

(1972) 06 AP CK 0012

In the Andhra Pradesh High Court

Case No : Second Appeal No"s. 435 and 436 of 1971

Ravuri Bhadrayya and Another

APPELLANT

Vs

Veluri Sivarama Sastri

RESPONDENT

Date of Decision : 27-06-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : AIR 1973 AP 125 : (1973) 2 ALT 153

Hon'ble Judges : Madhava Reddy, J

Bench : Single Bench

Advocate : T.H.B. Chalapati and A. Hanumantha Rao, for the Appellant; N. Rajeswara Rao, for the Respondent

Judgement

1. These two second appeals arise out of two suits filed by the plaintiff (Respondent in S. A. No. 435 of 1971 and 1st respondent in second appeal No. 436 of 1971) for recovery of possession for eviction and recovery of damages for use and occupation. S. A. No. 435 of 1971 arises out of O. S. No. 33 of 1963 while S. A. No. 436 of 1971 arises out of O. S. No. 2 of 1961. It is the plaintiff's case in O. S. No. 2 of 1961 that on 31-8-1953 the 1st defendant was inducted into possession as a lessee on his executing a lease deed agreeing to pay Rs. 101 /- per annum. Defendant 2 and 3 are members of the joint family of the 1st defendant. The 1st defendant having entered into possession as a lessee inducted defendants 4 and 5 into possession and also committed default in payment of rent. In O. S. No. 33 of 1963, it is the case of the plaintiff that items 1 and 2 of the plaint schedule properties were leased out to the father of the defendants 1, 3, 4 and 5 on 17-12-1944 and item No. 3 was leased out on 29-4-1946. These defendants inducted defendants 6 and 7 into possession. The 6th and 7th defendants in this suit are the 4th and 5th defendant in the other suit.

2. These two suits were resisted on various grounds which it is not necessary to reiterate here having regard to the only two points that were urged in these

second appeals. The two points are (1) that the plaintiff having valued the suits u/s 40(1) of the Andhra Court-fees and Suits Valuation Act, the trial court has no jurisdiction to go into the question of title ; and (2) that if the suits are treated as one for recovery of possession from a trespasser, they should have been accordingly valued and if so valued, they would be beyond the pecuniary jurisdiction of the District Munsif's Court.

3. So far as the second contention is concerned, that is based on a ground not taken in the written statement. The defendants never objected to the valuation of the suits and never contended that if the suits are valued as one for recovery of possession, the subject-matter of each of the two suits would be more than Rs. 5,000 /- and consequently the District Munsif's Court would have no pecuniary jurisdiction to try the suits. The defendants not having taken this objection in their written statement and not having pressed it in the trial court, they cannot be allowed to raise it for the first time in these second appeals. All questions as regards valuation and jurisdiction must be taken in the written statement and in any case in the trial court. Under sub-section (2) of Section 11, any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient and all questions arising on such pleas are required to be heard and decided before the hearing of the suit. Under sub-section (4) of Section 11, a question relating to the value for the purpose of determining the jurisdiction of the court shall be heard and decided before the hearing of the suit. If the defendants had raised this question in the trial court, that court would have enquired and decided that question. If upon such enquiry the value of the subject-matter of the suit was found to be beyond the pecuniary jurisdiction of the court, the plaint would have been returned for presentation to the proper Court. It may be that if such an objection was raised, on enquiry the court would have found that even if the suits were valued as one for recovery of possession, the Court had pecuniary jurisdiction. In any case, it cannot be positively found that the trial court had no pecuniary jurisdiction to entertain the suits relating to the present subject-matter. That involves an enquiry into questions of fact and therefore cannot be allowed to be agitated for the first time in these second appeals. The second contention must therefore, fail.

4. Once it is held that the court had jurisdiction to entertain the suit, the mere fact that the proper court-fee has not been paid is not a ground for refusing to grant the relief to which the plaintiff is entitled on the facts found by the court below. The trial court has found that though the court-fee was paid as if the suits are between a landlord and tenant from the averments in the plaints it is clear that at least defendants 4 and 5 in O. S. No. 2 of 1961 and defendants 6 and 7 in O. S. No. 33 of 1963 are not the tenants of the plaintiff. They were inducted into possession of the plaint schedule property by the other defendants who, according to the plaintiff, are lessees. The defendants themselves denied that they were lessees or sub-lessees of the plaintiff and had also set up occupancy rights. The court enquired into the question whether the defendants are entitled to recover possession and whether the plea of the defendants that they had

acquired occupancy rights was true or not, and gave finding in favour of the plaintiff. On the material placed before the Court by both the parties, these findings of fact are given and they have not been challenged in these second appeals. The mere fact that the requisite court-fee was not paid, assuming that such court-fee was payable, the plaintiff is not disentitled to the relief. No judgment or decree of the lower court could be varied on this ground. In any case the defendants have no locus standi to object to the decree on the ground that proper court-fee has not been paid.

5. In the aforesaid view of the matter, both the appeals fail and are accordingly dismissed with costs. No leave.

6. Appeals dismissed.