

---

**(2006) 09 AP CK 0070**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 3886 of 2006**

Abdul Fayaz and Another

APPELLANT

Vs

Babaiah (died) by LRs. and Others

RESPONDENT

---

**Date of Decision :** 28-09-2006

**Acts Referred:**

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 17, 18, 24  
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

**Citation :** (2007) 1 ALD 166 : (2007) 4 ALT 687

**Hon'ble Judges :** Gopala Krishna Tamada, J

**Bench :** Single Bench

**Advocate :** A. Bichaiah, for the Appellant; K. Govind, for the Respondent

**Final Decision :** Allowed

---

## Judgement

Gopala Krishna Tamada, J.—This civil revision petition is directed against the docket order dated 12-6-2006 passed in O.S. No. 43 of 1999 by which the learned Junior Civil Judge, Banswada, while recalling the order passed in I.A. No. 97 of 2005, dated 21-2-2006, directed to return the amended plaint to the plaintiffs i.e., the petitioners herein.

2. The brief facts of the case are that the petitioners, are the absolute owners of the land in Plot No. 51 situated in Pitlam Village and as there was threat of dispossession by the respondents herein, they approached the Court below and filed O.S. No. 43 of 1999 for perpetual injunction along with an application in I.A. No. 139 of 1999 seeking temporary injunction. After hearing both sides, the learned Junior Civil Judge, Banswada, dismissed the application on 29-12-1999. Thereafter, it appears that the petitioners filed I.A. No. 26 of 2000 seeking amendment of the plaint, but it was dismissed as not pressed. While the matter stood thus, again, the petitioners came forward and filed I.A. No. 97 of 2005 under Order VI Rule 17 read with Section 151 CPC requesting the Court to permit them to amend the plaint. The amendment sought for is from an injunction simpliciter to declaration of their title and for mandatory injunction .

The Court below, by a detailed order dated 21-2-2006, allowed the application and directed the petitioners to amend the plaint and permitted the respondents to file additional written statement if necessary. Thereafter, the petitioners, after ascertaining the value of the suit from the local builders assessed its value at Rs. 83,496/- and a Court fee of Rs. 1,906/- was paid u/s 24(d) of the A.P. Court Fees and Suits Valuation Act, 1956 (for brevity "the Act"). However, the Court below, being not satisfied with the valuation, directed the petitioners to obtain a valuation certificate from the Competent Authority and adjourned the suit. In spite of the fact that sufficient time was granted to the petitioners, they could not produce the certificate. Hence, the Court below passed the impugned order recalling the orders passed in I.A. No. 97 of 2005 dated 21-2-2006 and directing to return the amended plaint to the plaintiffs.

3. Heard the learned Counsel for both the parties.

4. The learned Counsel for the petitioners has drawn my attention to Sections 17 and 18 of the Act and contended that it is always open for the Court to appoint an Advocate Commissioner. If it is not satisfied with the value arrived at by the plaintiffs, instead of rejecting the amended plaint, the Court below ought to have appointed an Advocate Commissioner, which probably would have met the ends of justice.

5. Per contra, the learned Counsel for the respondents has opposed the said contention stating that it is an old suit of the year 1999 and for some reason or the other, the petitioners are dragging on the matter. It is his further submission that on an earlier occasion, an application in I.A. No. 26 of 2000 for amendment of the plaint, was filed, but it was dismissed as withdrawn, and hence, I.A. No. 97 of 2005, which was filed for the very same relief, ought not to have been entertained by the Court below. The learned Counsel has further contended that instead of resorting to this method, the petitioners have a right to institute a separate suit for declaration of their title and mandatory injunction.

6. No doubt, it is an old suit of the year 1999 and prima facie it appears that the petitioners are trying to protract the litigation. It is true that I.A. No. 26 of 2000 filed for the very same relief was withdrawn. But, it must be remembered that the orders passed in I.A. No. 97 of 2005 dated 21-6-2000 permitting the petitioners to amend the plaint was not questioned by the respondents. So long as the order in I.A. No. 97 of 2005 is in force, the respondents cannot be permitted to contend that I.A. No. 26 of 2000 was dismissed as withdrawn. Of course, it may be a fact, which can definitely be taken into consideration, but on that score, I am not inclined to dismiss this revision. No doubt, the petitioners, instead of seeking amendment of the plaint can definitely invoke the jurisdiction of the Court below and file a separate suit for the very same relief, but again that will be leading to further complications. Further, from a perusal of Section 17, it clear that if the Court is not satisfied with the valuation of the suit, it has the power to appoint an Advocate Commissioner to ascertain the exact value of the suit.

7. Section 17 of the Act deals with Inquiry and Commission and the proviso reads thus:

**Inquiry and Commission :** For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such an inquiry as it considers necessary and may, if it thinks fit, issue a commission to any person directing him to make such local or other investigation as may be necessary and to report thereon to the Court.

From the language incorporated in the section, it is clear that the Court below, instead of resorting to the method of recalling the orders passed in LA. No. 97 of 2005, dated 21-2-2006, and returning the amended plaint to the plaintiffs, ought to have appointed an Advocate Commissioner. After-all, the enquiry and issuance of commission as provided u/s 17 of the Act are intended for the protection of revenue payable to the State, and hence, this Court is of the view that the order impugned is liable to be set aside and the Court below may be directed to appoint an Advocate Commissioner to ascertain the correct value of the suit.

8. Accordingly, the order impugned in this revision is set aside and the Court below is hereby directed to appoint an Advocate Commissioner for the purpose of ascertaining the exact value of the suit so as to enable the petitioners to pay necessary Court-fee. It is needless to observe that the petitioners shall bear the entire expenses towards fees of the Advocate Commissioner.

9. Accordingly, the civil revision petition is allowed. No costs./