
(2014) 08 AP CK 0083

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1576 of 2004

Pranit Projects Pvt. Ltd.

APPELLANT

Vs

Goundra Yadaiah

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 137

Citation : (2014) 6 ALD 232 : (2015) 1 ALT 352

Hon'ble Judges : Noushad Ali, J;B. Siva Sankara Rao, J

Bench : Division Bench

Advocate : A. Laxminarayana, Advocate for the Appellant; C. Pratap Reddy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This revision, under Article 227 of the Constitution of India, is filed by the petitioners, who are defendants 22 to 24 among the 28 defendants in O.S. No. 118 of 2013, against the order, dated 29.04.2014, in I.A. No. 958 of 2013 in O.S. No. 118 of 2013 on the file of I Additional District Judge, Medak at Sangareddy.

2. The petitioners herein filed interlocutory application I.A.No. 958 of 2013 in the pending suit, in support of their written statement contest to decide, u/s 11(2) of Andhra Pradesh Court Fee Act read with Order VII Rule 11 of Civil Procedure Code, 1908, on insufficiency of Court Fee payable and or to reject the plaint for insufficient payment of the Court Fee in saying that the plaintiffs instead of valuing the suit u/s 34(1) of Andhra Pradesh Court Fee Act for ad volerum undervalued u/s 34(2) of Andhra Pradesh Court Fee Act only with fixed court fees as if in Joint possession.

3. Undisputedly, it is the suit for partition. The trial Court in answering I.A. No. 958 of 2013, by order, dated 29.04.2014, after hearing both sides, running in 12 paras, referring to 46 exhibits on behalf of defendants 22 to 24 and 15 exhibits

on behalf of plaintiffs 1 to 4, concluded that the plaint is liable to be rejected is untenable from the payment of fixed court fees in claiming Joint Possession and that any sufficiency or not of the Court Fee is to be decided during trial on establishing any such claim of the defendants of plaintiffs not in possession and are liable to pay ad volerum court fees; by framing any specific issue to answer after full fledged trial and any insufficiency of Court Fee is not directly entitles rejection of the plaint as sought for without affording opportunity including from the defence of plaintiffs not in possession and defendants also executed sales in favour of the third parties. Impugning the same, the present revision is filed with the contentions in the grounds of revision that the trial Court in the impugned order, did not apply its mind to the clear averments in the written statement paras 2 and 3 in pages 4 to 6 of dispossession of the plaintiffs to say there is no any joint possession in support of the plaint plea and they are bound to pay ad valorem Court Fee and have no right to cause loss to the State Exchequer by paying fixed Court Fee and the trial Court erred at the factual matrix and the propositions relied gives only conclusion for allowing the application.

4. Heard both sides. Perused the material on record.

5. Now the points for consideration are,

1. Whether the impugned order of the lower court is unsustainable and requires interference by this Court under Article 227 of the Constitution of India?

2. To what result?

6. Point I:

It is to be kept in mind in deciding the revision the scope of Article 227 of the Constitution of India as laid down by the Apex Court in *Surya Dev Rai v. Ram Chander Rao* guidelines at para 38 that mere error in non application of law or erroneous application of law or ill appreciation of law is not suffice, but must be shown of failure of Justice therefrom as resulted as reiterated in *Shalini Shyam Setty v. R.S.Patil* (in SLP (Civil) No. 7445 of 2009, dated 23.07.2010). It is important to note therefrom that irrespective of Section 11 of the Andhra Pradesh Court Fee Act, 1956, particularly Sub Section 2, enables defendants to raise a plea regarding the sufficiency of Court Fee it obligates the Court to consider the plea of the defendants. Here so far as the numbering stage is concerned, on sufficiency of Court Fee as laid down in the Full Bench decision of this Court, in *Chillakuru Chenchuram Reddy v. Kanupuru Chenchurami Reddy*, that at the initial stage, the plaint averments and the documents in support of the plaint are only decisive and after appearance, pleadings of the defendants that also to be considered in deciding the sufficiency of Court Fee. In fact the above Full Bench expression equivalent to 1968(3) An.WR 616 referring the earlier expression of *Patchamatla Venkata Subbayamma Vs. Kocherlapati Rajayya*, laid down the principle of the decision of the court fees shall be subject to review from time to time as and when occasion arises till end of trial. It also laid down that rejection of plaint arises if the Court gave a finding on

insufficiency of court fees and direction to pay the deficit court fee within the time fixed and even then failed to comply the same.

7. The learned Judge, in fact, considered all these aspects in saying all the disputed facts raised require elaborate and roving enquiry that can be possible only by trial and this aspect of sufficiency of Court Fee is a mixed question of fact and law and not possible to reject the plaint straight away as sought for by the defendants 22 to 24 apart from the issue to decide may encroach other issues on trial vide decisions support the view are P.Balaraju v. C.J. Yadav; Valluri S.Prasad v. Alluri K.Naidu; Satyanarayana v. Om Prakash. It is needless to say even within the scope of Section 11 of A.P. Court Fee Act with reference to Full Bench expression and other two Judges Bench expression of Court placed reliance, they were already referred before the trial Court and reflected as considered in the order and even those nowhere say the pre trial roving enquiry is required to be conducted by the Court to decide the issue of Court Fee on several disputed questions of fact where it requires elaborate evidence with reference to the documents including by testing in cross-examination u/s 137 of Evidence Act. It is needless to say in this regard that Court is not functuous officio till pronouncement of judgment on sufficiency of Court Fee to decide including so to direct while passing judgment, to pay any requirement of deficit court fee by making the decree unexecutable till such payment. Needless to say the time granted for payment of Court Fee will not give life to the execution and enforcement of the decree nor it suspend the operation of judgment and decree as a consequence for any latches vide AIR 1941 Madras -929 (FB) that was even followed in G.C. Kumar v. Ashok Kumar.

8. Having regard to the above, the order of the learned trial Judge no way requires interference for this Court, while sitting in the revision, under Article 227 of the Constitution of India. Accordingly, Point I is answered.

9. POINT II: Accordingly and in the result the revision petition is dismissed with no costs. It is made clear that the trial court shall frame specific issue in this regard on sufficient or otherwise of the valuation made in the plaint and court fees paid and answer along with other issues and in the final adjudication, if required so to direct for payment of sufficient Court Fee and in such event with direction of till deficit court fee is paid the decree that shall be even drawn up is unexecutable and that no way give additional life against limitation from the date of decree to date of payment of deficit court fees.