

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CIVIL REVISION PETITION No.616 of 2013

ORDER:

The petitioner herein/plaintiff had filed an unnumbered suit (G.R.No.5238, dated 11.07.2012) against the respondents herein/defendants, challenging the partition deed executed among the family members, on 28.07.2011. He paid the Court fee of Rs.4,126/- on Rs.1,70,000/- being the quantum of his share; and, for the purpose of valuation of the suit of partition for an amount of Rs.10,42,624-50 ps., he paid Court fee of Rs.200/- under Section 37 (2) of A.P. Court Fees and Suits Valuation Act, 1956. The Court below had called the case on 17.10.2012 and passed orders to the effect that the Court fee is not paid and plaintiff called absent and had rejected the plaint on the same day.

2. A perusal of the plaint copy filed along with the Revision would disclose that the petitioner/plaintiff had paid the Court fee. If the Court below was of the opinion that proper Court fee is not paid, it could have given an opportunity to the petitioner/plaintiff to pay the deficit Court fee, but the Court below cannot reject the plaint at the threshold on the ground that the petitioner has not paid the Court fee. The said finding of the Court below is non-application of mind.

3. Learned counsel appearing for the petitioner has relied on a judgment of this Court in *Saramekala Anjaneyulu Vs. Kurra*

*Sambrajyam*¹, wherein, the defendant therein wanted the suit to be dismissed on the ground that the plaintiff therein had paid the Court fee to the extent of his 1/7th share in the property. After examining the relevant provision of law, this Court held that the plaintiff had rightly paid the Court fee to the extent of his share and the contention of the defendant was rightly rejected. In the instant case also, the petitioner/plaintiff had paid the court fee to the extent of his share and therefore, the Court below was not right in rejecting the plaint at the threshold on the ground that the petitioner/plaintiff has not paid the Court fee.

4. For the above reasons, the Civil Revision Petition is allowed and the Court below is directed to entertain the suit filed by the petitioner/plaintiff and adjudicate the same on merits, after giving opportunity to the contesting parties. No costs.

Miscellaneous petitions, if any, pending in this Revision, shall stand closed.

ABHINAND KUMAR SHAVILI, J

04th October, 2017
KTL

¹ 2004(1) L.S. 167