

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

CIVIL REVISION PETITION NO.1444 OF 2017

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 23.02.2017 in O.S. No.18 of 2016 of the VIII Additional District & Sessions Judge at Medak.

The petitioners are defendants in the said suit.

The respondents had filed the said suit against the petitioners for partition and separate possession of half share to the respondents as well as to the petitioners in the suit schedule properties.

It is the contention of the respondents that the petitioners and themselves constitute undivided Hindu joint family and that they are all claiming through a common ancestor one Narsaiah. They alleged that they are in joint possession along with the petitioners of the suit schedule properties and paid fixed court fee of Rs.200/- under Section 34(2) of the A.P. Court Fees and Suit Valuation Act, 1956 ('Act' for short).

The petitioners herein raised a counter claim along with the written statement disputing that they are members of the undivided Hindu joint family consisting of the respondents. According to them, there is no common ancestor by name Narsaiah, that the parties belong to different castes and so they cannot therefore belong to the same joint Hindu family.

In the counter claim, one of the reliefs sought by the petitioners is the relief of perpetual injunction restraining the respondents and their henchmen from interfering with the petitioners' peaceful

possession and enjoyment of the counter claim of the schedule properties A to J.

The court below raised an objection when the petitioners valued the relief of injunction at Rs.2,00,000/- and paid only court fee of Rs.4,426/- invoking Section 26(c) of the Act. According to it, A to J schedule properties shown in the counter claim have a value of Rs.90,21,250/-. The court below held that it is necessary for the petitioners to pay court fee under Section 26(a) of the Act, since the properties in question in relation to which the counter claim of injunction is made have a value of Rs.90,21,250/-.

Assailing the same, this revision is filed.

Counsel for the petitioners contends that the order passed by the court below is bereft of reasons and the court below is not correct in coming to the conclusion that the petitioners ought to pay the court fee under Section 26(a) of the Act.

Counsel for the respondents refuted the said contentions and supported the order passed by the court below.

Section 26 of the Act states in clause (a) that where the relief sought relates to any immovable property, and where the plaintiff's title to the property is denied, fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher; and in (c) that in any other case, whether the subject matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

On a reading of the above provision, it is clear, that if in a suit for injunction where the relief sought relates to any immovable

property, and where the plaintiff's title to the property is denied, he shall pay court fee under Section 26(a) on one-half of the market value of the property or on rupees two hundred, whichever is higher.

In the instant case, the respondents had pleaded that the suit schedule properties are joint family properties, while the petitioners had contended that there is no joint family at all and A to J schedule properties are properties wherein respondents have no rights at all.

In my considered opinion the counter claim raised by the petitioners is akin to a suit for injunction which relates to immovable property and both parties denying each other's title thereto and therefore the case would fall under clause (a) of Section 26 of the Act only and not under clause (c) of Section 26 of the Act.

Therefore, the order passed by the court below does not warrant any interference.

Therefore, the CRP is disposed of permitting the petitioners to pay court fee on the counter claim as regards the relief of injunction under Section 26(a) of the Act within three weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, pending, if any shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 05.07.2019

MRKR