

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AS.No.1406 of 2018

ORDER :

When this appeal was initially filed, the Court raised an objection about the valuation. So the matter was called at the Bench.

This Court had heard Sri E.V.V.S.Ravi Kumar, learned counsel, on the issue of valuation. Relying on Section 49 explanation (3) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short 'the Act'), this Court initially was of the opinion that the Court fee paid is correct and the appeal was registered. However, along with this application, other appeals including AS(Sr).No.2436 of 2018 came up for hearing. In the course of the submissions of these cases, it was brought to the notice of the Court that just before the order dated 10.08.2018 was passed by this Court, a Division Bench of this Court in A.S.Nos.908 and 910 of 2017 heard a similar issue and passed orders. Thereafter, a copy of the said order was also supplied by one of the learned counsels appearing in connected matters. The copy was furnished to Sri E.V.V.S.Ravi Kumar, and also to Sri S.Subba Reddy counsel appearing in AS(Sr).No.2436 of 2018. With the consent of both the counsels, this matter was heard again on 10.09.2018. On that day, Sri S.Subba Reddy, adopted the arguments of Sri E.V.V.S.Ravi Kumar, and relied upon another Full Bench decision of this Court and argued the

matter. Therefore, with the consent of the counsels concerned and in view of the fact that a Division Bench has given an order in a similar case, this matter was reopened and heard again.

The facts important in this case are as follows:

(a) The suit is filed for recovery of a sum of Rs.7,95,666/-. The suit was decreed for the said amount along with interest at 12% from the date of filing of the suit till the date of the decree and subsequent interest was awarded. Questioning the said judgment and decree, the defendant filed the appeal.

(b) In line with the provisions of the Act, interest was calculated up to the date of the decree and this amounted to Rs.6,85,833.33. The total value came to Rs.14,81,499.33. Court fee was paid thereon. If the value of the appeal is above Rs.10 lakhs, the appeal lies to the High Court as this matter arises from Andhra Pradesh. Therefore, it is the contention of the learned counsel for the appellant that as the value of the appeal as calculated in terms of Section 49 (3) of the Act, is above Rs.10 lakhs, the appeal is maintainable in this Court.

This Court drew the attention of the learned counsel to the Judgment of the Division Bench in AS.Nos.908 and 910 of 2017. In the case before the Division Bench also the two suits in the lower Court on the basis of which appeals were filed were OS.No.116 of 1981 (AS.No.908 of 2017) which is

valued at Rs.1,53,000/- and OS.No.307 of 1979 (AS.No.910 of 2017) which was valued at Rs.5.01 lakhs. The Division Bench, after considering the law on the subject including the five Judge Bench decision in **Vallabhaneni Lakshmana Swamy v. Valluru Basavaiah¹**, came to a conclusion that the value of the suit is the determining factor and directed the return of the suit OS.No.307 of 1979 (AS.No.910 of 2017) for filing before the District Court. The connected matter arising out of AS.No.1196 of 1991 was also directed to be presented before the District Court as both the appeals arise out of a common judgment. Therefore, the Division Bench held that the value on the date of the filing of the suit is the critical factor. Section 17 of the A.P.Civil Court Act, 1972, while prescribing the Courts to which appeals would lie, clearly states that the appeal should be determined on the basis of the amount or value of the subject matter of the suit. This has also been upheld by a learned single Judge of this Court in **M.Mohan Reddy v. D.Rajamallu²**, wherein both Section 49 explanation (3) of the Act and Section 17 of the A.P.Civil Court Act were considered. After considering both the provisions which are relied upon by the learned counsels in this case, the learned single Judge came to a conclusion that Section 49 of the Act deals with the payment of Court fee only. The said provision cannot be relied upon for

¹ 2004 (5) ALT 755

² 2015 (1) ALD 447

determining the pecuniary jurisdiction of the appellate Court. For this purpose, the learned single Judge held that only Section 17 of the A.P.Civil Court Act would apply. The office objection was upheld.

These two judgments therefore, clinch the issue. Sri E.V.V.S.Ravi Kuar, in all fairness also produced before this Court a judgment of a Bench consisting three judges reported in ***Kalla Yadagiri v. Kotha Bal Reddy***³. This case also deals with the jurisdiction of the Courts after the earlier amendment of the A.P.Civil Court Act. In para 7 of this judgment, there is comprehensive discussion on the subject. The three judge Bench also clearly held that the A.P.Civil Court Act is subsequent to the Court Fees Act and it did not make a departure or seek to explain the provisions of the Court fees Act. Therefore, the Bench also relied upon Section 17 and held the words ‘amount or value of the subject matter of the suit’ are important and concluded as follows in para 8:

“The value for Court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value of the Court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of Court-fees that determines the value for jurisdiction in the suit and not vice versa.”

³ 1999 (1) ALD 222

Thus, the Bench clearly held that the subject matter of the suit and the Court fee paid thereon will determine the jurisdiction. The value of the claim stated by the plaintiff in the opinion of the three Judge Bench is of primary importance.

During the course of hearing, as the issue is important, in view of the recent amendment to the A.P.Civil Courts Act, a number of counsels expressed their opinions on the subject. Sri P.Rajashekhar, learned counsel also assisted the Court and submitted a judgment reported in **G.Venkata Appa Rao v. P.Sivaramakrishna Prasad**⁴, wherein a learned single Judge of this high Court upheld a very similar contention relying upon by a Full Bench decision of the Madras High Court reported in **Putta Kannayya v. Venkata Narasayya**⁵. The learned single Judge held that for determining the forum to which the appeal lies, the amount or value of the subject matter of the suit is the critical factor. Sri P.Rakashekhar, learned counsel, while assisting this Court produced this judgment and also the Full Bench of the Madras High Court which clearly held that the value of the subject matter of the suit at the time of its institution and the amount or value of the subject matter as fixed in the plaint would determine the Court to which the appeal lies. Para 5 of the judgment is reproduced here:

⁴ 1979 (1) ALT 334

⁵ AIR 1918 Madras 998

“The value of the subject matter of a suit must be its valuation at the time of its institution and the amount or value of the subject matter as fixed in the plaint should determine the court to which the appeal lies. The theory of an appeal is that the suit is continued in the Court of appeal and re-heard there.”

The Division Bench of the A.P.High Court in AS.Nos.908 and 910 of 2017 also considered the judgment of Full Bench in **Vallabhaneni Lakshmana Swamy** (1 supra) directed the appeals to be presented to the District Court basing on the value of the suit.

In view of all these authoritative pronouncements of the Division Bench of this Court in AS.Nos.908 ad 910 of 2017 and also three judges of this Hon'ble Court in the case of **Kalla Yadagiri** (3 supra), this Court is of the opinion that the earlier order passed by this Court on 10.08.2018 should be recalled.

This Court, therefore, holds that the Office Objection raised is correct. The Office is, therefore, directed to return the original copy of the judgment and decree along with appeal grounds etc., to the learned counsel to present the same before the appropriate Court. The Court fee that is paid shall also be returned to the learned counsel for the appellant under due acknowledgment.

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

D.V.S.S.SOMAYAJULU, J

Date: 09.11.2018
KLP

