

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

**Civil Revision Petition Nos.1272, 1273, 1294, 1296, 1297
and 1302 of 2019**

COMMON ORDER:

These Revisions raise a common question of law and so they are being disposed of by this common order.

2. The petitioner in CRP.Nos.1294, 1296 and 1302 of 2019 is one Manish Agarwal. He is the plaintiff in O.S.No.56 of 2019 on the file of XII Additional Chief Judge, City Civil Court, Secunderabad. He filed the said suit against 28 defendants/ respondents for the following reliefs:

- a. *“To declare that the actions of Defendants 2 to 4 are detrimental to the beneficiary of the trust and that Defendants 2 to 4 have acted in breach of the terms of the Trust and contrary to the law and rendered themselves unfit and improper to continue as Trustees of the 1st Defendant Trust.*
- b. *To direct the Defendants 2 to 4, and 6 to 28 to reimburse the loss suffered by the 1st Defendant Trust as per the books of account and surcharge the Defendant No.2 to 4 and 6 to 28 for such losses along with compound interest @ 18% per annum compounded every 6 months, to the 1st Defendant Trust.*
- c. *To direct Defendant No.13 and Defendants No.20 to 28 to account to plaintiff for the loss suffered on account of wrongfully obtaining the pledge of shares belonging to 1st Defendant, for wrongfully invoking the pledge and selling these shares or in the alternate to restore 45,00,000 shares held by 1st Defendant in 6th Defendant and any other shares or*

assets of the 1st Defendant Trust that they have sold or liquidated, in specie to the Plaintiff.

- d. *To direct Defendant No.13 and Defendants No.20 to 28 to return 18,82,040 equity shares of Gari Limited (6th Defendant) and other shares and securities if any belonging to the 1st Defendant Trust, in an unencumbered state, that are currently in their possession on being provided to them by the Defendants No.2 to 4 by way of wrongful pledge / surety / security / collateral on behalf of the 1st Defendant Trust.*
- e. *For a direction to the 2nd Defendant and his entities to restore all the shares belonging to the 1st Defendant Trust in an unencumbered state as per the original holding of the Trust as well as the additional 15 lakh (Fifteen Lakh) shares of the 6th Defendant that had come into the 1st Defendant Trust, as well as additional shares/assets purchased/acquired/ gifted if any.*
- f. *To Remove Defendants 2 to 4 from the post of the Trustees and dissolve the 1st Defendant Trust by handing over all the assets to the beneficiary in unencumbered state and make payment of all funds of the 1st Defendant to the beneficiary of the 1st Defendant i.e. the plaintiff.*
- g. *Such other relief.”*

3. He valued this suit for the purpose of Court Fee and Jurisdiction at Rs.181 crores but he paid Court Fee of only Rs.200/- invoking Section 27 of the A.P. Court Fee and Suit Valuation Act, 1956 (for short ‘the Act’).

4. Dhruv Agarwal, the brother of the Manish Agarwal, filed CRP.Nos.1272,1273 and 1297 of 2019. He is the plaintiff in O.S.No.57 of 2019 on the file of XII Additional Chief Judge, City Civil Court,

Secunderabad. He filed the said suit against 27 defendants/ respondents for the following reliefs:

- a. *“To declare that the actions of Defendants 2 to 4 are detrimental to the beneficiary of the trust and that Defendants 2 to 4 have acted in breach of the terms of the Trust and contrary to the law and rendered themselves unfit and improper to continue as Trustees of the 1st Defendant Trust.*
- b. *To direct the Defendants 2 to 4, and 6 to 27 to reimburse the loss suffered by the 1st Defendant Trust as per the books of account and surcharge the Defendant No.2 to 4 and 6 to 27 for such losses along with compound interest @ 18% per annum compounded every 6 months, to the 1st Defendant Trust.*
- c. *To direct Defendant No.13 and Defendants No.20 to 27 to account to plaintiff for the loss suffered on account of wrongfully obtaining the pledge of shares belonging to 1st Defendant, for wrongfully invoking the pledge and selling these shares or in the alternate to restore 45,00,000 shares held by 1st Defendant in 6th Defendant and any other shares or assets of the 1st Defendant Trust that they have sold or liquidated, in specie to the Plaintiff.*
- d. *To direct Defendant No.13 and Defendants No.20 to 27 to return 23,93,700 equity shares of Gati Limited (6th Defendant) and other shares and securities if any belonging to the 1st Defendant Trust, in an unencumbered state, that are currently in their possession on being provided to them by the Defendants No.2 to 4 by way of wrongful pledge / surety / security / collateral on behalf of the 1st Defendant Trust.*
- e. *For a direction to the 2nd Defendant and his entities to restore all the shares belonging to the 1st*

Defendant Trust in an unencumbered state as per the original holding of the Trust as well as the additional 15 lakh (Fifteen Lakh) shares of the 6th Defendant that had come into the 1st Defendant Trust, as well as additional shares/assets purchased/acquired /gifted if any.

f. To Remove Defendants 2 to 4 from the post of the Trustees and dissolve the 1st Defendant Trust by handing over all the assets to the beneficiary in unencumbered state and make payment of all funds of the 1st Defendant to the beneficiary of the 1st Defendant i.e. the plaintiff.

g. Such other relief.”

5. He valued this suit for the purpose of Court Fee and Jurisdiction at Rs.170 crores but he also paid Court Fee of only Rs.200/- invoking Section 27 of the A.P. Court Fee and Suit Valuation Act, 1956.

The pleas of the petitioners in the suits

6. It is the pleading of both petitioners in these Revisions that they are sons of Mahendra Kumar Agarwal (2nd defendant in both suits / 2nd respondent in all the CRPs.,) and Mrs.Neera Agarwal (5th defendant in both suits/5th respondent in all the CRPs.,); that the 2nd defendant controls Defendant no.s 18,8,10,11,12 and other entities; that the petitioners are beneficiaries of Manish Agarwal Benefit Trust (1st respondent in CRP.Nos. 1294, 1296 and 1302 of 2019 / 1st defendant in O.S.No.56 of 2019) and Dhruv Agarwal Benefit Trust (1st respondent in CRP.Nos.1272,1273, and 2nd respondent in CRP.No. 1297 of 2019 / 1st defendant in O.S.No.57 of 2019); and at the instance of the 14th defendant, the 2nd defendant was spending the wealth belonging to the Trusts for his own personal benefit and for the

benefit of the 14th defendant and her son 19th defendant and draining the financial resources of the family members of the petitioners' families.

7. It is alleged that shares in Defendant No.s 6 to 12 Companies held by the respective petitioners were transferred by the 2nd defendant to the respective Trusts for the benefit of the respective petitioners; and the 2nd defendant retained voting power in respect of such shares in order to use them for his own benefit to the detriment of the petitioners, who were minors at that time. It is alleged that the assets of the respective petitioners were misused and wasted by defendant No.s 2 to 4 who were Trustees in the respective Trusts in violation of the Articles of the respective Trust deeds; that they committed acts of breach of trust; that they never provided accounts or information about the respective Trusts to the respective petitioners/plaintiffs.

8. It is alleged that they pledged the Trusts' assets and borrowed monies using the Trusts' assets for the personal benefits of the 2nd defendant. It is contended that 2nd defendant pledged assets of the respective Trusts with defendants 13 and 20 to 27 and the latter granted loans to other entities unrelated to the respective Trusts or to the respective petitioners based on the security of assets of the respective Trusts. It is alleged that those defendants are also liable for breach of trust in collusion with defendants 2 to 4. It is contended that defendant No.s 15 to 18 and other entities of the 2nd defendant are beneficiaries of the funds belonging to the respective Trusts on account of loans raised and investments made in these Companies by the 2nd defendant by using the assets of the respective Trusts.

9. It is contended that the 14th defendant used her position of influence and her alleged extra marital relationship with 2nd defendant and received favours, benefits from 2nd defendant using the funds and assets of the respective Trusts and she and her son, the 19th defendant are the actual and unnamed beneficiaries of the Trust funds along with the 2nd defendant.

10. It is contended that defendant No.s 2 to 4 are liable for breach of Trust, defendant No.s 6 to 12 are Companies whose shares were the assets of the Trusts, and defendants 2 to 4, 6 to 27 as well as other entities of the 2nd defendant are beneficiaries of Trusts' Funds and funds of the Trusts need to be traced in the hands of defendants 2 to 4, 6 to 27 and other entities of the 2nd defendant.

The various applications filed under Or.VII Rule 11 (b) CPC

11. Defendant No.s 15 and 18 filed I.A.No.512 of 2019 in O.S.No.57 of 2019, defendant No.s 1 to 3 filed I.A.No.513 of 2019 in O.S.No.57 of 2019, defendant No.s 15 and 18 filed I.A.No.514 of 2019 in O.S.No.56 of 2019, defendant No.23 filed I.A.No.631 of 2019 in O.S.No.56 of 2019, defendant No.24 filed I.A.No.630 of 2019 in O.S.No.57 of 2019, and defendant No.s 1 to 3 filed I.A.No.515 of 2019 in O.S.No.56 of 2019 to reject the plaints in O.S.No.56 and 57 of 2019 invoking Order VII Rule 11(b) CPC.

12. In all these applications, it is the contention of the said defendants in the respective suits that the petitioners/plaintiffs grossly undervalued the suit for the purpose of evading Court Fee as per the Telangana Court Fees and Suit Valuation Act, 1956. It is contended that the petitioners, who are beneficiaries of the Trusts in the respective suits filed by them, ought to have

valued each of the reliefs claimed under the provisions of the Act and they cannot value all the reliefs collectively and pay only an *ad-valorem* Court Fee of Rs.200/- under the Act. It is also their contention that Section 27 has no application to the suits since the petitioners, who are the plaintiffs herein are neither current trustees nor ex-trustees in the respective Trusts and they are only beneficiaries of the said Trusts. According to them, Section 27 of the Act would apply only to dispute between the Trustees or rival claimants to the Office of the Trustee, or between a Trustee and a person who has ceased to be trustee, but not to suits filed by beneficiaries against trustees.

13. It is their contention that relief (a) in both suits is to be valued as per Section 24 of the Act; reliefs (b) and (c) ought to be valued as per Section 20 of the Act; and the alternative prayer in relief (c) and in reliefs (d) and (e) should be valued as per Section 23 of the Act. It is also their case that relief (f) should be valued as per Section 47 of the Act.

14. They contend that under the guise of valuing the suits by paying fixed Court Fee of Rs.200/-, petitioners have chosen to seek reliefs in respect of assets worth crores of rupees.

15. In I.A.No.630 of 2019 in O.S.No.57 of 2019 the 24th defendant also pleaded that there is no real, subsisting and valid cause of action and that the suit is barred by law. It is alleged that plaintiff in O.S.No.57 of 2019 has failed to demonstrate how defendant No.24 is a proper and necessary party and only to harass defendant No.24 the suit has been filed. It is also alleged that the relief in the suit is barred by limitation. Similar plea was raised by

the same party which is the 23rd defendant in I.A.No.631 of 2019 in O.S.No.56 of 2019.

The Counter affidavits of the petitioners in the said applications

16. Counter affidavits were filed by the petitioners opposing the above applications.

17. They denied the allegation made by the applicants in the I.A.s that petitioners had grossly undervalued the suits and that the Court Fees of Rs.200/- paid was not correct. According to them the reliefs in the suits touch the Trusts' properties only and nothing other than that and since the Trustees are trying to make unlawful gain out of the trusts' property, the petitioners, who are beneficiaries of the Trusts, are entitled to maintain the instant suits and seek the reliefs claimed therein. They contend that the dispute cannot be said to be not falling under Section 27 of the Act because directly or indirectly it is a dispute between the Trustees in respect of the Trust property, and Trustees are trying to take away property of the Trusts by unlawful means.

18. They contend that the applicants in the I.A.s are trying to show as if the assets are not that of the Trust property, but the provision of law clearly shows that suits for possession or joint possession of Trust property or for declaration would be covered by Section 27 of the Act.

19. They also contend that issue of Court Fee even otherwise can be considered by the Court at any stage even before the final hearing or along with the final hearing and as such the filing of these applications to reject the

plaints is only to cause further loss to the petitioners and to prolong the litigation for reasons best known to the applicants/defendants. According to them, whatever be the worth of the Trust property, the same is immaterial and the provisions of Sec.27 of the Act would apply. They deny that the other provisions of the Act are attracted and that they are liable to pay Court Fee on that basis.

20. They also refuted the stand of the 23rd defendant in O.S.No.56 of 2019, who is also the 24th defendant in O.S.No.57 of 2019 and who had filed I.A.No.s 630 and 631 of 2019. They contended that the said defendant is aware about the trust deeds and the Trusts and it had admitted that shares taken as security by the said defendant belong to the said Trusts and that the 2nd defendant had availed a loan of Rs.25 Crores by pledging the shares belonging to the respective Trusts. They contended that the said defendant is aware that the pledge of shares was made without the knowledge and approval or involvement of the plaintiffs. According to the petitioners they have cause of action against the said defendant in both suits on the various dates mentioned in the respective complaints. They denied that the cause of action for the suits is illusory or that it was created for the purpose of filing the suits. They also denied that any of the reliefs claimed in the suit are barred by limitation.

Orders passed by the Court below in these applications

21. Two separate orders were passed by the XII Additional Chief Judge, City Civil Court at Secunderabad on 03.05.2019 in these applications. One common order relates to I.A.No.s 514, 515 and 631 of 2019 in O.S.No.56 of

2019 and the other common order relates to I.A.No.s 512, 513 and 630 of 2019 in O.S.No.57 of 2019.

22. The Court below framed the following four points for consideration:

- “1. Whether the plaintiff has not valued the suit properly and whether the Court Fee of Rs.200/- paid by the plaintiff is not sufficient and whether the plaintiff is liable to pay court fee under Section 24(a) of Andhra Pradesh Court Fee and Suit Valuation act, 1956.*
- 2. Whether there is no cause of action to file the suit, as claimed by the 24th defendant?*
- 3. Whether the suit is barred by law of limitation, as claimed by the 24th defendant?*
- 4. Whether the suit of the plaintiff is liable to be rejected?”*

23. It rejected the pleas of the 24th defendant in O.S.No.57 of 2019 who is the 23rd defendant in O.S.No.56 of 2019 that the plaints do not disclose the cause of action and also the plea of bar of limitation raised by it. It observed that, *prima facie*, it is not a case where the plaints do not disclose any cause of action. It observed that the Law of Limitation does not prohibit a party from approaching Civil Court and filing a suit even though it may be barred by limitation and the suit cannot be dismissed on the said ground without proper pleadings, framing of an issue on the point of limitation and taking of evidence.

24. But, on the issue of payment of Court Fee it observed that Section 27 of the Act deals with suit for possession or joint possession of Trust property or for a Declaration with or without consequential relief between Trustees or rival claimants to the office of the Trustee or between a Trustee and a person, who has ceased to be a Trustee, but petitioners/plaintiffs in the suit

are not seeking reliefs as Trustees but only as beneficiaries. Therefore, the suits cannot be said to be suits between Trustees or rival claimants to the Office of the Trustees and so Section 25 would not apply and Court Fee under Section 24(a) of the Act should be paid.

25. It also rejected the plea of the petitioners that questions relating to deficit Court Fee can only be heard and decided at the conclusion of the hearing in the suit. It referred to Section 11(2) of the Act which states that all questions arising on the question of deficit Court Fee shall be heard and decided before hearing of the suit as contemplated under Order XVIII CPC. It noted that the suits are at a initial stage and are coming up for filing of written statements of several defendants and trial had not yet commenced. It observed that plaint cannot be rejected straightaway on the ground that the suit is under valued and the Court should fix time for the plaintiff to pay requisite Court Fee and if he does not do so, then only the plaint can be rejected. It directed the petitioners to pay the deficit Court Fee under Section 24(a) of the Act on or before 12.06.2019 by allowing I.A.No.s 514 of 2019 and 515 of 2019 in O.S.No.56 of 2019 and I.A.Nos.512 of 2019 and 513 of 2019 in O.S.No.57 of 2019 and partly allowing I.A.No.631 of 2019 in O.S.No.56 of 2019 and I.A.No.630 of 2019 in O.S.No.57 of 2019.

The present Revisions

26. Assailing the same, the respective petitioners have filed CRP.No.s 1272, 1273, 1294, 1296, 1297 and 1302 of 2019.

27. Heard Sri L.Ravichander, Senior Counsel for Sri Sharad Sanghi and Sri Mayur Mundra, counsel for the petitioners and Sri

D.V.Seetharamamurthy, Senior Counsel for Ms.Shireen Sethna Baria, for M/s Rare Enterprises, which is Respondent no.24 in CRP.No.1272 and 1273 of 2019 and Respondent No.23 in CRP.No.1294, 1296 and 1302 of 2019 and Respondent No.1 in CRP.No.1297 of 2019; Sri Sunil B.Ganu, for Sri T.S.Praveen Kumar, for Respondent No.s 1 and 2 in CRP.Nos.1272, 1273, 1294, 1296 and 1302 of 2019 and for Respondent No.s 2 and 3 in CRP.No.1297 of 2019, and Sri A.Venkatesh, Counsel for Respondent No.s 15 to 18 in CRP.No.1272, 1273, 1294, 1296 and 1302 of 2019 and for Respondent No.s 16 to 19 in CRP.No.1297 of 2019.

28. Sri L.Ravichander, counsel for the petitioners, firstly contended that the applications for rejection of plaints in the suits O.S.No.56 and 57 of 2019 have been filed by the respective applicants therein only invoking Order VII Rule 11(b) CPC, which deals only with *undervaluation* of reliefs claimed in the respective plaints; that they did not invoke Order VII Rule 11(c) CPC which deals with *insufficiency of Court Fee* and so the Court below ought not to have gone into the aspect of insufficiency of Court Fee at all.

29. Or.VII Rule 11 (c) states that “*the plaint shall be rejected.....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.*”

30. This contention of counsel for petitioners is without merit because in para 17 of the applications I.A.No.512 of 2019 in O.S.No.57 of 2019 and I.A.No.514 of 2019 in O.S.No.56 of 2019 filed by Defendant No.s 15 and

18, it is clearly contended not only that the plaintiffs had grossly undervalued the suits but also that the Court Fee paid by the plaintiffs of Rs.200/- is not sufficient Court Fee and that the payment of Court Fee is not in accordance with the provisions of the Act.

31. Similarly, defendants No.1 to 3 in O.S.No.s 56 and 57 of 2019 in I.A.No.s 513 of 2019 and 515 of 2019 also stated that the plaintiffs intentionally valued the suit under Section 27 of the Act *by paying fixed Court Fee of Rs.200/-, which is not permissible in law.*

32. The 24th defendant in O.S.No.57 of 2019 which is also the 23rd defendant in O.S.No.56 of 2019 specifically contended in para 14 in I.A.No.s 630 of 2019 and 631 of 2019 that plaintiffs in the said suits are liable to be rejected for *non-payment of proper Court Fee.*

33. So merely because in the petitions filed by the applicants in the applications to reject the respective plaints they mentioned only Order VII Rule 11(b) CPC, it cannot be construed that they did not rely upon Order VII Rule 11(c) CPC. In my considered opinion, the applications filed for rejection of the respective plaints impliedly invoked Order VII Rule 11(c) CPC also and non-mention of the said provision in the applications cannot preclude the Court from applying the said provision of law, if it is attracted to the facts of the cases.

34. The counsel for the petitioners next contended that issues relating to Court Fee ought not to be decided at the initial stage of the suit and they ought to be decided only at the final hearing of the suit.

35. This contention is also without merit because Order VII Rule 11 CPC has been interpreted by the Supreme Court to enable the Court to reject the plaint *at any stage*. In **Saleem Bhai v. State of Maharashtra**¹, the Supreme Court held:

“A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”

36. Also, Section 11(2) of the Act gives a right to the defendant to plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. It further directs that *all questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated under Order XVIII in the I Schedule to the Code of Civil Procedure.*

37. The said provision is extracted below:

“11(2). Any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908(Central Ct V of 1908). 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 Court’s decision and the deficit fee shall be paid. If within the time allowed, the subject-matter of the suit is not valued in accordance with the Court’s decision or if the deficit fee is

¹ 2003(1) SCC 557

not paid, the plaint shall be rejected and the Court shall pass such order as it deems just regarding cost of the suit.”

38. In view of the above statutory provision, it cannot be said that there is any bar for the trial Court to consider the question of sufficiency of Court Fee at the initial stage of the suit when even the written statement is not filed.

39. In **Satyanarayana vs. Om Prakash and Ors²**, a Division bench of this considered the question whether Sec.11(2) of the Act is mandatory or directory and held that it is directory. It held:

“if we examine the provisions of Section 11(2) of the Act, it is clear that the purpose for which the provision is made is only to see that proper court fee is collected from the plaintiff by the Court and the defendant is only given a right to point out regarding the deficiency of the Court-fee paid and that should be limited and should not be extended to enable him to protract the trial of the suit. The question as to in what cases the issue relating to the payment of Court-fee should be tried as a preliminary issue and in what cases the said issue should be tried jointly along with the other issue should be left to the discretion of the trial court. As laid down by the Supreme Court, the defendant is not aggrieved by any such decision and therefore merely because he is given a right to contest the valuation, he cannot be permitted to use the same as a weapon to protract the litigation. Only in cases where the question of payment of court-fee affects the very pecuniary jurisdiction, it is necessary for the court to investigate and examine and then decide it as a preliminary issue, if it is satisfied that the jurisdictional question is involved. In such cases only, the defendant can move the higher Courts on the ground that the dispute regarding court-fee is not tried as a preliminary issue. In other disputes relating to the payment of court-fee it should be left to the discretion of the court to try the same as preliminary issue or to try jointly along with other issues. This discretion should be exercised by it after necessary investigation into the plaint allegations and other material including the objections by the

² MANU/AP/0335/1989 = 1989 (2) APLJ 477 (DB)

defendant.”

40. When the matter is left to the discretion of the trial Court as to the stage when it wants to determine whether the Court Fee paid is correct or not, it cannot be said that the view taken by the Court below (that the applications for rejection of plaints on the ground that Court Fee paid is not correct, can be entertained before the hearing of the suits and need not be postponed for a decision after hearing the suit), suffers from any error of jurisdiction.

41. Counsel for the petitioners contended that the petitioners had rightly paid the Court Fee invoking Section 27 of the Act. The said provision reads as under:

“27. Suits relating to trust property: (1) In a suit for possession or joint possession of trust property or for a declaration, with or without consequential relief, between trustees or rival claimants to the office of a trustee or between a trustee and a person who has ceased to be a trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value, on rupees one thousand.

(2) Where the property has no market value, value for the purpose of determining the jurisdiction of courts shall be the amount stated in the plaint.

Explanation: For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof.”

42. A plain reading of the said provision shows that the said section is attracted in disputes between trustees or rival claimants to the office of a

trustee or between a trustee and a person who ceased to be a trustee, and not between beneficiaries of trust and trustees.

43. Counsel for the petitioners sought to contend that sub-section (1) of Section 27 applies to all suits relating to trust property irrespective of who the party to such suit is, and Rs.200/- would be the maximum Court Fee. He also contended that suits for possession or joint possession of trust property or for a declaration, with or without consequential reliefs, relating to trust property can be filed by paying Rs.200/- invoking sub-section (1) of Section 27 though they do *not* relate to disputes between trustees or rival claimants to the office of a trustee, or between a trustee and a person who has ceased to be a trustee.

44. No precedent supporting the said view has been cited by him.

45. On the other hand, Sri Sunil B.Ganu, Counsel for the respondents has cited the judgment of the High court of Karnataka in **Sri Radhakrishna Bhakta Mandali Trust v. Kannan**³ interpreting Section 27 of the Karnataka Court Fee and Suit Valuation Act, which is *in pari materia* with Section 27 of the AP statute relating to Court Fee. In the said case the plaintiff-trust was claiming the suit property under a Will said to have been executed by the wife of the defendant and the defendant was disputing the execution of Will by his wife. The Court held that at no point of time the suit property had belonged to the trust and for the first time, the trust was claiming it under the Will executed by the wife of the defendant; and when the Will is disputed, it is for the plaintiff-Trust to prove the Will. It pointed

³ MANU/KA/2385/2013

out that the person who executed the Will is the wife of the defendant, who was not a trustee, and so it is not a dispute between the trust and trustees or between the trust and co-trustees. In the said judgment it was held that Section 27 can be pressed into service only if the suit is between trustees or co-trustees relating to trust properties and it does not apply to suits against a third person; and when a suit is filed for declaration of title of the plaintiff as owner of the property and for possession, Court Fee has to be computed only under Section 24 and not under Section 27.

46. **Sri Maharaj Kumarika Subarna Rekha Mani Devi and others v. Sri Ramakrishna Deo and others**⁴ cited by the counsel for the petitioners is not relevant to the issue raised in these cases. It dealt with the issue as to payment of Court Fee under the Act on a memorandum of Appeal filed against an order rejecting plaint under Order VII Rule 11 CPC. The Full Bench by a majority held that Section 47 read with Section 49 will not cover a case where subject matter of an Appeal is incapable of valuation and that there was an omission by the legislature to provide for Court Fees in suits or appeals which are incapable of valuation.

47. In **Sujir Keshav Nayak v. Sujir Ganesh Nayak**⁵ also cited by counsel for petitioners it was a suit for dissolution of partnership and accounts and the question of valuation of such suits. The said decision is also not applicable to the instant cases.

48. In my considered opinion, Section 27 of the Act on which reliance has been placed by the respective petitioners in the suits O.S.No.56 and 57 of

⁴ AIR 1968 AP 239 (FB)

⁵ 1992(1) SCC 731

2019 filed by them to justify payment of Court Fee of Rs.200/-, does not apply and so payment of Court Fee by them was not correct and proper. The Court below did not commit any error of jurisdiction in the impugned orders.

49. Accordingly, all the Civil Revision Petitions are dismissed. No costs.

50. As a sequel, miscellaneous applications, if any pending shall stand closed.

51. After the order is pronounced today, the learned Senior Counsel appearing for petitioners has sought leave to appeal to the Supreme Court. But the said request is declined.

JUSTICE M.S. RAMACHANDRA RAO

Date: 03.07.2019

LSK/GRA

