

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4562 OF 2018

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - plaintiff challenging the order, dated 19.06.2018, in I.A. No.492 of 2018 in O.S. No.203 of 2011 passed by the learned XI Additional Chief Judge, City Civil Court, Hyderabad, whereby the petition filed under Order VII, Rule 11 read with 151 of the Code of Civil Procedure, 1908 (for short 'Code'), was dismissed while directing the petitioner - plaintiff to pay court fee on the plaint under Section 34 (1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short 'Act, 1956').

2. The petitioner - plaintiff filed a suit for partition and separate possession of schedule properties claiming that she is in joint possession of the schedule properties, but whereas, respondent No.4 - defendant No.4 raised a specific plea in paragraph Nos.4 and 5 of the written statement that fixed court fee paid under Section 34 (2) of the Act, 1956 is not correct as she was never in joint possession of the properties along with defendants, but in the petition under Order VII, Rule 11 of the Code, such question cannot be decided as it is limited to certain clauses (a) to (d). According to Order VII, Rule 11 of the Code, clause (b)- where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so, the Court may

reject the plaint. Even according to clause (c) of Rule 11 of Order VII of the Code - where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so, the Court can reject the plaint. But, in the present case, instead of passing any order under Order VII, Rule 11 of the Code, the Court went on deciding the court fee payable on the plaint exercising power under Section 11 of the Act, 1956. Clause (b) and (c) of Rule 11 of Order VII of the Code can be invoked only when the Court determined the valuation of the suit and directed him to pay court fee within the specified time or where the plaint was written on insufficiently stamped paper, and if the plaintiff fails to make good the deficit stamp within the specified time, the Court may reject the plaint by exercising power under Order VII, Rule 11 of the Code. Instead of filing an application questioning sufficiency of court fee paid on the plaint, inviting an order from the trial Court, respondent No.4 filed an application under Order VII, Rule 11 of the Code, and such contingency will arise only after determining the court fee payable on the plaint but not in a petition under Order VII, Rule 11 of the Code, such question cannot be decided and, therefore, the trial Court committed an error in determining the court fee payable on the plaint in a petition filed under Order VII, Rule 11 of the Code, and such jurisdiction can be exercised only in clause (a) to (f) of Rule 11, Order VII. But, the

order passed by the trial Court is beyond the scope of jurisdiction under Order VII, Rule 11 of the Code.

3. Therefore, the order under challenge is set aside leaving it open to the defendants to file application to determine court fee payable on the plaint and, accordingly, the Civil Revision Petition is allowed. However, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

October 31, 2018
Mgr

M. SATYANARAYANA MURTHY, J

