

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.6688 OF 2018

O R D E R

Revision petitioner is the plaintiff. He filed the suit in O.S.(SR).No.6034 of 2018 on the file of Principal Senior Civil Judge, Tirupathi, for declaration of title and perpetual injunction. As the Sub Registrar, Renigunta did not issue the market value certificate, he notionally assessed the value of the suit schedule property at Rs.10,00,000/- and paid the court fee as per the said notional value. The trial court, while not accepting the notional value assessed by the plaintiff for the purpose of payment of court fee under Section 24(b) of Andhra Pradesh Court fee and Suits Valuation Act, 1956 (for brevity 'the Act'), returned the plaint with the following endorsement, by granting fifteen days time:

"This court considered the plaintiff's averments only to accept the valuation and returned the plaint to file market value certificate in order to take decision on the jurisdiction of this court, basing on the certificate of the market value under Section 24(b) of the Andhra Pradesh Court fees and Suits Valuation Act, 1956. Explain how court can accept the notional value fixed by the plaintiff under Section 24(b)."

Aggrieved by the above endorsement, the plaintiff filed the present revision.

2. Learned counsel for the petitioner submits that when the petitioner applied for issuance of market value certificate, the Sub-Registrar, Renigunta, made an endorsement stating that the survey number, in which the suit schedule property is situate, i.e., Sy.No.242 of

Tiruchanur village, is classified as endowment land and no value is fixed by the market value committee. He submits that the plaintiff enclosed said endorsement, along with the plaint and thus complied with the mandatory requirement of enclosing a certificate under Rule 3 of the Andhra Pradesh Court-Fees and Suits Valuation Rules, 1987. He submits that as the competent authority has not fixed the market value of the suit schedule property, the petitioner/plaintiff, notionally valued the plaint schedule property at Rs.10,00,000/- and paid the court fee on the said notional value. Relying on the judgment of the Apex Court, in *TARA DEVI v. SRI THAKUR RADHA KRISHNA MAHARAJ*¹ learned counsel submitted that valuation of suit made by plaintiff according to his own estimation of the relief claimed by him, has to be accepted by court, unless it is arbitrary, unreasonable and deliberately underestimated. He submitted that in the present case, the court has not found that the valuation made by the plaintiff is arbitrary, unreasonable or deliberately underestimated. Therefore, in such circumstances, the value estimated by the plaintiff, has to be accepted. Relying on an other judgment of the Apex Court in *SUHRID SINGH v. RANDHIR SINGH*², learned counsel submitted that in a suit for declaration and for consequential relief, court fee has to be calculated in reference to averments in plaint. Learned counsel further submits that at the stage of numbering the suit, sufficiency or otherwise of

¹ (1987) 4 SCC 69

² (2010) 12 SCC 112

the court fee paid, cannot be gone into, and the plaint averments and the documents in support of the plaint, are only decisive, and after appearance, pleadings of the defendants can be considered in deciding the sufficiency of court fee. In support of this contention, learned counsel relied on the judgment of a learned single Judge of this court reported in *PRANIT PROJECTS v. GOUNDRA YADAI AH*³. With these contentions, learned counsel sought to set aside the impugned endorsement.

3. In the present case, the suit schedule property is in Sy.No.242 of Tiruchanur Village, Tirupati. Petitioner claims that the Sub Registrar, Renigunta, has issued the certificate stating that the land in survey No.242 of Tiruchanur village, is classified as endowment land and no value is fixed by the Market Value Committee. Therefore, by notionally assessing the value, the plaintiff paid the court fee. The court below at the stage of number the suit, returned the plaint under the impugned endorsement, noted above.

4. Under Section 11(1) (a) of the Act, the court, shall, before registering the suit shall decide, on the allegations contained in the plaint and on the material furnished by the plaintiff, the proper fee payable thereon. Under clause (b) of sub section 1 of Section 11, the decision under clause (a) regarding payment of proper fee, shall be subject to review from time to time as occasion requires. Under Section (2) of

³ 2015(1) ALT 352 (S.B.)

Section 11, the defendant is entitled to plead that the suit has not been properly valued or that fee paid is not sufficient and all questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated under Order XVIII of C.P.C. and that if the court decides that the subject matter of the suit is not properly valued or that the fee paid is not sufficient, the court shall fix a date before which the subject matter of the suit, shall be valued in accordance with the decision of the court and deficit fee shall be paid within the stipulated time.

5. In similar facts and circumstances, a learned single judge of this court in PRANIT PROJECTS PVT LTD. Vs. GOUNDRA YADIAH (3 supra), considering Section 11 of the Act and a catena of decisions on the issue, including a Full Bench decision of this court reported in *CHILLAKURU CHENCHURAM REDDY v. KUNUPURU CHENCHURAMI REDDY*⁴, held that at the initial stage of numbering the suit, plaint averments and documents filed in support of plaint, are only decisive to consider the question of sufficiency of court fee paid and the aspect of sufficiency of court fee is a mixed question of fact and law and not possible to reject the plaint straightaway as sought by defendants and the disputed facts raised, require elaborate and roving enquiry, which can be possibly, only during trial. It is further held that the court is not *functous officio* till pronouncement of judgment to decide on sufficiency of court fee and

⁴ 1968(2) An.W.R. 616 (F.B.)

the court can even direct, while passing judgment, to pay the deficit court fee, if any, by making the decree inexecutable, till such payment.

The relevant portion of the order is as under:

“6... It is important to note therefrom that irrespective of Section 11 of the Andhra Pradesh Court Fees Act, 1956, particularly sub-section (2), enables defendants to raise a plea regarding the sufficiency of Court Fees, it obligates the Court to consider the plea of the defendants. Here so far as the numbering stage is concerned, on sufficiency of Court Fee as laid down in the Full Bench decision of this Court, in Chillakuru Chenchuram Reddy v. Kanupuru Chanchurami reddy {1968(2) An.W.R. 616 (F.B.) = 1968(2) ALT 1 = ILR 1969 AP 1042}, that at the initial stage, the plaint averments and the documents in support of the plaint are only decisive and after appearance, pleadings of the defendants that also to be considered in deciding the sufficiency of Court Fee. In fact the above Full Bench expression equivalent to 1968(3) An.W.R. 616 referring the earlier expression of AIR 1962 AP 90 laid down the principle of the decision of the court fees shall be subject to review from time to time as and when occasion arises till end of trial. It also laid down that rejection of plaint arises if the Court gave a finding on insufficiency of court fees and direction to pay the deficit court fee within the time fixed and even then failed to comply the same.

7. The learned Single Judge, in fact considering all these aspects in saying all the disputed facts raised require elaborate and roving enquiry that can be possible only by trial and this aspect of sufficiency of Court Fee is a mixed question of fact and law and not possible to reject the plaint straightaway as sought for by the defendants 22 to 24 apart from the issue to decide may encroach other issues on trial vide decisions support the view are P.Balaraj v. C.J. Yadav {2004(1) An.W.R. 105 = 2004(2) ALD 152 (NOC)}; Valluru S.Prasad v. Alluri K. Naidu {(4) 1998 (4) ALT 384 = 1998(5) ALD 1}; Satyanarayana v. Om Prakash {1989 (3) ALT 629 = 1989(2) APLJ 477}. It is needless to say even within the scope of Section 11 of A.P.Court Fees Act with reference to Full Bench expression and other two Judges Bench expression of Court placed reliance, they were already referred before the trial court and reflected as considered in the order and even those nowhere say the pre trial roving enquiry is required to be conducted by the Court to decide the issue of Court Fee on several disputed questions of fact where it requires elaborate evidence with reference to the documents including by testing in cross-examination under Section 137 of Evidence Act. It is needless to say in this regard that Court is not functus officio till pronouncement of judgment on sufficiency of Court Fee to decide including so to direct while passing judgment, to pay any requirement of deficit court fee by making the decree inexecutable till such payment. Needless to say the time granted for payment of court fee will not give life to the execution and enforcement of the decree nor it suspend the operation of judgment and decree as a consequence for any laches vide AIR 1941 Madras 929 (FB) that was even followed in G.C. Kumar v. Ashok Kumar {AIR 2001 Delhi 338}.

8. ...

9. Point No.2:-- Accordingly and in the result the revision is dismissed with no costs. It is made clear that the trial court shall frame specific

issue in this regard on sufficiency or otherwise of the valuation made in the plaint and the court fee and answer along with other issues and in the final adjudication, if required so to direct for payment of sufficient Court Fees and in such event with direction of till deficient court fee is paid the decree that shall be even drawn up is inexecutable and that no way give additional life against limitation from the date of decree to date of payment of deficit court fees.”

6. The facts in other decisions of the Apex Court (1 and 2 supra), relied on by the learned counsel for the petitioner, would disclose that these decisions were rendered after suits were numbered, but in the present case, suit was returned before numbering. The Apex Court in *Tara Devi's case* (1 supra) held as under

“4. . . It is now well settled by the decisions of this court in *Sathappa Chettiar v. Ramanathan Chettiar* {AIR 1958 SC 245} and *Meenakshisundaram Chettiar v. Venkatachalam Chettiar* {(1980) 1 SCC 616} that in a suit for declaration with consequential relief falling under Section 7(iv)(c) of the Court fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same.”

7. In view of the facts and circumstances of the case and the law laid down in the above cited decision of this court (3 supra), the impugned endorsement of the trial court dated 06.09.2018 is set aside, and the trial court is directed to number the suit and shall frame a specific issue with regard to sufficiency or otherwise of the valuation made by the plaintiff and court fee paid, and decide the same in accordance with law along with other issues during the trial of the suit.

8. The revision petition is accordingly disposed of at the stage of admission.

9. Office is directed to return the original plaint filed along with material papers, to the learned counsel for the petitioner.

10. Interlocutory applications pending, if any, shall stand closed.

No costs.

A.RAJASHEKER REDDY,J

DATE:23—11—2018

AVS

