule Property. There is absolutely no suppression of facts and all the parties who are concerned with the subject matter in issue are impleaded as parties to the present Original Suit. However, to the contrary, the defendants 22 to 24 have suppressed the facts from the others, who are parties to the present Original Suit by not impleading all the defendants in the suit as party respondents to the present interlocutory application. The defendants obviously did so for *mala fide* reasons known to them. The allegation that since Naiker sold the property in the year 1960 and delivered possession, the question of the plaintiffs being in possession much less joint possession does not arise and that the plaintiffs mislead the Court and paid a fixed court fee of Rs.200/- instead of paying proper court fee by properly valuing the relief are all false allegations. Whether the plaintiffs are in possession or in joint possession of the suit schedule property can only be known after full-fledged trial. Even at the time of passing of the judgment, the Court can collect the Court fee, if any, if it is found that additional and further court fee is payable on the relief claimed in the suit. There is no need at this stage to determine either the valuation of the property or the court-fee payable by the plaintiffs on the relief claimed in the suit.

The defendants 22 and 23 fabricated documents in favour of the other defendants in the suit even though the sale deed bearing document no.1959/1960 does not belong to the suit schedule property. There are no merits in the application or *bona fides* on the part of the petitioners/defendants 22 to 24. The petition may be dismissed.

6. Learned counsel for the plaintiffs made submissions in line with the contents in the counter field before the trial Court and urged that the trial Court erred in prejudging the issue of sufficiency or otherwise of the court fee and the aspect of joint possession even without the parties entering trial. He would further submit as follows: 'Without a trial, it is not possible to ascertain/determine as to who amongst the parties are in possession or in joint possession of the suit schedule property. Most of the suit schedule land is still an open land even without a compound wall. The situation of the property gives raise to ambiguity with regard to possession. In the present suit, the plaintiffs are not only claiming a share but are also stating that the defendants 1 to 21 are also having a share. As such, the defendants 1 to 21 are necessary parties to the interlocutory application filed by the defendants 22 to 24. The said defendants have deliberately not impleaded the said other defendants 1 to 21 as party respondents to the subject interlocutory application filed by the said defendants 22 to 24. defendants 22 to 24 are claiming their possession through Urban Land Ceiling proceedings only. Except the said proof, there is no other proof. The open land out of the suit schedule land is still lying unoccupied by the third parties. The trial Court erroneously allowed the application of the defendants 22 to 24 merely on the ground that plaintiffs did not plead their joint possession in their application. In fact, the plaintiffs clearly averred in the plaint that the plaintiffs along with defendants 1

to 21 have inherited title and possession of the suit schedule land from the original assignee, A.K.Naiker. The trial Court ought to have seen that as per the settled law, the coparceners of a Joint Hindu family need not physically be in possession at once of the undivided property, which is being sought to be partitioned. Further, possession of one coparcener of the property is sufficient; as possession of one coparcener is possession of all coparceners. Hence, the revision petition may be allowed and the impugned order may be set aside leaving it open for the trial Court to decide, after full-fledged trial, the issue of proper valuation of the relief claimed in the suit and the correctness of the court fee paid thereon.'

7. Per contra, learned counsel appearing for the defendants while supporting the order impugned in this revision and while reiterating the contentions urged in support of the relief claimed in the interlocutory application forcefully contended that since the year 1960 onwards, Naiker, the original owner, having sold the property to Somayajula Sarma, the father of the defendants 22 and 23, was not in possession and that since 1960 onwards, Somayajula Sarma alone was in possession till his death and that thereafter his sons were and are in possession of the entire property till the property was developed through a developer and that, therefore, the question of plaintiffs or any of the other defendants 1 to 21 being in possession or in joint possession does not arise for consideration and that the plaintiffs without being in possession or joint possession and without having any cause of action filed the present frivolous and speculative suit and that after purchase of Ac.10.20 guntas by Somayajula Sarma, the property was mutated in his name and that he also purchased Ac.6.00 guntas of land under two registered sale deeds, in the year 1960, vide Documents bearing

nos.1155/1960 and 1569/1960 and that he fenced the said entire property and resided therein and that his sons came into possession after his death and enjoyed the property and that the defendants 22 and 23 had also filed declarations in respect of the said land under urban land ceiling laws and that the said proceedings have become final and that the said facts are undisputed and that, thereafter, the petitioners/ defendants 22 and 23 entered into a Development Agreement-cum-irrevocable General Power of Attorney with M/s. Srinivasa Associates (Projects) Works Limited for development of the property in an extent of 7064.16 square meters and that the developer obtained NOC from the District Collector, Hyderabad, and building sanction from the GHMC for construction of cellar, Stilt + 5 upper floors, that is, for construction of 105 residential flats and that a big complex was constructed and that the flats were sold away to various persons and that the respective purchasers of the flats are in possession of their respective flats and that the plaintiffs are not in possession much less joint possession and that, therefore, payment of a fixed court fee of Rs.200/- under Section 34(2) of the CF & SV Act is permissible and the suit claim is a vexatious and speculative claim and that the relief claimed in the suit ought to be valued under Section 34(1) of the Act and that the relief, if so valued, the court fee payable would be more than rupees three Crores and that in the facts & circumstances of the case, the trial Court is justified in passing the impugned order.

7.1 In support of the contentions, the learned counsel for the defendants 22 to 24 placed reliance on the following decisions: (i) G.V.Mohan and others v. State of Andhra Pradesh and others[1]; and (ii)

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[1] 2011 (1) ALD 761

State of Andhra Pradesh and others v. G.V.Mohan and others[2]. Defendants 22 to 24 also filed before this Court a copy of the Document bearing no.1159/1960.

8. I have given earnest consideration to the facts and submissions.

9. In view of the fact that the contentions and the issue involved in this revision revolve around the proper valuation of the relief of partition claimed in the suit and the correctness or otherwise of the court fee paid by the plaintiffs, it is profitable to refer to the relevant provisions of law.

Section 34 of the CF & SV Act, reads as under:

> 34. Partition Suits:- (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the movable property or three-fourths of the market value of the immovable property, included in the plaintiff's share.
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> (2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:
>
> When the plaint is presented to:

(i)	a District Munsiff's Court	Rupees Fifty
(ii)	a Subordinate Judge's Court Or a District Court	Rupees one hundred if the value of plaintiff's share is less than Rs.10,000. Rupees two hundred if the value is not less than Rs.10,000.

> (3) Where, in a suit falling under sub-section (1) of sub-section (2) the plaintiff or the defendant seeks also cancellation of decree or other document of the nature specified in Section 37, separate fee shall be payable on the relief of cancellation in the manner specified in that section.

[2] 2014 (4) ALD 757 (D.B)

From a reading of the provision, it is manifest that in a suit for partition of the joint family property or property owned jointly or in common by a plaintiff who is in joint possession of such property, fixed court fee shall be paid. However, in a suit for partition by a plaintiff who has been excluded from possession of property, fee shall be computed on the 3/4th of the market value of the immovable property included in the plaintiff's share. Therefore, if the plaintiffs are able to *prima facie* establish joint possession of such property, fixed court fee of Rs.200/- is payable under Section 34(2) of the CF & SV Act; however, if it is *prima facie* established that the plaintiffs have been included from possession of such property, advalorem court fee is payable, as per Section 34(1) of the Act by computing the fee on three-fourths of the market value of the immovable property included in the plaintiffs' share.

10. Now, the crucial question is: 'Whether the plaintiffs are in joint possession as being claimed by them or not in possession of the suit schedule property as being claimed by defendants 22 to 24. The next incidental question is -- Whether the plaintiffs have to pay court fee under Section 34(1) of the CF & SV Act as being claimed by the said defendants?

11. <u>POINT</u>:

11.1 Before proceeding further, it is necessary to refer to certain relevant provisions of law.

The provision of Order VII Rule 11 of the Code of Civil Procedure, 1908, reads as under:

> 11. Rejection of plaint:- The plaint shall be rejected in the following cases:

> (a) xxx xxxx xxxx xxxx xxxxx xxxx xxxxx
>
> (b) xxx xxxx xxxx xxxx xxxxx xxxx xxxxx
>
> (c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) xxx xxxx xxxx xxxx xxxxx xxxx xxxxx
>
> (e) xxx xxxx xxxx xxxx xxxxx xxxx xxxxx
>
> (f) xxx xxxx xxxx xxxx xxxxx xxxx xxxxx

Thus, from a reading of the above provision, it is clear that when the relief claimed is properly valued, but, the plaint is written upon a paper insufficiently stamped, the plaint can be rejected, on the plaintiff being required by the Court to supply the requisite stamp-paper within a time fixed by the Court, fails to do so.

In this context, it is apt to refer to the provision of Section 11 of the CF & SV Act, which reads as under:

> 11. Decision as to proper fee—(1)(a) In every suit, the Court shall, before ordering the plaint to be registered, decide on the allegation contained in the plaint and on the materials furnished by the plaintiff the proper fee payable thereon.
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> (b) The decision of the Court under clause (a), regarding the proper fee payable shall be subject to review, from time to time, as occasion requires.
>
> (2) Any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908). If the Court decides that the subject-matter of the suit is not properly valued and that the fee paid is not sufficient, the Court shall fix a date before which the subject-matter of the suit shall be valued in accordance with the Court's decision and the deficit

fee shall be paid. If within the time allowed, the subject-matter of the suit is not valued in accordance with the Court's decision or if the deficit fee is not paid, the plaint shall be rejected and the Court shall pass such order as it deems just regarding cost of the suit.

(3)(a) A Court of appeal, in which an appeal is filed may, either of its own motion or on the application of any party, consider the correctness of any order passed by the Lower Court regarding the fee payable on the plaint or written statement in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation:- The power exercisable by a Court of Appeal under this clause shall be exercisable even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of Appeal decide that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) if the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but in the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess of proper fee, the Court shall direct the refund of the excess of the party who is entitled to it.

(4) Any question relating to the value for the purpose of determining the jurisdiction of Courts shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908)."

Generally, at the time of numbering, the Court will look into the allegations made in the plaint and would decide the proper fee payable on the plaint to be registered based on the allegations contained in the plaint and on the materials furnished by the plaintiff. The said decision of the Court regarding proper fee is subject to review from time to time and as and when occasions require. However, after the defendants enter appearance, any defendant may plead that the subject matter of the suit has not been properly valued or that the court-fee paid is not sufficient. In such an event, the Court has to hear both the parties on such pleas and decide such questions.

12. Reverting to the facts of the case, it is to be noted that the plaintiffs 1 to 6, who are wife and daughters of the said Naiker filed the suit for partition of the suit schedule property by metes and bounds into eight equal shares and physical delivery of two such separated shares to the 1st plaintiff and plaintiffs 2 to 6 respectively and for rectification of entries and consequential permanent injunction and for costs. According to the plaint averments, the 1st defendant has got 1/8th share, defendants 2 to 5 have got 1/8th share, defendants 6 to 11 have got 1/8th share, defendants 12 to 14 have got 1/8th share, defendant no.15 has got 1/8th share and the defendants 16 to 21 have got 1/8th share in the suit schedule property. In the plaint paragraphs (13) and (14), it was specifically averred verbatim as under:

> "That, taking advantage of the silence of the Defendants 1 to 21 against the requests of the plaintiffs to partition the Suit Scheduled Property, one Mr.G.V.L.Sharma has fabricated the revenue records of rights and obtained the entry of his name in possession columns. After the death of Mr.G.V.L.Sharma, his sons, viz., the Defendants 22 to 24 herein falsely representing that Mr.G.V.L.Sharma had purchased the Suit Scheduled Property under the registered Sale Deed No.1159 of 1960, fabricated further farce sale deeds in favour of the Defendants 25 to 154 through the Defendant No.24 herein.
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> That, in fact, the registered Sale Deed No.1159 of 1960 does not belong to the Suit Scheduled Property, and

> Mr. Allapaka Kanakasabhapathi Srinivas Naiker never sold the Suit Scheduled Property under the alleged registered Sale Deed No.1159 of 1960 to the father of the Defendants 22 and 23, viz., Mr.G.V.L.Sharma."

There is no whisper in the plaint as to why 153 defendants were added. However, in the paragraph dealing with cause of action, the plaintiffs specifically averred as follows:

> 'Cause of Action: The Cause of Action for this Suit arose on 18.07.2016, when the Plaintiffs finally demanded the Defendants 1 to 21 to partition the suit Scheduled Property by metes and bounds and to physically deliver the respective shares of the plaintiffs out of the partitions of the Suit Scheduled Property in favour of the plaintiffs, and when the Defendants 1 to 21 refused to do so duly advising the Plaintiffs to pursue legal remedies for the implementation of their legal demands.'

Whereas, the specific case of the present petitioners/defendants 22 to 24 is that the said A.K.Naiker sold and delivered possession of the property of Ac.10.20 guntas, way back in the year 1960, to Somayajula Sarma and that from then onwards the said Naiker is no way concerned with the suit schedule property. It is the case of the defendants that the property continued in possession and enjoyment of the said Somayajula Sarma; and that apart from the above said property, he also owned Ac.6.00 guntas of land in Survey nos.105, 110,113 & 114, situated at Yousufguda, having purchased the said property under two registered sale deeds and that he erected fencing around the entire land of about Ac.16.00 guntas and was residing therein and that since after his death, the defendants 22 and 23 are continuing to reside in the said property. The property was mutated in the name of the said Somayajula Sarma is undisputed, though the plaintiffs are disputing the said entries at this long distance of time. It is also undisputed that the defendants 22 and 23 entered into a registered Development Agreement-cum-irrevocable General Power of Attorney with M/s. Srinivasa Associates (Projects) Works Limited for development of the property in an extent of 7064.16 square meters and that pursuant to the said deed and that the said developer obtained NOC from the District Collector, Hyderabad, and building sanction from the GHMC for construction of cellar, Stilt + 5 upper floors, that is, for construction of 105 residential flats and permission was also granted by the GHMC and that a big complex was constructed and the flats that were constructed were sold to various persons and the respective purchasers of the flats are in possession and enjoyment of their respective flats and thus, by now, third party interests are created and third parties entered into possession and thus, *prima facie* it appears that the plaintiffs are excluded from possession of the suit schedule property. Though it is sought to be contended by the plaintiffs that after construction of the flats by the developer, there is still some open site not enclosed in compound walls, it is not even averred in the plaint that after construction of the residential flats, there was some open place and that it is not in possession of any third parties. Therefore, the said contention has no foundation in the plaint. As rightly pointed out and as also rightly observed in the impugned order by the trial Court, the plaintiffs have not specifically pleaded that they are in joint possession of any part of the plaint schedule property much less any open land. They specifically claimed physical delivery of their share after partition of the plaint schedule property into eight equal shares. Therefore, the trial Court after analysis of the plaint averments held that the plaintiffs are not either in possession or in joint possession of the plaint schedule properties and that therefore, Section 34(1) is only applicable and not Section 34(2) of the CF & SV Act. In view of the provisions of Section 11 and the above sections of law, which are already noted, when the plaintiffs are *prima facie* excluded from possession and when it is evident from the pleadings and submissions that in the suit for partition, the plaintiffs have been excluded from possession of the suit property, it follows that the fee shall be computed on three-fourths of the market value of the immovable property included in the plaintiffs' share and that therefore, Section 34(1) would apply and not Section 34(2) of the CF & SV Act.

13. Having carefully considered the pleadings and averments, this Court finds itself in agreement with the findings of the trial Court and holds that the trial Court is justified in passing the impugned order directing the plaintiffs to value the suit as per the provision under Section 34(1) but, not under Section 34(2) of the CF & SV Act and in giving a time of two weeks to pay the Deficit Court fee after accordingly valuing the relief claimed in the suit.

14. Viewed thus, this Court finds that the revision is devoid of merit and is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed. The plaintiffs are given a time of three weeks from the date of receipt of a copy of this order to comply with the directions in the orders of the trial Court, which are now confirmed by this Court.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

04th December, 2017
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THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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04-12-2017