HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1637 of 2018

ORDER:

The challenge in this Civil Revision Petition is the order dated 26.02.2018 in I.A.No.331 of 2010 in O.S.No.90 of 2006 passed by the learned Principal Junior Civil Judge, at Deverakonda, dismissing the application filed by the defendants 9 to 12 under Order VII Rule 11(b) CPC seeking to reject the plaint.

2) 1st respondent /plaintiff filed suit—O.S.No.90 of 2006 for partition and separate possession of his 1/10th share in plaint schedule properties against defendants 1 to 12. Defendants 1 to 8 were set *ex parte*. Defendants 9 to 12 filed written statement and contesting the said suit.

3 a) While-so, pending suit defendants 9 to 12 filed I.A.No.331/2010 seeking rejection of plaint on the following grounds: a) that the 1st respondent/plaintiff did not file market value certificate for all the suit schedule properties and further, he failed to plead how he calculated market value @ 14,000/- per acre; b) when the first relief sought is declaration of suit schedule properties as undivided Hindu joint family ancestral properties of plaintiff and defendants 1 to 7, the court fee cannot be paid on 1/10th share of such properties and as such suit was undervalued; c) that the plaintiff sought for cancellation of sale deeds to the extent of 1/10th, such relief cannot be granted as it was inexecutable; d) that the plaintiff sought relief of declaring that the plaintiff was entitled to separate possession of 1/10th share of suit schedule properties

and to allot the same to him but failed to value such relief, and e) when alternative relief was prayed, the same to be valued and court fee shall be paid on higher of such reliefs but the plaintiff failed to value the alternative relief of recovery of possession prayed by him.

b) The 1st respondent/plaintiff opposed the petition contending that the said petition was filed at belated stage after commencement of trial and that he already filed market value certificate issued by Sub-Registrar, Devarakonda. He further contended that he valued the suit under Section 24(a) & (d) of Andhra Pradesh Court Fees and Suit Valuation Act, 1956 (for short "APCF & SV Act"), whereas the court fee examiner valued the suit under Section 34(1) & 37 of said Act and the deficit court fee was also paid by him. He also contended that for the alternative relief no court fee was required to be paid and even if such relief was considered, the Court fee was sufficiently paid. He finally submitted that the petition was filed with *mala fide* intention to drag and delay the disposal of the suit. He thus prayed to dismiss the petition.

4) The Trial Court while dismissing the petition, in its elaborative order observed that none of the objections raised by the petitioners deserve merits for consideration and that the suit was properly valued and court fee was also sufficiently paid.

5) Heard arguments of Sri T. Lakshmi Narayana, learned counsel for petitioners and Sri A.Rama Krishna Reddy, learned counsel for 1st respondent/plaintiff.

6) Learned counsel for petitioners would argue in vehemence but without much conviction that the Trial Court has not properly assimilated the order in CRP No.4536/2010 whereunder this Court while setting aside the earlier order in I.A.No.331/2010 remitted back the matter to the Trial Court for deciding the aspects set out by this Court and virtually reproduced the earlier order in I.A.No.331/2010 by dismissing the petition.

7) I have carefully scrutinized the order impugned and without demur, it must be said that the Trial Court's order is perfect and impregnable as the learned Principal Junior Civil Judge, has pointedly and meticulously discussed the points set out by this Court in CRP No.4536/2010 and answered them perfectly with equanimity. On a threadbare analysis of the plaint, prior and subsequent to its amendment and other material on record, I must subscribe my stamp and agreement with the observations made by the Trial Court on the inept and circuitous mode on drafting the plaint reliefs which paved way for filing I.A.No.331/2010 by the defendants and carrying the matter to this Court twice in revision unnecessarily. As rightly observed by the Trial Court, the plaint averments would manifest that as per plaintiff, the plaint schedule properties are ancestral properties wherein he has right to $1/10^{th}$ share and therefore, he seeks for partition and separate possession of his $1/10^{th}$ share and putting him in possession thereof and further, he seeks for cancellation of five registered sale deeds so far as his $1/10^{th}$ share is concerned. Though the intention of the plaintiff is writ-large,

unfortunately, prior and amended plaint, particularly the relief portion, does not reflect the same in simple and straight manner, rather, instead of seeking for partition, the words 'declaration' and 'recovery of possession' are employed as a bull in china shop. At the first instance the Court fee was paid under Section 24(a) and (d) of the APCF & SF Act basing on the market value @ Rs.14,000/- per acre obtained from Sub-Registrar's office, Deverakonda. Later, the Court fee examiner deputed by the District Court objected the said valuation made under Section 24(a) and (d) instead of Section 34(1) and 37 of the APCF & SF Act and thereby the plaintiff amended the plaint as per orders in I.A.No.341/2009 and complied with the objections raised by the Court fee examiner and paid deficit court fee of Rs.1,237/-. A perusal of the amended plaint would show that in valuation paragraph, the plaintiff complied with the requirements under Sections 34(1) and 37 of APCF & SF Act to the extent of his share. This Court in CRP No.4536/2010 opined that the Trial Court did not discharge its legal obligation in respect of three material questions involved in the petition: a) whether the value of the property in full but not confined to 1/10th share of the plaintiff alone ought to have formed the basis for payment of the Court fee b) whether the value of the registered sale deeds as a whole should be the basis for payment of Court fee and not 1/10th share of plaintiff and c) whether the alternative relief of recovery of possession had to be independently valued.

8) The Trial Court taking into consideration the facts that the Court fee examiner raised an objection to the effect that valuation should be done under Section 34(1) and 37 but not under Sections 24 (a) and (d) of the APCF & SF Act and subsequent amendment of the plaint as per order in I.A.No.341/2009 and meeting the objections raised by the court fee examiner, has answered the above material questions raised by this Court in Paras 16 to 18 of the impugned order. Incidentally, the Trial Court has also answered the objections raised by the petitioners in their petition.

9) Sofaras the questions 1 and 2 raised by the High Court are concerned, the Trial Court basing on the judgment of this Court in ***Saramekala Anjaneyulu vs. Kurra Sambrajyam***[1], observed that plaintiff can pay Court fee under Sections 34(1) and 37 of APCF & SF Act on the share claimed by him and not necessarily on the full value. The same is manifest from Sections 34 (1) and 37 of APCF & SF Act itself and so far as the requirement under Section 37 is concerned, the same was reiterated in ***Saramekala Anjaneyulu***[1]**.** Thus, the Trial Court adequately answered the questions 1 and 2 raised by the High Court in CRP No.4536/2010.

10) The third question raised was whether the alternative relief of recovery of possession had to be independently valued. The Trial Court answered this question to the effect that though at first plaintiff claimed joint and constructive possession over the suit schedule properties and

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[1] 2004 (1) ALD 846 (AP)

prayed for separate possession, however, alternatively prayed that if the Court comes to a conclusion that plaintiff was not in such joint possession, recovery of possession of his share to be granted. Be that it may, he paid the Court fee under Sections 34(1) and 37 of APCF & SF Act. Payment of Court fee under Section 34(1) of APCF & SF Act indicates that he was not in joint possession. The Trial Court considering Section 6(2) of APCF & SF Act, observed that if reliefs are claimed alternatively, plaint shall be chargeable only with the highest of the fees chargeable on them and in this case since the plaintiff paid the highest Court fee under Section 34(1) it is sufficient even though the same is compared and considered with the Court fee payable under Sections 24(a) and 29 of APCF & SF Act. In short, to the question No.3, the Trial Court held that payment of Court fee under Section 34(1) of APCF & SF Act, which is on higher value, is sufficient and meet the requirement even if Sections 24(a) and 29 of APCF & SF Act are taken into consideration. On perusal of the above Sections and court fee requirements mentioned there under, I am in agreement with the answers furnished by the Trial Court.

11) Added to above, the Trial Court also answered the objections raised by the petitioners.

a) The first objection was that the plaintiff did not file market value certificate for all the suit schedule properties and failed to plead how it had arrived the market value of the property @ Rs.14,000/- per acre. The Trial Court observed, the plaintiff secured market value certificate from

Sub-Registrar, Devarakonda and filed through the list of documents, as per which, the market value of the suit schedule properties is Rs.14,000/- per acre. Therefore, this objection on the part of petitioners/defendants 9 to 12 is untenable.

b) The second objection was that when the plaintiff sought for declaration that the suit properties were undivided ancestral properties of plaintiff and defendants 1 to 7, Court fee cannot be paid on 1/10th share alone. The answer to this question is covered under answer to questions 1 and 2 posed by the High court and the same was reiterated by the Trial Court.

c) The third objection was that the plaintiff seeking cancellation of sale deeds to the extent of his 1/10th share cannot be granted as it is untenable. This objection was held by the Trial Court not covered under Order VII Rule 11 CPC to reject the plaint. The Trial Court was right to that extent. It may be added, the argument that even if plaintiff succeeds in suit, such relief is inexecutable is an untenable plea. In the event plaintiff succeeds, certainly the Court can carve out the plaintiff's share from out of the properties sold under the impugned sale deeds. In such an event the defendants 9 to 12, who are the purchasers of those properties may pray for equity. Ofcourse we are not at that stage now.

d) Sofaras objections 4 and 5 are concerned, the same were already covered under the answers narrated to the questions posed by the High Court.

12) So at the outset, the Trial Court has painstakingly answered all the questions raised by the High Court in CRP No.4536/2010 as well as the objections raised by the petitioners/defendants 9 to 12 in their petition and the essence of the answers is that the plaintiff has paid the Court fee correctly under Sections 34(1) and 37 of APCF & SF Act. The order of the Trial Court does not suffer from any perversity or illegality warranting interference of this Court.

13) In the result, this Civil Revision Petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.08.2018
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