

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

CRP.No.6877 of 2017

ORDER:

1. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.16.11.2017 in O.S.No.480 of 2012 of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. Petitioners are plaintiffs in the above suit.

3. They filed the said suit to declare a Will dt.16.07.1997 executed by Dr.Boyi Bheemanna as illegal and for cancellation of the same.

4. In the suit as originally filed in plaint schedule, they merely mentioned that the suit schedule property will be *'all that the Will dt.16.07.1997 executed by the said Bhemanna'*, nothing more.

5. Initially, the suit (OSSR.No.11114 of 2011) was not numbered by the Court of the Chief Judge, City Civil Court, Hyderabad by order dt.17.02.2012 on the ground that the valuation of the suit and payment of Court fee was not proper and the valuation of the suit at Rs.10,000/- under Section 34 read with 47 of the A.P.

Court Fee and Suit Valuation Act, 1956 (for short 'the Act') by the petitioner is not valid. It took the view that neither Section 34 nor 36 would apply.

6. Petitioners questioned the said order dt.17.02.2012 in OSSR.No.11114 of 2011 of the Chief Judge, City Civil Court, Hyderabad in CRP.No.1522 of 2012.

7. In the said CRP, the Senior Counsel appearing for the petitioners conceded that the reasoning of the Court was correct, but that the Court below had not appreciated the fact that the Will did not mention value of two disputed properties at Banjara Hills and Jubilee Hills and also did not given the details of said properties to establish their identity. He contended that under Section 37 of the Act, petitioners are liable to pay Court fee on the value of the property and not on the Market Value.

8. The said CRP was disposed of by this Court on 28.03.2012. Basing on the said statement of the Senior counsel appearing for the petitioners that the petitioners are prepared to pay Court fee on the value of the two disputed houses at Banjara Hills and Jubilee Hills as per

Section 37 of the Act and since according to the petitioners, properties are not identifiable, this Court directed the Court below to entertain the suit on payment of Rs.10,000/- on the notional value for the present, subject to the condition that on the respondents entering their appearance and contesting the suit, the properties can be asked to be identified, and their market value can be ascertained as on the date of the execution of the Will. It observed that on such ascertainment, petitioners shall pay the balance Court fee, if any, payable and they shall be entitled to proceed further in the suit only on payment of such balance Court fee.

9. Thereafter, petitioners filed I.A.No.1906 of 2014 invoking Order VI Rule 17 CPC to amend the pleadings in the plaint.

10. In the said I.A., they sought to add a paragraph in para III(d), four lines in paragraph III(k), substitute the paragraphs dealing with Valuation and Court Fees and also sought to add a prayer for decree for partition of A, B & C schedule properties into six shares and to allot and deliver vacant and physical possession of 4/6th share to the petitioners and 2/6th share to respondents 2 & 3.

They also sought to add A to D schedules giving detailed description containing the extent and boundaries of the properties which are subject matter of the Will.

11. The said application was allowed by the Court below on 15.10.2014 after contest. Though the respondents challenged the same in CRP.No.5442 of 2015, it was dismissed on 04.07.2015. Further, while dismissing the said Revision, this Court observed that petitioners are liable to comply with the order in CRP.No.1522 of 2012 and in case they fail to pay the Court fee after proper valuation of the suit, the respondents can move an application under Order VII Rule 11 CPC.

12. Thereafter, a Memo was filed on 16.08.2017 by the petitioners contending that at the time of numbering the suit it was valued notionally at Rs.10,000/- under Section 36 of the Act and Rs.786/- was paid as Court fee; that there was an objection raised by the Court about the valuation and it had held that Sections 34 and 36 would not apply; ultimately, CRP.No.1522 of 2012 came to be disposed of; that petitioners then changed their counsel and got the plaint amended which was confirmed in CRP.No.5442 of 2015; and petitioners are

liable to pay Court fee under Section 24(d) of the Act and not under Section 37 of the Act because the petitioners, being non-executants of Deed of Will are challenging it, they have to seek relief of Declaration but not cancellation. They contended that in **Suhrid Singh @ Sardool singh v. Randhir Singh and Others**¹ and **Mohd.Ikramuddin v. Sangram Bosle and Others**² it was held that though petitioners invoked wrong provision of law, Court has inherent power to apply correct provision of law and direct them to make necessary corrections at any stage of the case and collect proper Court fee. A direction was sought to reassess the valuation of the claim of the original prayer under Section 24(d) of the Act and fix the proper Court fee and permit the petitioners to pay the same immediately.

13. The 1st respondent filed objections to the said Memo contending that there was a concession made by the counsel for the petitioner in CRP.No.1522 of 2012 that they would pay Court fee after calculation as per Section 37 of the Act after identification of the properties located at Banjara Hills and Jubilee Hills, and it was recorded in

¹ AIR 2010 SC 2807

² 2007(5) ALT 607

the order dt.28.03.2012 in the said CRP; that this Court also directed in the said order that only on payment of balance Court fee, petitioners would be entitled to proceed with the suit; even in CRP.No.5442 of 2015 disposed of on 04.07.2015, this Court had directed the petitioners to pay Court fee by complying with the order passed in CRP.No.1522 of 2012; and only to over come these two orders passed by this Court, the Memo has been filed by the petitioners. They contended that petitioners are bound to pay Court fee under Section 37 of the Act and they cannot now contend that they be permitted to pay Court fee under Section 24(d) of the Act because the orders passed in the Revisions are binding on the petitioners and have attained finality and they cannot re-agitate the same.

14. By order dt.16.11.2017, the Court below rejected the plea of the petitioners that they should be permitted to pay Court fee under Section 24(d) of the Act and directed them to pay Court fee under Section 37 of the Act amounting to Rs.4,02,125/- by 04.12.2017 and if they do not pay it, giving liberty to the respondents to invoke Order VII Rule 11 CPC.

15. The Court below referred to order dt.28.03.2012 in CRP.No.1522 of 2012 wherein this court had recorded the contentions of the counsel for the petitioners that petitioner would pay Court fee on the properties in Banjara Hills and Jubilee Hills as per Section 37 of the Act and observed that only because they were not identified at that time, notional value of Rs.10,000/- was allowed to be taken and later, on ascertainment of the identity of the properties, this Court had directed that petitioners should pay balance Court fee and then only proceed with the suit. It distinguished both the judgments cited by the counsel for petitioners on the ground that in those cases relief of cancellation of Will Deed was not sought. It also noted that on 04.07.2017 in CRP.No.5442 of 2015 this Court again directed the petitioners to comply with the orders in CRP.No.1522 of 2012. It then calculated the Court fee applying Section 37 of the Act as Rs.4,02,125/- and directed the petitioners to pay it by 04.12.2017.

16. Assailing the same, this Revision is filed.

17. Counsel for the petitioners contended that the order passed by the Court is not proper and correct; that

Section 37 of the Act is not at all attracted and petitioners ought to be permitted to pay Court fee invoking Section 24(d) of the Act only; and notwithstanding the orders passed in CRP.No.1522 of 2012 and 5422 of 2015, petitioners should be permitted to pay Court fee only as per Section 24(d) of the Act.

18. Counsel for the petitioners placed strong reliance on the judgment of this Court in **Nade Ali Mirza and others v. Khalida Mohammed Salim Dawawala and others**³ to contend that since the petitioners are not parties to the Will Deed, and they are not executants thereof, they are entitled to only seek a Declaration that it is invalid and not binding on the petitioners, and petitioners are not bound to seek the relief of cancellation of the Will Deed and only Section 24(d) of the Act is attracted and not Section 37.

19. Counsel for the respondent refuted the said contentions and supported the order passed by the Court. According to him, the orders passed in CRP.No.1522 of 2012 and CRP.No.5442 of 2015 are binding on the petitioners and they cannot re-agitate the

³ 2016(1) ALD 318

issue, particularly, when petitioners' counsel himself had conceded in CRP.No.1522 of 2012 that petitioners will pay Court fee as per Section 37 of the Act.

20. I have noted the contentions of both sides.

21. From the facts narrated above, it is clear that the suit itself was initially not numbered because of the objections as to the valuation taken by the Chief Judge, City Civil Court, Hyderabad, which opined in its order dt.17.02.2012 in OSSR.No.11114 of 2011 that Section 34 or 36 of the Act would not apply.

22. Thereafter petitioners challenged it in CRP.No.1522 of 2012 before this Court. During the course of hearing in the said Revision, counsel for the petitioner had conceded that his clients would pay the Court fee under Section 37 of the Act; but because two of the items of the properties located in Banjara Hills and Jubilee Hills were not identifiable at that point of time, this Court directed the petitioners to pay Court fee on the notional value of Rs.10,000/- subject to the condition that petitioners should pay the balance Court fee, after the properties are identified and their market value ascertained. This Court

had observed specifically that the *petitioners will proceed with the suit further only on the payment of such balance Court fee.* This was also reiterated in the order dt.04.07.2017 in CRP.No.5442 of 2015.

23. Both these orders have attained finality. So they are binding on the petitioners and unless the petitioners pay the Court fee after valuing the suit under Section 37 of the Act, they cannot proceed further.

24. Therefore, it is not open to the petitioners to rely on a decision in **Suhrid Singh @ Sardool Singh's** case (1 supra) or **Nade Ali Mirza and others** (2 supra) and re-agitate the issue because the principle of *res judicata* would apply and bar the petitioners from re-agitating the issue.

25. I am of the opinion that the Court below had correctly appreciated the legal position and rejected the Memo filed by the petitioner.

26. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India with the impugned order.

27. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

1st May, 2019.

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