

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.7016 OF 2017

ORDER:

Heard Sri J.C. Francis, learned counsel for the petitioner, and Sri D. Jagadishwar Rao, learned counsel for respondent No.1, and perused the material on record.

2. The present Civil Revision Petition arises against the order of return dated 26.04.2017, passed by the learned Principal District Judge, Medak at Sanga Reddy in O.S. (S.R.) No.1403 of 2017, holding that the earlier objections dated 25.04.2017 at Serial Nos.1 to 4 holds good.

3. The office objections dated 25.04.2017 raised by the office of the learned Principal District Judge, read thus:

- “(1) The suit is not properly valued as to the pecuniary jurisdiction of this Court i.e., District Court.
- (2) Where the relief is sought for cancellation of sale deeds, the Court Fee has to be paid U/Sec 37 of A.P.C. & S.V. Act.
- (3) Required Court fee is not paid on documents.
- (4) The mode of payment of Court Fee, the provision shall be mentioned.
- (5) How the defendant No.5 made the party as there is no cause of action against him in plaint pleadings.”

4. The learned counsel for the revision petitioner would place reliance in **Nade Ali Mirza v. Khalida Mohammed Salim**

Dawawala¹, wherein, in an alike situation, expression of the learned single Judge of this Court in paragraph No.40, is thus:

“40. The trial court took an objection about the payment of court fee and directed him to pay court fee under Section 37 of the Act since he is asking for declaration that a registered sale deed was null and void and not binding on him. This was questioned in Revision before this Court. This Court held that since the plaintiff was not a party to the registered sale deed, he need not ask for cancellation of it and he is perfectly justified in asking for consequential relief of declaration that the sale deed is not binding on him. It held that merely because, to be on the safe side, the plaintiff sought for the relief for declaration that the sale deed is null and void and paid the court fee under Section 24 (d) of the Act, it did not mean that the suit falls under Section 37 and not Section 24 (d). It further held that such a prayer for declaration or cancellation could as well be ignored and court fee need not be paid thereon. It held that according to the plaint, when the plaintiff is not a party to the sale deed, he need not ask for cancellation of the sale deed as the cancellation implies that the person suing should be an actual or constructive party to a valid or operative document. It held that a third party like the plaintiff is not bound by a document of the description in question and is not obliged to sue for cancellation. It set aside the order of the court below directing the plaintiff to pay court fee under Section 37 of the Act but not under Section 24 (d) and held that since according to the plaintiff it is a sham transaction, he need not pray for its cancellation and

¹ 2016 (1) ALT 300

even if such a prayer is made, he need not pay court fee.”

5. The learned counsel for respondent No.1 would submit that no revision would arise as there is no rejection order, but, only it was an order of return granting seven (7) days time for re-submission by answering queries/office objections at Serial Nos.1, 2 and 4.

6. Precisely, the question is whether Order - XXXVII of Andhra Pradesh Court Fee and Suit Valuation Act, 1956, would apply to the fact-situation occurring herein, for the reason that the revision petitioner is not a party to the registered documents, which are sale deeds now sought to be cancelled, which is one of the reliefs claimed in the plaint.

7. In such an event, it would be appropriate to direct the learned Principal District Judge to afford an opportunity to the learned counsel for the plaintiff of hearing to satisfy the queries 1, 2 and 4 by giving a date for hearing on Bench.

8. With the above directions, the Civil Revision Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision petition stand closed.

A. SHANKAR NARAYANA, J

March 16, 2018.
PV