

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.38 of 2019

O R D E R:

This Revision is filed challenging the order dt.22.10.2018 in I.A.No.2051 of 2017 in O.S.No.910 of 2013 of the IX Additional Chief Judge, City Civil Court, Hyderabad.

2. Petitioner is the 2nd defendant in the above suit.
3. The said suit was filed by 1st respondent against the petitioner and other defendants for partition of the plaint schedule property and for delivery of actual and vacant physical possession apart from mesne profits.
4. It is the allegation of the 1st respondent in the plaint that himself, petitioner and respondents 2 to 4 are the children of Iqbal Ahmed Jeddy and Smt Shahnaz Begum; that the subject property was purchased by Smt Shahnaz Begum under registered Sale Deed dt.06.12.1962, that certain additions were made there to with the funds contributed by the petitioner, and respondents 1 & 2 and on her death on 23.09.2013, the property became 'Matruka' property and liable for partition. In para 15 of the plaint it was alleged that the property being 'Matruka' Property of the 1st respondent's mother, 1st respondent is entitled to ½ share therein, that 1st respondent was also in joint possession of the same, and so a Court Fee of Rs.200/- was paid.
5. Written statement was filed opposing the suit claim.

6. Petitioner/2nd defendant then filed I.A.No.2051 of 2017 under Order VII Rule 11(b) CPC stating that the 1st respondent was not in possession of the suit schedule property except one Flat in 1st floor bearing Flat No.103 which was orally gifted by Smt Shahnaz Begum during her life time; that the Court Fee of Rs.200/- paid by the 1st respondent was not proper, since he is not in possession of the other properties except the said flat; and the 1st respondent therefore ought not to be allowed to proceed with the suit unless he pays Court Fee under Section 34(2) of the A.P. Court Fee and Suits Valuation Act, 1956.

7. Counter affidavit was filed by the 1st respondent opposing the same. He contended that the application is filed only to delay the proceedings in the suit after trial commenced, wherein the 1st respondent was also cross-examined. 1st respondent also disputed the allegation that he was not in possession of the plaint schedule property and contended that the property being 'Matruka' Property and he being a co-owner, possession of one co-owner is possession of all co-owners and so the Court Fee paid is proper. He also contended that the petitioner admitted in his evidence affidavit that he is supporting the suit claim and also admitting 1st respondent's possession over the suit schedule property.

8. By order dt.22.10.2018, the Court below dismissed the said application. It held that the main suit is at the fag end of trial and evidence on the side of 1st defendant was also completed and

it is coming for the evidence of other defendants and at that stage, the present application has been filed. It observed that the issue as to insufficiency of Court Fee raised by the petitioner can be decided when the suit is decided on merits. It also held that while deciding the question of rejection of plaint, only the contents of the plaint have to be looked into and other evidence cannot be looked into.

9. Assailing the same, this Revision is filed.

10. Counsel for petitioner contended that the order of the Court below is erroneous and that the Court below, in the light of certain averments made in the plaint by the 1st respondent, ought to have held that the 1st respondent was not in possession of the plaint schedule property, that the Court Fee of Rs.200/- paid by the 1st respondent on the plaint was not correct and it should have rejected the plaint.

11. It is not disputed that in para 3 of the plaint, the 1st respondent/plaintiff had specifically stated that the property is 'Matruka' Property, liable for partition on the death of the 1st respondent's mother, who is also the mother of the petitioner.

12. If this fact is true, 1st respondent will also be a co-owner along with the petitioner and other siblings, and possession of one co-owner would be the possession of other co-owners. Also it is not disputed by the petitioner that Flat No.103, which is also in

the subject property, is in the enjoyment and possession of the 1st respondent.

13. Since, admittedly, only the contents of the plaint have to be looked into to decide about the correct Court Fee payable in a suit for partition, and as per the contents of the plaint and in particular in para 15, where 1st respondent has specifically asserted that he is in joint possession of the plaint schedule property, it cannot be said that the plaint was liable to be rejected at this stage on the ground that the Court Fee paid by the 1st respondent was not proper. The Court below has any way said in its order that it would consider the issue of insufficiency of the Court Fee raised by the petitioner when it decides the suit on merits.

14. Since the suit is of the year 2013, the court below is directed to proceed further in the suit and decide the suit as expeditiously as possible, uninfluenced by any views expressed by it in its order dt.22.10.2018 or in the order passed by this Court, and decide the issue of insufficiency of Court Fee when it decides the suit on merits.

15. With the above observations, this Civil Revision Petition is dismissed. No order as to costs.

16. Consequently, miscellaneous petitions pending if any, shall stand closed.

24th January, 2019.
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M.S. RAMACHANDRA RAO, J