

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1074 OF 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Docket Order dt. 02.01.2018, whereby the trial Court though raised an objection to the payment of Court Fee under Section 34 (2) of APCF and SV Act, instead of payment of Court Fee under Section 34(1), the plaint was not re-submitted though seven daytime was granted.

The objection raised by the Chief Judge, City Civil Court, Hyderabad, is that as the property was handed over to the builder on the development agreement and the developer constructed an apartment consisting of 24 flats, the plaintiff is under obligation to pay the Court Fee under Section 34 (1) of APCF and SV Act since it is a suit for partition.

The main contention of the learned counsel for the petitioner/plaintiff before this Court is that he is in joint possession and enjoyment of the property along with Defendant Nos. 1 to 4 and defendant No.5 is only a builder and defendant No.6 is a person who purchased flat 302 from defendant No.5, which fell to his share on 50-50 basis and therefore, the petitioner need not pay the Court fee under Section 34(1) APCF and SV Act and at the time of registration of the plaint, the Court has to take into consideration the pleadings alone, but the Court below did not consider his contention and committed an error in returning the plaint by Order 02.01.2018 granting seven daytime.

During hearing, learned counsel for the petitioner while reiterating the grounds urged in the petition placed reliance on the following three judgments of this Court:

- i) *Gundsay Swaroopa v Gundsay Balaiah*¹; and
- ii) *A. Divakrupamani v. A. Sakuntala Devi*²; and
- iii) *Mirza Raheem Baig v. Mirza Mahamood Baig*³.

There is no dispute with regard to the law declared in the above judgments. But, the petitioner instead of complying the objection raised by the Office of the Chief Judge, City Civil Court, Hyderabad, based on law, he straight away approached this Court under Article 227 of the Constitution of India against the Docket Order dt. 02.01.2018. When a remedy is available to the petitioner to resubmit the plaint complying the objection raised by the Court below, he is not entitled to approach this Court straight away invoking jurisdiction under Article 227 of the Constitution of India since no Order was passed by the Court below except return of the plaint raising certain objection and therefore, this Court is not inclined to set aside the Order passed by the Court below.

With the above observation, this Civil Revision Petition is disposed of. The Registry is directed to return the plaint to the petitioner. The Chief Judge, City Civil Court, Hyderabad, is directed to receive the plaint on its re-representation notwithstanding the time granted for the presentation. If the Chief Judge did not satisfy with the compliance of objection, he is

¹ 2005 Law Suit (AP)230

² 2000 LS (AP) 148

³ 2004 LS (AP 93

directed to afford an opportunity to the petitioner to advance argument and decide Court Fee payable on the plaint.

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

JUSTICE M. SATYANARAYANA MURTHY

22.02.2018
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C.R.P.No.1074 OF 2018

Dt.22.02.2018

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