

THE HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.5964 of 2017

ORDER:

This revision under Article 227 of Constitution of India is filed being aggrieved by order dated 31.8.2017 whereby the Principal District Judge at Vizianagaram rejected the plaint in O.S.(GR) No.3894 of 2017 filed by the petitioners herein.

2. The contention of the revision petitioners-plaintiffs is that they filed the suit for partition and separate possession of their undivided 1/4th share in the ancestral joint family properties claiming joint possession with other sharers and impleaded the alienees from the first defendant of some of the joint family properties to the suit, alleging that those alienations are not binding on them, and then the Court fee payable would be only under Section 34(2) of the Andhra Pradesh Court Fees and Suit Valuation Act, 1956 (for short 'the Act'). It is further contended that the trial Court ought to have seen that to determine court fee at the time of institution of the suit, the averments made in the plaint alone are required to be taken into consideration and that it is not open for the trial Court to consider the merits of the suit documents and record any findings at that stage. The petitioners-plaintiffs have given full extent of the respective survey numbers of the plaint schedule properties and that they are capable of being identified by survey number alone and therefore, the boundaries need not be mentioned. Further the Court ought to have seen that the inam

document and enquiry proceedings which are referred to in the plaint are not presently in possession of the plaintiffs and that they are matter of evidence that can be secured and filed subsequently.

3. Heard the learned counsel for the petitioners and perused the material available on record.

4. Since the plaint was returned at the stage of numbering of the suit itself with certain objections, this issue is between the petitioners and the Court and therefore, no notice was ordered to the respondents in this revision and considering the material brought on record, the present order is being passed.

5. A perusal of the record goes to show that the petitioners-plaintiffs filed the suit for partition of plaint schedule properties into four equal shares and for allotment of one such share after converting the joint right into several and put the plaintiffs in physical possession of such 1/4th share and to direct the defendants to render true and proper accounts of the profits from the date of the suit. A fixed Court fee of Rs.200/- is paid under Section 34(2) of the Act. After presenting the plaint, the Court returned the plaint with some objections on 27.6.2017 with the following objections:

1. Valuation Para is to be noted correctly;
2. Boundaries of the plaint schedule property are to be given;
3. Full Residential particulars of both parties are to be furnished;

4. Maintainability of the suit in respect of payment of Court fee U/s.34(2) of APCF and SV Act is to be explained;

5. Documentary proof i.e. (1) inam proceedings mentioned in para III and enquiry proceedings in para (f) are to be filed;

6. Notice got issued by publication by 1st defendant dt.14.03.2015 and reply notice issued by Sri S.N.M.Raju, Advocate are to be filed;

7. Extent of land shown in the plaint schedule and noted in the publication are not tallying;

8. C.F. is to be affixed on all xerox copies of documents.

6. The plaint was again represented by the petitioners-plaintiffs on 05.7.2017 stating that they have complied with all the objections raised by the Court. Again the plaint was returned on 10.07.2017 and lastly by the impugned order dated 31.08.2017.

7. For the above objections raised by the trial Court, the counsel appearing for the petitioners-plaintiffs submitted his representations before the trial Court as follows:

“1. It is submitted that this objection complied with.

2. It is submitted that it is specifically mentioned that plaint schedule properties being full extents of respective survey numbers and they are capable of identification with reference to filed measurement books of respective villages, boundaries need not be furnished.

3. Regarding this objection, the defendants are resident of villages, in which door numbers are not assigned or displayed at each one's house and the summons would be served at the addresses mentioned in the plaint. Hence, this objection may not be insisted.

4. It is submitted that the properties covered by the plaint schedule being owned and possessed jointly and for conversion of such joint right into

several, the plaintiffs being in joint possession, since not ousted, a Court Fee is paid is correct.

5. Regarding objection No.5, there are no documents for the present with the plaintiffs to file and being matter of evidence would be secured and filed later.

6. Regarding this objection No.6, the property shown in publication of 1st defendant, those extents are not being claimed in the suit, hence the documents sought are not relevant.

7. Regarding objection No.7, the extents shown in the publication are of approximate measurements, whereas, the extents in the plaint schedule are with reference to revenue records hence need to be tallied.

8. This objection is complied with.”

8. In the unreported decision in **N.Savithri And Others v. N.Hanmappa And Others**, a Single Judge of this Court held that ‘as to what would be the impact of such alienation on the joint possession claimed by the petitioners/plaintiffs was a matter which essentially fell for consideration during the trial. The finding of the trial Court at the threshold, while dealing with the valuation of the suit for the purpose of the court fee, that the petitioners/plaintiffs could not claim joint possession therefore effectively decided one of the crucial issues arising for consideration in the main suit. This approach on the part of the trial Court was completely unsustainable in law. As matters stand, going by the plaint averments, the petitioners/plaintiffs were entitled to pay court fee under Section 34(2) of the Act of 1956. However, as observed by this Court in the judgments cited supra the power under Section 11 of the Act of 1956 would be available to the trial Court and

in the event the issue of valuation of the suit and payment of proper court fee thereon arises at a subsequent stage, the trial Court would always be at liberty to take recourse to use of such power.'

9. A perusal of the pleadings goes to suggest that the plaintiff No.2 is the mother; plaintiff Nos.3 to 5 are the sisters of plaintiff No.1. They being the class-I heirs of Raparthi Bhaskara Kannappa, are entitled a share in the suit schedule property. The petitioners'-plaintiffs' claim is that they are having an undivided 1/4th share in the schedule properties and on coming to know that some of the villagers have been creating documents of alienations over the schedule properties, the first plaintiff initially got issued a public notice through publication in Eenadu, District edition on 08.03.2015. According to them, the first plaintiff's great grandfather Sri Raparthi Kannappa was granted an Inam of an extent of Ac.122.00 cents, situated at the village of Mindivalasa Ramachandrapuram (MR Puram); besides he has lands at Ganisetipalem of Kothavalasa Mandal; Kothavalasa (v) and Gottupalli village of Anandapuram Mandal. The first defendant, who is working as Village Karanam of MR Puram, while in management of said landed properties, allegedly alienated most of the lands. The first defendant got issued a notice by publication dated 14.03.2015, to which, the first plaintiff got sent a reply and after exchange of notices, the first plaintiff noticed that due to inadvertent mistake, notices were sent twice to the same persons, and thus the figure of addressees was boosted to 112. It is their case that their predecessor Bhaskara Kannappa is having 1/4th

undivided share along with the defendants 1 and 2 in the plaint schedule property.

10. It is stated that the cause of action for the purpose of suit, arose after the death of Sri Raparathi Kannappa in 1940; in 1972 when the grandfather of first plaintiff Jagannadham died intestate in joint status with his brother Venkata Suryanarayana, on 13.11.1995 when the father of the 1st and 3 to 5 plaintiffs and husband of the 2nd plaintiff Bhaskara Kannasubbarao not being heard and by November, 2002 when he is said to have suffered civil death besides other reasons stated in the plaint.

11. Those being the averments of the plaint, the trial Court was of the opinion that the sale deeds said to have been executed by the first defendant in favour of other defendants recorded that possession was delivered, the question of petitioners-plaintiffs claiming joint possession does not arise. The trial Court in the objection No.4, took an objection regarding maintainability of suit in respect of payment of court fee Under Section 34(2) of A.P. Court Fees and Suit Valuation Act.

12. A perusal of Section 34 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 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 plaintiffs share.

(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 Munsif Court Rupees Fifty

(ii) a Subordinate Judge Rupees one hundred if the Court or a District Court. Value of plaintiffs share is less than Rs.10,000. Rupees two hundred if the value is not less than Rs.10,000/-.

(3)

13. Section 34(1) of the Act of 1956 would therefore apply to a partition suit where the property is owned jointly but the plaintiff is excluded from the possession of such property, for which, the plaintiff has to pay the Court fee upon the market value of the property concerned. Section 34(2) of the Act applies to a partition suit where the property in question is owned jointly and the plaintiff, being in joint possession, seeks partition and separate possession, for which, the Court fee is fixed as stipulated thereunder.

14. In a catena of decisions, this Court held that at the inception of the suit, the trial Court has to go by the recitals of the plaint and only if a challenge is laid by the defendants at a later point of time, the trial Court can frame a triable issue as to whether the suit was properly valued and whether the court fee paid was proper. Even otherwise, the Court is empowered under Section 11 of the Act to reopen the issue as

to payment of court fee. However, these are stages which would arise later and not at the time of numbering of the suit based on the plaint averments. I am of the considered view that once the plaint averments read to the effect that the alleged alienation by way of a sale deed was sham and nominal and that the alienators had no right to sell the joint family property without there being a division, the question as to whether the possession was joint at the time of the alleged alienation is to be decided after trial of the suit and not at the stage of numbering of the suit by the office of the Court. For collection of court fee, the trial Court has to see the averments made in the plaint as to whether there was a prior partition of the suit schedule property which was stated to be in joint possession. If, upon the defendants appearance, a plea is taken that there was an earlier partition, it would be open to the trial Court to frame an appropriate issue as to valuation of the suit and payment of court fee, but at the stage of presentation of the suit, the plaint cannot be returned on the presumption that there was no joint possession.

15. With regard to objection No.2, Order VII Rule 3 C.P.C. postulates that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. In the present case, the plaintiffs have given full extent of the survey number of the property, which is the

sufficient description to identify the property. If there is any dispute with regard to the identity, the defendants, after putting up appearance, can take the relevant plea and basing on the same, appropriate issues can be framed and settled.

16. Regarding objection No.3, the plaintiffs clearly stated that the defendants are residents of villages, wherein door numbers are not assigned and therefore, they gave with full description and address of such defendants. In respect of objection No.4, the defendants have already put up appearance before the trial Court and objected for the Court fee and therefore, necessary issue can be framed and settled for trial.

17. Order VII Rule 14 C.P.C. deals with objection No.5, for which, the plaintiffs represented and stated that at present, no documents are available and they will be produced at a later stage. So far as objection No.6 is concerned, since it is a publication made by the first defendant and those extents are not being claimed in the suit, the documents sought for are not relevant. Regarding objection No.7, the petitioners submitted their representation stating that the extents shown in the publication are of approximate measurements, whereas, the extents in the plaint schedule are with reference to revenue records and hence, there is such discrepancy.

18. In view of the facts and circumstances stated, I am of the considered view that the trial Court erred in opining that all the suit

documents should be filed along with the plaint. Further the petitioners-plaintiffs made a specific endorsement that they will produce the documents at the time of trial. Considering the explanation offered by the petitioners-plaintiffs to the objections of the trial Court, it is manifest that the trial Court did not take into consideration the plaint averments, but examined the contents and merits of the suit documents. When the petitioners-plaintiffs specifically averred that the registration effected under the sale deeds was sham and nominal and are not binding upon them, the trial Court could not have gone by the contents of the said documents to the exclusion of the plaint averments, which read to the effect that the property in possession was joint property and that without prior partition, their share falling to the lot of the petitioners-plaintiffs is unlawful. The impact of such alienation on the joint possession claimed by the petitioners-plaintiffs was a matter which essentially fall for consideration during the trial. The objections of the trial Court at the threshold, while numbering the suit with regard to the valuation of the suit, for the purpose of court fee, that the petitioners-plaintiffs could not claim joint possession, therefore, effectively decided one of the crucial issues arising for consideration in the main suit. Therefore, the order of the trial Court is completely untenable in law.

19. As matters stand, going by the plaint averments, the petitioners-plaintiffs are entitled to pay Court fee under Section 34(2) of the Act. However, in catena of decisions, this Court observed that the power

under Section 11 of the Act would be available to the trial Court and in the event the issue of valuation of the suit and payment of proper court fee thereon arises at a subsequent stage, the trial Court would always be at liberty to take recourse to frame appropriate issues.

20. Subject to the above observations, the revision is allowed setting aside the impugned order. The trial Court is directed to accept the Court fee for institution of the suit of the petitioners-plaintiffs under Section 34 of the Act and number the suit if it is otherwise in order.

No order as to costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

08th November, 2017

Tsr

JUSTICE N.BALAYOGI

