
(2006) 09 AP CK 0063
In the Andhra Pradesh High Court
Case No : CRP No. 4900 of 2006

Mylapore Rajeswari Devi

APPELLANT

Vs

Ponnamanda Lakshmi Bai and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 34, 34(1), 34(2)

Citation : (2006) 3 ALD 212

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Eranki Phani Kumar, for the Appellant;

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner presented a plaint in the Court of Senior Civil Judge, Kakinada, with a prayer to pass a decree for partition of Plaints-A and B-Schedule properties, in the manner pleaded by her, and for grant of future profits. Plaint-A Schedule comprised of, four items of immovable properties, and Plaint-B Schedule comprised of, nine items of jewellery. Pleading that the parties are in joint possession of the said properties, the petitioner paid Court-fee of Rs. 200/- under Sub-section (2) of Section 34 of the A.P. Court Fees and Suits Valuation Act, 1956 (for short "the Act"). The trial Court returned the plaint, through its order dated 23-6-2006, directing the petitioner herein, to pay Court fee on movable properties, on her shares, as per the Act, within the time stipulated by it. The petitioner challenges the endorsement made by the trial Court.

2. Sri Eranki Phani Kumar, learned Counsel for the petitioner submits that once the contents of the plaint disclose that the suit schedule properties are in joint possession of the co-sharers, a fixed Court fee of Rs. 200/- is payable, under Sub-section (2) of Section 34 of the Act, and that there was no justification for the trial Court, in insisting that the Court-fee must be paid on movable articles. He contends that there does not exist any difference, as to the nature of

possession, between Plaints-A and B Schedule properties. He placed reliance upon a Division Bench judgment of this Court in A. Divakrupamani and another Vs. A. Sakuntala Devi and others, .

3. Since the suit is yet to be numbered, no rights can be said to have accrued to the respondents, and this Court does not find it necessary, to issue notice to them.

4. Section 34 of the Act, deals with the payment of Court-fees in partition suit. Sub-section (1) thereof directs that, where the plaintiff is out of possession and proposes to recover his share, after partition, the ad-valorem Court-fee has to be paid. Sub-section (2), on the other hand, provides for payment of fixed Court-fee of Rs. 300/-, where, the plaintiff is said to be in joint possession of the properties, which are sought to be partitioned.

5. In the instant case, the petitioner asserted that, herself and the respondents are in joint possession of the Plaints-A and B-Schedule properties. In a way, the trial Court was satisfied, that the immovable properties mentioned in Plaint-A schedule are in joint possession, and in that view of the matter, it did not insist on payment of ad-valorem Court-fee, on such items. It, however, took a different view, as regards the movable properties. Neither from the plaint, nor from the endorsement made by the trial Court, it is found that there is any distinction, as to the nature of rights claimed, in respect of Plaint-A Schedule properties, on the one hand, and Plaint-B schedule properties, on the other hand. In fact, the nature and incidence of possession, of an immovable property, gives rise to, relatively greater consequences of law, than the possession of an item of movable property. The possession of an item of immovable property can be said to be more assertive, firm and lasting, than the one, of movable property. The endorsement made by the trial Court cannot be sustained, either on law, or on facts.

6. The CRP is accordingly allowed, and the trial Court is directed to register the suit, if it is otherwise in order, without insisting on payment of ad-valorem Court-fee, on Plaint-B Schedule property. There shall be no order as to costs.