

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

SECOND APPEAL No.220 of 2017

JUDGMENT:

This appeal is filed by the appellant/plaintiff, aggrieved by the judgment and decree dated 30.03.2015 in A.S.No.22 of 2014 on the file of the II Additional District Judge, Madanapalle, where under the learned Judge confirmed the judgment and decree dated 23.06.2014 in O.S.No.14 of 2009 on the file of the Senior Civil Judge, Punganur.

2) Heard both sides.

3) The Second Appeal is admitted for considering the following substantial questions of law:

- 1) In the absence of any plea in the written statement and raising of any defence at or before settlement of issues, whether it is left open regarding the pecuniary jurisdiction of the Court to consider?
- 2) Whether the Court is *functo-officio* regarding the sufficiency of court fee till pronouncement of judgment even initially any value accepted while numbering?
- 3) The return of plaint by the learned Senior Civil Judge (trial Court) for presentation before the Junior Civil Judge having jurisdiction from the value saying below Rs.1,00,000/- though mentioned about Rs.1,02,657/- as contemplated by Order 7 Rule 10 C.P.C. is unsustainable and the lower appellate Court's judgment confirming the same by Order 41 Rule 31 CPC to the prejudice of the plaintiff/ appellant is unsustainable?

4) To what result?

4. Having admitted the second appeal for final disposal from the substantial questions of law, the factual matrix is that it is a suit for partition filed by sole plaintiff against three defendants, one of them added two years after the suit in 2011 i.e. 3rd defendant as per the orders dated 02.02.2011 in I.A.No.321 of 2010 in O.S.No.14 of 2009 on the file of the Senior Civil Judge, Punganur. The plaintiff pleaded joint possession with the defendants in seeking the partition for division of the plaint schedule property with 5 items into 12 equal shares and to allow one such share to the plaintiff and claimed past profits of Rs.10,000/- per year per crop for the past three years with interest thereon and also claimed future profits of Rs.50,000/- p.a. per crop commencing from Karthika Maasam, 2005 to 2008 payable in 2009 and till date of said partition to be affected with separate possession to be delivered, with interest thereon at Rs.18,000/- p.a. and for costs and sought other reliefs. In the valuation para, the market value of the plaint schedule property is mentioned as per the valuation certificate issued by the Sub-Registrar, Punganur, of Rs.3,62,500/-, and plaintiff's 1/12th share therein shown as Rs.30,210/- and 3/4th market value thereof for the purpose of court fee had it been under Section 34(1)

of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short 'the Act') for the purpose of valuation under Section 50, half of the court fee as Rs.22,657/- . However, paid fixed court fee under Section 34(2) of the Act from the joint possession pleaded.

5. So far as past profits concerned, for the three years as referred supra valued at Rs.30,000/- under Section 20 of the Act and so far as the future profits concerned valued at under Section 41 of the Act Rs.1,50,000/- by payment of Rs.2,466/- court fees. It is the aggregate shown as value of the suit for purpose of court fee which is to be read as purpose of jurisdiction as per the settled law of this Court at Rs.1,02,657/- .

6. The defendants 1 and 2 filed separate written statements and 3rd defendant adopted the written statement of 1st defendant being his daughter for her claim through registered gift deed dated 28.01.2009 for part of the suit property. There is no specific plea regarding the pecuniary jurisdiction of the Court, but for, on sufficiency of the court fees.

7. The trial Court framed the issues and additional issues as follows:

1. Whether the plaintiff is entitled to preliminary decree?
2. To what relief?

Additional issues:

1. Whether the first defendant purchased 11/24th share in suit property?
 2. Whether D1 executed registered gift deed on 28.1.2009 in favour of his daughter Sumitra in respect of items 1 and 2 of suit property for 11/24th share of D1?
 3. Whether the suit is barred by limitation?
 4. Whether the court fee paid is proper and correct?
 5. Whether the suit is bad for misjoinder or nonjoinder of parties?
8. Pursuant to the issues, trial is taken up and in the course of trial, on behalf of the plaintiff, the plaintiff himself was examined as PW.1 and Exs.A1 to A11 were marked and on behalf of defendants, Dws.1 and 2 were examined and no documents were marked.
9. It is, from the above in deciding the suit, the trial Court taken up only additional issue No.4 as to whether court fee paid is proper and correct? The finding therein is, particularly from para No.20 onwards, that out of joint family property, to the ancillary to the main relief of partition as laid down in Parvathi and another v. Venkataramana Prasad(ILR 2003 KAR 2306) and in this case plaintiff valued past and future profits and paid court fee.

Though, plaintiff paid for the profits as ancillary relief, Court is bound to consider the main relief for the purpose of court fee and jurisdiction. Hence, what the value for the purpose of partition of property for 1/ 12th share comes to Rs.22,657/- is below the pecuniary jurisdiction of the Court and in view of the finding, the court of the Senior Civil Judge has no pecuniary jurisdiction, thereby, plaint is returned to present in proper court i.e., Principal Junior Civil Judge, Punganur, within one week from that day.

10. When the same was impugned in the lower appellate Court, the learned Additional District Judge, by judgment dated 30.03.2015, by formulating at para-14, the point as to whether decree and judgment of the trial Court supra dated 23.06.2014 is liable to be set aside or not and reproduced only what the trial Court judgment contained mostly in juxta position by saying ultimately at the end paras of in view of the discussion and observations concluded of trial Court is reasonable based on the evidence available on record and thereby, not inclined to interfere with the conclusion, dismissed the appeal by confirming the trial Court's judgment.

11. In fact, for the sufficiency of court fee, the Court got power to decide as contemplated by Section 11 of the Act till pronouncement of judgment and till then, no way *functio-officio*. It is, in addition to the power of the inspecting Court contemplated by Section 15 of the Act, if at all to revise any amount arrived initially while numbering for accepting or refusing the value claimed by the plaintiff, by the Court as the case may be. It is to say mere acceptance of plaint by accepting the value of the plaintiff or any tentative revision by enhancement of the court fee or reducing of court fee initially for numbering by Court is not the be all and end all, for, the Court got power till pronouncement of judgment to revise the court fee to meet the sufficiency of court fee, though the defendants have no contesting role, but for, if at all to bring the facts to the notice of the court and the court fee issue is between the plaintiff and the Court in arriving at a court fee payable on the lis, more particularly before the Court for the respective claims of the plaintiff give his possession findings by any counter claim by the defendants as contemplated by Order 8 Rule 6A C.P.C.

12. By enhancement of court fee if the pecuniary jurisdiction of the Court changed, the court is entitled to

return the plaint by giving a finding specifically it is on payment of the enhanced court fee. If the Court feels that any court fee is excessively paid, Court is bound and otherwise even entitled from the combined reading of sections 63 to 68 of the Act under Chapter 7 and law is fairly settled Court got suo moto power without even asking for ordering refund of court fee by giving certification for claim through revenue authorities as the case may be.

13. Here, in the case on hand as the trial court observed is by simply referring to a Karnata High Court judgment in Parvathi (supra) of profits issue is an ancillary to the main relief of partition. However, the Karnataka High Court expression much less the discussion undertaken by the trial Court in para-23 of its judgment no way stated what is the value of the past profits to be taken into consideration for purpose of valuation and jurisdiction of the court in relation to pecuniary value to be arrived at.

14. In fact, Section 20 of the Act ordains of the payment of court fee for any claim of past profits. So far as future profits concerned, though plaintiff did not value, plaint cannot be rejected including by ordering to pay any value for future profits including by invoking clauses (b) or (c) of Order 7 Rule

11 CPC, more particularly, for the fact that for future profits to value and to pay court fee, there is no accrued cause of action as on that date and that is also the law laid down by the Supreme Court in *Gopalakrishna Pillai v. Meenakshi Ayal*¹. However, even the expression no way says plaintiff if paid any court fee by valuing, the future profits cannot be taken into consideration as including for determination of the future profits or for accounting of the income derived by one of the persons in management of the joint family and coparcenary property as contemplated by Order 20 Rule 18 CPC from any preliminary decree defining a right in a suit for partition for the profits to be determined pursuant thereto by applying for final decree petition including by appointment of an advocate commissioner to ascertain the profits as contemplated by Order 26 Rules 13 and 14 C.P.C. from the said amount to be arrived and court fee has to be paid on the said amount even for passing of a final decree as contemplated by Section 20 of the Act. Once such is the case, what is the court fee paid for the future profits is a tentative value, Court is bound to consider the same. Thereby, the finding of the trial Court that for future profits or past profits valuation even made that cannot be taken into

¹ AIR 1967 SC 155

consideration for determining the pecuniary jurisdiction of the Court is unsustainable. Once such is the case, the lower appellate Court's confirmed judgment in this regard is unsustainable and liable to be set aside, more particularly, for the reason that it is hit by perversity and outcome by ill-appreciation. It is also for the reason that Order 20 Rule 5 Ordains by use of the word 'shall' and that is also the law of the Apex Court in the State of Karnataka v. Registrar General, High Court of Karnataka² that 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 wording that in suits in which issues have been framed, Court shall give its finding or decision, that the reasons there of upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. Coming with reference to it, the scope of Order 14 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 law and of fact arise in the

² (AIR 2000 SC 2626)

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 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 issue. Thus, by the combined reading of Order 20 Rule 5 C.P.C. and order 14 Rule 2 C.P.C. with non-obstante clause what it mandates is if at all the Court wants to deal with a preliminary issue out of other issues formulated without undertaking the trial on the other issues only to take trial if necessary on that preliminary issue and decide the same. Otherwise from sub-section (10) part clause (1) of Order 14 Rule 2 C.P.C. with the non-obstante clause court has taken up trial on all issues, give finding on all issues, which is mandatory. Here, the trial Court committed a grave error, thereby, so also in confirming of the same by the lower appellate Court. Though, the appellate Court formulated specific points for determination, and giving answers thereof irregularly, which goes to the prejudice of the plaintiff/appellant as contemplated by

Order 41 Rule 31 CPC. Hence, the trial Court's judgment confirmed by the lower appellate Court is set aside. It is made clear that once the court fee paid by the plaintiff for the future profits also though otherwise not bound to pay and valued the same in arriving the valuation for the purpose of jurisdiction, which must be as per the expression of the Apex Court in C.Venkata Swamy v. H.N.Shivanna (dead) by legal representatives³ and Full Bench expression of this Court in Kalla Yadagiri v. Kotha Bal Reddy⁴ quoted with approval in Syed Nazinnunnisa v. Syed Azmathullah⁵, wherein it is categorically observed that what is the value arrived for the purpose of court fee must for all purposes be adopted as value for the purpose of jurisdiction with no other alternative by the Court and that too, when the trial Court did not even refund the court fee with any observation of excess payment and it is not the case by giving any finding that no future profits are entitled much less for any relief of partition, the value arrived by the Court of Rs.1,02,653/- is the proper value for purpose of jurisdiction, thereby, from the expression of the Full Bench in Kalla Yadagiri (supra) the trial Court could have been proceeded to decide all issues,

³ 2018(1) SCC 604

⁴ 1999(1) ALT 211

⁵ 2017(6) ALT 59

for, not even a case of any enhancement of court fee, for not even any issue framed regarding the pecuniary jurisdiction.

15. Accordingly, this appeal is allowed by setting aside the judgments and decrees of both the Courts below and remanding the matter to the trial Court, to dispose of the suit afresh basing on the evidence available on record and give its findings on all the issues as contemplated by the combined reading of Order 20 Rule 5 r/ w Order 14 Rule 2 CPC on its own merits, within four months, from the date of receipt of copy of this order.

16. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.



JUSTICE Dr. B.SIVA SANKARA RAO

Date: 10.04.2018
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