

\* THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL No.816 of 2002

%03.07.2018

Between:

Nuthalapati Munaswamy Naidu

.. Appellant

And

N.A.Chengama Naidu  
and others

.. Respondents

Counsel for the Appellant : Smt. K.Sesharajyam  
for M.Koteswara Rao

Counsel for the respondents : Sri D.V.Starama Murthy  
for M.Suguna

< Gist :

> Head Note:

? CITATIONS:

1. (2015) 6 SCC 412
2. 2017 (3) ALD 260
3. AIR 2000 SC 2626
4. 1999 (1) ALT 211
5. 2017 (6) ALT 59
6. 2018 (1) SCC 604
7. 1989 (3) ALT 629
8. 2004 (2) ALD 152 NOC
9. AIR 1968 AP 239
10. AIR 1941 Madras 929
11. AIR 2001 Delhi 338
12. AIR 1962 AP 372

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

S.A.No.816 of 2002

JUDGMENT:

The plaintiff is the appellant in Second Appeal and the defendants 1 to 10 are the respondents and out of said defendants, from death of the defendants 2 & 9, the legal representatives came on record as the respondents 10 to 13 and respondent No.14 respectively as per the orders dated 11.06.2008 in S.A.M.P.No.1550 of 2007 and 11.10.2017 in S.A.M.P.No.2203 of 2017. The Second Appeal is maintained against the concurrent findings of the Courts below by saying it involves the substantial question of law and the said concurrent findings are perverse and unsustainable and contrary to law. The Second Appeal was admitted originally on 21.11.2003 showing the substantial questions of law raised in the grounds 1 to 4, though as contemplated by Section 100 CPC the Court has to formulate the substantial question of law from reading of the material and after hearing the appellant, if any, or relied upon any ground mentioned in the appeal as if the substantial question of law for maintainability of the Second Appeal arising of the substantial question of law no doubt mandatory for the appellant, and the scope of the formulation of substantial question of law by the Court therefrom is thus different. Thereby, this Court formulated

on 27.04.2018 from involvement of the substantial questions of law as under:

1. Whether the trial Court was in error in dismissing the suit instead of return of the plaint having found the plaintiff under valued the suit, with reference to the sale deed of 1989 relied on by the defendants to show the same for placing reliance instead of directing the plaintiff for not an *functo-officio* to deliver of the judgment, atleast invoking Order VII Rule 11 clause (b) and (c) C.P.C. read with 11 of the A.P. Courts Fees and Suits Valuation Act, 1956 and the impugment of the same by the plaintiff in the appeal attacking the whole judgment and confirmation of the same by the lower appellate Court is correct?
2. Whether the concurrent findings of the Courts below in this regard and otherwise on appreciation of fact and law are perverse or unsustainable and requires interference?
3. To what result?

2. Heard both sides at length and perused the material on record. The factual background necessary to mention is that for a total extent of Ac.11.92 cents there was a joint patta granted in the year 1958 by Survey and Settlement authorities under the provisions of the Estates Abolition Act for each 1/3<sup>rd</sup> in favour of three persons viz., Nuthalapati Abbayi Naidu @ Munaswamy Naidu for 1/3<sup>rd</sup>, Muppala Nagamma Naidu for 1/3<sup>rd</sup> and Muppala Seshama Naidu for 1/3<sup>rd</sup>. Said Abbayi Naidu @ Munaswamy Naidu had three brothers and of whom he was the eldest in their family after their late father and he acted as family manager thereby and patta was granted for that 1/3<sup>rd</sup> share on behalf of their joint family according to the claim in favour of said Abbayi Naidu since family manager for the benefit of himself and his three brothers and that the co-

brothers thereby got equal shares in the  $1/3^{\text{rd}}$  of 11.92 cents in Survey No.5 comes to Ac.3.97 cents viz., Abbayi Naidu @ Munaswamy Naidu entitled to  $1/4^{\text{th}}$  out of said 3.97 cents for the benefit of himself and his sons late Kuppa Naidu who left behind two sons N.Bhaskara Naidu-defendant No.3 and N.Muniratnam Naidu-defendant No.4 and Abbayi Naidu's another son N.Elappa Naidu-defendant No.1, another son N.A.Chengamma Naidu-defendant No.2 and another son Munaswamy Naidu-plaintiff. It is to say the plaintiff, defendants 1 to 4 of whom defendants 3 & 4 are sons of late Kuppa Naidu, the brother of plaintiff, defendant 1 & 2, who are sons of Abbayi Naidu got  $1/4^{\text{th}}$  out of Ac.3.97 cents supra and Abbayi Naidu's other three brothers each got  $1/4^{\text{th}}$  of Ac.3.97 cents viz. Gurrappa Naidu (brother of Abbayi Naidu) whose wife Nallakka @ Muniyamma, who are issue less and adopted defendant No.1, one of the sons of Abbayi Naidu, and thereby, Nallakka and Elappa Naidu together sold away their  $1/4^{\text{th}}$  share out of Ac.3.97 cents and Abbayi Naidu's another brother Subba Naidu so far as  $1/4^{\text{th}}$  share in Ac.3.97 cents concerned also had no children and he adopted Abbayi Naidu's another son N.A.Chengama Naidu-defendant No.2 and he performed his obsequies and he sold away, as such adopted son the  $1/4^{\text{th}}$  entitled share to Subba Naidu out of Ac.3.97 cents and coming to Abbayi Naidu's another brother

Venkataswamy Naidu the other  $1/4^{\text{th}}$  entitled shareholder out of Ac.3.97 cents. Said Venkataswamy Naidu 's wife was one Sayamma and defendant No.5-B.Doraswamy Naidu not even son and Sayamma and Doraswamy Naidu after the death of Venkataswamy Naidu sold away  $1/4^{\text{th}}$  share entitled supra. Defendant No.6 is one Kommini Jayamma, who acquired  $3/4^{\text{th}}$  share out of Ac.3.97 cents viz., that of Gurrappa Naidu, Subba Naidu and Venkataswamy Naidu supra and said Jayamma in turn sold away the same to the defendants 7 to 10.

3. In this factual background with the family genealogy, the sole plaintiff Munaswamy Naidu, one of the four sons of Abbayi Naidu including defendants 1 and 2 who are given in adoption to Abbayi Naidu's other brother Gurrappa Naidu and Subba Naidu as referred supra, in respect of five share holders shown with the plaint of which all relates to Survey No.5 supra with total extent of Ac.11.92 cents where a shareholder shown of Ac.1.33 cents sought for declaration of right and title in his favour and to restrain the defendants 1, 2 & 5 to 10 and their men from interfering with the plaintiff's right, possession and enjoyment of the plaint 'A' schedule property by granting permanent prohibitory injunction and for costs and other reliefs.

4. The value of the property shown is Rs.13,500/- and paid a Court fee of Rs.546/- under Section 24 (b) of the A.P. Court Fees & Suits Valuation Act, 1956. On half of said Rs.13,500/- which comes to Rs.6,750/-, since the relief is for declaration and injunction by claiming the plaintiff is in possession in seeking the relief mainly against defendants 1, 2 & 5 to 10 and the cause of action mentioned arisen in the months of February, March and May of the year 1990, when notices issued and replies received from some of them and subsequently from their alleged threatened interference which he could resist. It is claimed that the entire Ac.3.97 cents belongs to his father Abbayi Naidu and his father's brothers Gurrappa Naidu, Subba Naidu and Venkataswamy Naidu have no way concerned with it and as the defendants 1 and 2 were given in adoption respectively and among his other brothers Elappa Naidu, late Kuppa Naidu, represented by his sons Bhaskara Naidu and Muniratnam Naidu there was a partition and the plaint 'B' schedule property was not partitioned in that partition in 1962, since kept joint and the plaintiff and his brother late Kuppa Naidu and other brother were enjoying each 1/3<sup>rd</sup> out of the plaint 'D' schedule and the defendants 3 & 4 have been separated covered by the registered Partition Deed dated 07.04.1987 whereunder the plaint 'A' schedule falls to the share of plaintiff and the plaint

‘B’ and ‘C’ schedule falls to the shares of defendants 3 and 4 and the plaintiff is working as Principal in the Government Decree College at different places and was taking assistance of others in cultivation and looking after the land and as the defendants 7 to 10 are claiming rights in the plaint ‘D’ schedule property and trying to interfere with the plaintiff’s possession and enjoyment, he is constrained to file the suit with other averments not much of germane.

5. The written statement filed by the defendants 7 to 10 mainly in opposing the suit claim. As the defendants 1 to 6 having been served remained *ex parte*, the written statement context in nut shell of the defendants 7 to 10 was while denying the plaint averments and reply reference to the geneology and respective entitlements and claim as *bona fide* purchasers from K.Jayamma supra and not entitled to any of the reliefs by the plaintiff or other defendants, particularly from paragraph No.25 to 28 for earlier paragraphs covered above, contended of the Munsiff Court, Puttur, where the suit filed by the plaintiff, has no pecuniary jurisdiction for the plaint ‘A’ schedule property is worth now more than Rs.80,000/- and on that ground the suit is to be dismissed for the value shown by the plaintiff is very low and for proper Court fee not paid on proper value and the suit is filed without prayer for possession is not maintainable and the

defendants and their predecessors in interest perfected title to the property, which is described in the written statement schedule, as purchaser by adverse possession also and the suit claim is thereby barred by limitation and the suit is liable to be dismissed thereto.

6. The trial Court from the above context framed the following issues?

- 1) Whether the plaintiff is entitled for declaration of his right and title over the plaint schedule property as prayed for?
- 2) Whether the plaintiff is entitled for permanent injunction as prayed for?
- 3) To what relief?

After the said settlement of issues on 17.10.1995, the defendants 7 to 10 filed I.A.No.830 of 1991 to frame the additional issue in relation to the pecuniary jurisdiction of the Court and to decide the same as a preliminary issue, that petition was allowed partly on 08.07.1996 by framing the additional issue as to "Whether the Court has got pecuniary jurisdiction to entertain the suit?" in saying the issue relating to the jurisdiction will be decided in the suit itself by conducting full-fledged trial. Thus, the trial Court did not choose to decide as a preliminary issue pecuniary jurisdiction aspect, but for taken up trial on all issues to decide all issues and in the course of trial, the plaintiff came to the witness box as PW1 and examined one N.Chengaiah, B.Venkatadri

Naidu and N.Parasuramulu Naidu as PWs 2 to 4 and placed reliance upon the exhibits A1 to A15 viz., registered Partition Deed dated 27.04.1987, office copy of notice issued by the plaintiff, reply notice received from some of the defendants among 1, 2, 5 to 10, cist receipts, certified copies of the Settlement register and No.2 adangal and the Field Measurement books extracts for survey nos.4 & 5. On behalf of the contesting defendants 7 to 10, DWs 1 & 2 as P.Rangaiah Naidu-defendant No.8 and R.Doraswamy Naidu-defendant No.10 were came to the witness box and they placed reliance upon the exhibits B1 to B11 viz., the statement of PW1 dated 01.07.1979, registered Sale Deeds dated 24.12.1979, 26.06.1980, agreement dated 05.02.1987, payment endorsements dated 29.05.1987 and 27.09.1987, registered Sale Deed dated 03.08.1989, registered Partition Deed dated 14.12.1930 and office copy of notice and reply notice. The trial Court taken up to decide all the issues viz., issues 1 to 3 and additional issue on pecuniary jurisdiction aspect. It is held on issues 1 and 2 of the plaintiff is not entitled for declaration of title and consequential relief of injunction, and so far as the additional issue on pecuniary jurisdiction is concerned, it is observed that DW1 in his evidence stated that the suit property costs of Rs.75,000/- per acre and Ex.B8 Sale Deed dated 03.08.1989, which is prior to the date of suit,

refers the consideration of Rs.1,36,000/- and the plaintiff valued the suit for the plaint 'A' schedule property is Rs.13,500/-. In payment of Court fee on half of the market value under Section 24(b) of the A.P. Court Fees & Suits Valuation Act, 1956 even as per Ex.B8, the value of property is Rs.47,500/- per acre and the plaintiff did not file any document to prove the value of suit property and from perusal of Ex.B8 Sale Deed shows the value mentioned by the plaintiff is not correct and by the time the suit filed in the year 1990 the pecuniary jurisdiction of the Junior Civil Judge Court is Rs.25,000/- and not beyond and the costs for Ac.1.33 cents is more than Rs.50,000/- worth from Ex.B8 shows on average acreage value of Rs.47,500/- and thereby, the Court has no pecuniary jurisdiction to entertain the suit and in view of the valuation of the property, the additional issue is held against the plaintiff and ultimately dismissed the suit with costs in answering issue No.3 of what result.

7. The plaintiff aggrieved thereby maintained A.S.No.35 of 1997 before the learned Senior Civil Judge, Puttur, and the learned Senior Civil Judge by judgment dated 07.08.2001 having framed six points for consideration, which are extracted hereunder:

- 1) Whether the plaintiff's father's brothers have any right in the plaint D-schedule mentioned properties?

- 2) Whether the 1<sup>st</sup> defendant ceased to have any right in plaint D-schedule property after adoption to Gurrappa Naidu?
- 3) Whether the vendors under Exs.B2, B3, B4 and B8 have no right to alienate the property there under?
- 4) Whether the plaintiff is entitled for declaration of title and for permanent injunction as prayed for?
- 5) Whether the findings and conclusions arrived at by the lower Court in the judgment under appeal are liable to be set aside?
- 6) To what relief?

8. In answering the points, it was concluded that the plaintiff's father's brothers have right in the plaint 'D' schedule property, defendant No.1-N.Elappa Naidu went in adoption to Gurrappa Naidu, but not ceased to have his rights in the plaint 'D' schedule property. The vendors under exhibits B2 to B4 and B8 have right to alienate the property in favour of the defendants 7 to 10, and the plaintiff is not entitled for declaration of title and permanent injunction against the respondents in respect of the plaint schedule property. On point No.5 as to correctness of the trial Court's judgment are not considered, observed of the trial Court has properly considered the oral and documentary evidence placed on record in coming to correct conclusion on the issues framed and in giving its finding as to the plaintiff failed to establish his title over the plaint schedule property and exclusive possession for any entitlement to the relief of declaration and injunction and the findings arrived no way

requires interference and the appeal thereby dismissed in so holding.

9. The same is under attack in the Second Appeal with the contentions raised in the grounds of appeal including with the say of involving the substantial questions of law that the Court below ought to have seen that the suit schedule property is the self-acquired property of the father of appellant herein and the brothers of the father of appellant have no right therein, that the Court below ought to have seen that patta was granted in the name of the father of appellant in the year 1958 under the Estates Abolition Act and the suit property could not have been part of the Partition Deed-Ex.B9 dated 14.12.1930, that the Court below ought to have seen that having held that Paimash mentioned in Ex.A10-Settlement adangal is no tallying with survey number of the schedule land and erred in holding that the suit land was part of land covered by Ex.B9-Partition Deed dated 14.12.1930, that the Court below ought to have seen that the plaintiff and his brother have partitioned their properties including the suit land under the registered Partition Deed dated 27.04.1987 and there is nothing to suspect the said document, that the Court below erred in holding that under Ex.B1 the plaintiff admitted the share of defendant and even if it is taken as admitted of the only share of defendant No.1 and not otherwise, that the

Court below ought to have seen that the defendants 1 and 2 colluded with defendant No.6 and brought into existence exhibits B2 to B8 and those are not binding on the plaintiff, that the Court below went wrong in holding despite defendant No.1 who went in adoption to Gurrappa Naidu since got share as the properties are family properties with a share to Gurrappa Naidu, that the Court below erred in holding that it has no pecuniary jurisdiction to try the suit despite the value mentioned in the plaint clearly speaks the pecuniary jurisdiction and having if at all to so hold went wrong in deciding the matter on merits on other issues, that too while holding no jurisdiction to try the suit.

10. As referred supra, the Second Appeal is admitted by formulating the substantial questions of law as extracted above.

11. In fact, the Apex Court in *Foreshore Cooperative Housing Society Limited v. Praveen D.Desai (dead) through legal representatives*<sup>1</sup> observed the scope of Order XIV Rule 2 CPC and the Maharashtra State amendment to Section 9-A on the aspect of jurisdiction and power of the Court to decide its own jurisdiction including with reference to Sections 3 to 24 of the Limitation Act, particularly at paragraph Nos.35 to 38 by reproduction of Order XIV Rule 2 CPC that it confers power

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<sup>1</sup> (2015) 6 SCC 412

upon the Court to pronounce judgment on all the issues. But, there is an exception to that general rule i.e., where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issue of law, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law. It is observed that the exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force. In fact, Order XIV Rule 2 CPC is to be read with Order XX Rule 5 CPC. The scope of Order XX Rule 5 CPC not came for consideration before the two Judge Bench of the Apex Court in *Foreshore Cooperative Housing Society Limited's case* (supra 1) muchless as to any inconsistency between the two provisions and if so which one to prevail. For more clarity Order XIV Rule 2 CPC and Order XX Rule 5 CPC are reproduced hereunder:

Order XX Rule 5 CPC speaks that in suit in which issues have been framed, the Court shall state its finding or decision, with the reasons there for, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Order 14 Rule 2 CPC reads that:

2. *Court to pronounce judgment on all issues.*- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may

be disposed of on an issue of law only, it may try that issue first if that issue relates to ---

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

12. This Court in *S.Anjana Reddy v. Palvoi Ranga Reddy*<sup>2</sup> referring to Order XIV Rule 2 CPC and Order XX Rule 5 CPC observed in paragraph No.14C as follows:

14C. From its combined reading as also answered by this Court in CCCA.No.128 of 2009 dated 02.12.2015 between *Smt. Maimoona Begum v. G.Sarat Babu* reported in 2016 (2) ALD 610, on the scope of Order XX Rule 5 read with Order XIV Rule 2 CPC particularly from Paras 7 & 8 of the judgment, a combined reading of these provisions make it abundantly clear on question of law regarding jurisdiction or other legal bar to a suit once required to be decided and if was decided holding lack of jurisdiction or for other legal bar to maintain the civil suit there is no need to deal with other issues for practically the Court therefrom becomes *functus officio*. In this regard there is no any inconsistency between the two provisions. It is to say at the cost of repetition that if the Court gives any finding on the preliminary issue of lack of jurisdiction or other legal bar inherently which goes to the root of the matter, Court cannot decide the *lis* on merits and consequently *functus officio*.

13. In fact, from the combined reading of the two provisions, the observations of this Court in the expression *supra* with reference to the expression of the Apex Court in *Foreshore Cooperative Housing Society Limited's case (supra 1)* it is clear that once the trial is taken up and not confined to that issue letting evidence, but allowed the evidence to be let in on all issues the Court has to decide by giving finding on all issues. From the

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<sup>2</sup> 2017 (3) ALD 260

combined reading of the provisions also, before going further it is also necessary to refer the expression of the Apex Court in State of Karnataka v. Registrar General, High Court of Karnataka<sup>3</sup> that the judicial decree requires the judgment and orders to confine to the facts and legal appreciation involved and to give finding on all the issues involved therein, from the very wording that the suit in which issues have been framed, from reading of Order XX Rule 5 CPC the Court shall say its finding or decision with reasons therefor upon each separate issue unless the finding upon any one or more of the issues is sufficient, and by referring to Order XIV Rule 2 CPC it also speaks from non-obstante clause of notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues and where issues both of fact and law arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues and until after that issue has been determined, and may deal with the suit in accordance with the decision on that

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<sup>3</sup> AIR 2000 SC 2626

issue. Thus, if at all the Court wants to deal with the preliminary issue out of other issues formulated, it has to decide that issue if at all by confining the trial only to that issue without undertaking the trial on the other issues, otherwise from the combined reading of the provisions, particularly Order XIV Rule 2 sub-rule (1) CPC with the non-obstante clause the Court shall take up trial on all issues and give its findings on all issues as also mandated by Order XX Rule 5 C.P.C.

14. Here so far as the finding of the trial Court on additional issue on the value of suit and payment of Court fee and its stamp duty is concerned, the lower appellate Court did not discuss any thing as referred supra in this regard on point No.5 formulated by it for answering under Order XL1 Rule 31 CPC. Section 6 CPC says save insofar as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

15. So far as the pecuniary limits is concerned, it is the A.P. Civil Courts Act, 1972 that fixed by enhancement by amendment from time-to-time to consider as to what is the pecuniary jurisdiction of the Junior Civil Judge Court as on

the date of filing of the suit in the year 1990 to consider therefrom. In fact, the trial Court in its judgment mentioned the pecuniary limit is Rs.25,000/- and not beyond for the Junior Civil Judge as per the A.P. Civil Courts Act, 1972 provisions by then prevail as on date of the suit. Section 21 CPC reads as follows:

21. Objections to jurisdiction:- (1) No objection as to place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

16. Section 21(2) CPC which deals with pecuniary jurisdiction. Here, no doubt in the written statement itself an objection to the value of plaint was taken of the same as under valued and had it been properly valued the Junior Civil Judge has no pecuniary jurisdiction. The valuation for the purpose of Court fee to be arrived first and that is to be adopted for the purpose of jurisdiction as held by the Full

Bench of this Court in Kalla Yadagiri v. Kotha Bal Reddy<sup>4</sup>, the same was quoted with approval in Syed Nazinnunnisa v. Syed Azmathullah<sup>5</sup> observed of the value for the purpose of Court fee must first be arrived for all purposes be adopted as value for the purpose of jurisdiction with no other alternative; in view of the Full Bench expression of the Apex Court in C.Venkata Swamy v. H.N.Shivana (died) by legal representatives<sup>6</sup> observed that once the Court fee paid by the plaintiff, the value arrived for the Court fee is the value for jurisdiction. So far as the Court fee is concerned, it is between the Court and the plaintiff and not between the plaintiff and defendant, though the defendant can raise a plea and bring any material to assist the Court. Further, as per Section 11 of the A.P. Court Fees & Suits Valuation Act, 1956, in every suit the Court shall before ordering the plaint to be registered, decide on the allegations contained in the plaint and the material furnished by the plaintiff the proper Court fee payable thereon. The decision of the Court shall be no doubt subject to review from time-to-time as and when occasion requires, so to revise including for any inspecting Court invoking Section 16 of the A.P. Court Fees & Suits Valuation Act, 1956 for the Inspecting Court to give directions to

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<sup>4</sup> 1999 (1) ALT 211

<sup>5</sup> 2017 (6) ALT 59

<sup>6</sup> 2018 (1) SCC 604

guide for re-determination, if any, though mere check slip of the Inspecting Court is not binding in such determination, but for a rehearing of the plaintiff and application of the judicial mind for re-determination, if any, leave about such power even available to the appellate Court including with reference to the Sections 12 to 15 of the A.P. Court Fees & Suits Valuation Act, 1956. Sub-sections (2) & (4) of Section 11 of the A.P. Court Fees & Suits Valuation Act, 1956 speaks that a preliminary issue on sufficiency of Court fee for pecuniary jurisdiction can be decided, however, once the trial started and it encroaches upon another issue also taken up decide as a preliminary issue, but for along with other issues finally as held by this Court in Satyanarayana v. Om Prakash<sup>7</sup> and P.Balaraju v. C.J. Yadav<sup>8</sup> among others. As held by the Full Bench of this Court in Sri Maharaj Kumarika Subarna Rekha Mani Devi v Ramakrishna Deo<sup>9</sup> the Court further found any Court fee is deposited or any valuation not properly made returned the plaint by asking the plaintiff to pay the deficit Court fee, and it is only when such direction is given and not complied as contemplated by Order VII Rule 11 clauses 2 & 3 CPC the Court can reject the plaint. Thereby and also from the Full Bench judgment of the Madras High Court in Velagala

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<sup>7</sup> 1989 (3) ALT 629

<sup>8</sup> 2004 (2) ALD 152 NOC

<sup>9</sup> AIR 1968 AP 239

Sriramareddi v. Karri Sriramareddi, being minor by certificated guardian, G.Bhima Rao<sup>10</sup> that was quoted with approval in G.C.Kumar v. Ashok Kumar<sup>11</sup> the same is not final but tentative and if at all in course of enquiry or trial it finds any deficiency of Court fee, for so ordering to be paid including while pronouncing judgment. Once that is the case though decree to be drawn up, it cannot be allowed to be executed with endorsement until difference Court fee is paid, the same is followed by this Court way back in quoting with approval in Penmetcha Ananda Vijaya Venkatrama Timma Jagapathi Raju v. Gudumogula Tatayya<sup>12</sup> with reference to Section 11 of the A.P. Court Fees & Suits Valuation Act, 1956 supra. Once such is the case and if at all the trial Court found on the additional issue that the Court fee paid by the plaintiff is under valued, it could have been directed the plaintiff including if at all with reference to the value mentioned in the Sale Deed of the year 1989 placed reliance by the defendants is more with reference to it also in directing to pay the deficit Court fee either by return of the plaint or otherwise or even while pronouncing judgment with above endorsement required of unexecutability of decree without payment of deficit Court fee. It was not done by the trial Court. The

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<sup>10</sup> AIR 1941 Madras 929

<sup>11</sup> AIR 2001 Delhi 338

<sup>12</sup> AIR 1962 AP 372

trial Court should not have been dismissed the suit technically saying it has no pecuniary jurisdiction by placing reliance on one of the value of the document of the property referred by the defendants without even considering and without even affording opportunity in relation thereto. At best as referred supra it could have been directed the plaintiff to pay the deficit Court fee and if failed to pay, it should have been rejected the plaint and otherwise while pronouncing the judgment would have been directed to pay the deficit Court fee and should not have been dismissed the suit, that too it cannot arrive any conclusion of law of pecuniary jurisdiction when the plaint valued on its face shows it got pecuniary jurisdiction, and once the Court fee is not revised by revising the value for purpose of jurisdiction on pecuniary aspect, it cannot say that it has no pecuniary jurisdiction much less to dismiss the suit on that ground. The dismissal of suit claim on the ground of so-called pecuniary jurisdiction in answering the additional issue by the trial Court is unsustainable so also in without discussion by the lower appellate Court in confirming the trial Court's judgment even point No.5 formulated in this regard to cover it also.

Having regard to the above and in the result, this Second Appeal is allowed by setting aside the said findings

of the Courts below and remanded the matter to the trial Court to give a finding as to the plaint is under valued and if so to fix the value in directing to so value properly by payment of deficit Court fee by return of plaint and it is on such compliance, else to reject, if found it exceeds the pecuniary jurisdiction, to return the plaint by fixing time for presentation before the proper Court and the evidence already recorded no way invalidated for any other Court having pecuniary jurisdiction therefrom including if at all by that other Court to proceed further with the matter and to give its finding on own merits as expeditiously as possible from the said evidence on record and after further hearing on merits afresh. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

03.07.2018

Note: L.R. Copy to be marked

(B/ O)  
MVA