
(2022) 12 TEL CK 0028

In the Telangana High Court

Case No : Civil Revision Petition No. 2544 Of 2022

Srinivas Kondu

APPELLANT

Vs

Kondu Vijay Prakesh

RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section 6, 16, 17
Telangana Civil Courts Act, 1972 — Section 5

Citation : (2022) 12 TEL CK 0028

Hon'ble Judges : T. Vinod Kumar, J

Bench : Single Bench

Advocate : A.Raghu Ram

Final Decision : Allowed

Judgement

1. This Civil Revision Petition under Article 227 of the Constitution of India is filed against the docket order dt.28.10.2022, whereby the plaint presented before the Court of Senior Civil Judge, Medchal-Malkajgiri District, at Kukatpally, vide O.S. (SR) No.1743 of 2022, is returned with endorsement for being presented before the proper Court where the suit schedule 'D' property is situated, as being contrary to the provisions of Section 17 of the Code of Civil Procedure, 1908 (for short, 'CPC').

2. Heard learned counsel for the petitioner and perused the record.

3. Petitioner contends that initially, a suit for partition, separate possession, declaration of gift deeds as null and void and for grant of injunction in respect of four properties, being suit schedule properties A to D, was presented before the Court of I Additional Junior Civil Judge, City Civil Court, Secunderabad, and on return it was resubmitted before the Court of Senior Civil Judge, Medchal-Malkajgiri District, at Kukatpally on 27.10.2022 with O.S.(SR).No. 1743 of 2022. The office of the Court of Senior Civil Judge, Kukatpally, Medchal-Malkajgiri District on the same date had returned the said suit, by taking the following

objection:

"To file in proper Court where the Schedule 'D' property situates, as the market value is more than 'A' schedule property."

4. Upon re-submission, on 28.10.2022 the learned Senior Civil Judge passed the following docket order:

"Heard. Perused. As seen from record and as per law, the objection dt.27.10.2022 holds good as per law. Moreover Court fee is also not paid before this Court. Hence, in view of above objection, this suit is returned to file before proper Court having jurisdiction.

Time (7) days."

5. The present Civil Revision Petition is filed aggrieved by the return of the plaint vide docket order dt 28.10.2022.

6. Petitioner contends that the office objection and the docket endorsement made by the Court below by which the plaint presented is returned, is contrary to the provisions of Section 17 CPC, which permits a suit relating to immovable property being situated in the jurisdiction of different Courts to be presented in any Court, where any portion of the property or one or more properties is/are situated. Since, the suit schedule 'A' property, from and among the four properties, falls within the jurisdiction of the Senior Civil Judge Court, Medchal-Malkajgiri District at Kukatpally, the presentation of the plaint in the jurisdiction of Kukatpally Court is valid; and as regards the value of the suit, that the petitioner having paid the Court fee, the office of the court below ought not to have returned the plaint by up-holding the office objection dt.27.10.2022.

7. Petitioner further contends that the objection as to payment of Court fee before the I Additional Junior Civil Judge's Court, City Civil Court, Secunderabad, and not before the Senior Civil Judge's Court, Kukatpally, is erroneous, as by valuing the suit for a sum of Rs.32,12,518/-, an amount of Rs.5,984/- was paid as Court fee initially, when the plaint was presented before the Junior Civil Judge Court at Secunderabad, on the basis of one of the document relating to the suit schedule properties having been registered with the Sub-registrar office falling under the jurisdiction of the said court; and that the said payment of court fee being duly acknowledged, vide certificate dt.30.03.2022, the Court below ought to have received the certificate dt.30.03.2022 issued by the I Additional Junior Civil Judge, City Civil Court, Secunderabad, when the plaint was re-presented before the Senior Civil Judge's Court at Kukatpally, on its return by the Court of Junior Civil Judge.

8. To support his contention, the petitioner has relied upon a Circular dt.26.02.2005 issued by the Principal District & Sessions Judge, Ranga Reddy District, wherein it was clearly stated that all the Judicial Officers at the Unit are requested to accept plaints/petitions represented on the point of jurisdiction with the Court fee deposited already in the first Court in which suit was filed without

insisting for depositing the Court fee afresh in the Court account and they are also requested to accept enhanced Court fee paid in their Court accounts. Thus, it is contended that the return of plaint on any of the grounds noted in Docket order are unsustainable.

Hence, this revision petition.

9. I have taken note of the contentions urged.

10. In order to decide the issue as to in which Court the suit has to be instituted, two aspects of jurisdiction need to be looked into:– (i) pecuniary jurisdiction and (ii) territorial jurisdiction.

11. Insofar as pecuniary jurisdiction is concerned, firstly based on the relief sought for, the valuation of suit is to be arrived at and secondly, based on such valuation, the pecuniary jurisdiction of the Court is determined in terms of Section 6 of the Code of Civil Procedure, 1908 (for short, 'CPC') R/w Section 5 of the Telangana Civil Courts Act, 1972 (for short, 'the Act').

12. In the facts of the case as the value of the suit schedule properties 'A' to 'D' and the share being claimed by the petitioner being $\frac{1}{4}$ of such properties, the Court fee payable would be on the $\frac{3}{4}$ th value of the share of the property being claimed by the petitioner, which on the basis of valuation shown in the plaint is in excess of Rs.20 lakhs, but less than Rs.50 lakhs. Thus, it is the Court of Senior Civil Judge in which suit is to be instituted, as having pecuniary jurisdiction under the Act (as amended w.e.f. 01.09.2019), which specifies that if the suit value is below Rs.20 lakhs, the same shall be presented before the Court of Junior Civil Judge; where the value of the suit is above Rs.20 lakhs and does not exceed Rs.50 lakhs, the jurisdiction is conferred with the Court of Senior Civil Judge; and where the suit value is more than Rs.50 lakhs, jurisdiction is conferred with the District Court.

13. Insofar as the territorial jurisdiction is concerned, Section 16 of CPC specifies that suits to be instituted where the subject matter is situated. However, in a suit involving immovable properties situated within the jurisdiction of different Courts, as per Section 17 of CPC, the suit can be instituted in any Court within the local limits of a Court where any portion of the property is situated, which however is subject to the pecuniary jurisdiction of that Court.

14. In the facts of the present case, as can be seen from the plaint copy, among the four properties, the suit schedule 'A' property, is located within the jurisdiction of the Court of Senior Civil Judge, Kukatpally; the suit schedule 'B' property being located in Keesara falls within the jurisdiction of Senior Civil Judge's Court, Medchal of Medchal-Malkajgiri District; the suit schedule 'C' property falls within the jurisdiction of Siddipet District, (though the market value of property falls within the pecuniary jurisdiction of the Junior Civil Judge); and that the suit schedule 'D' property falls within the jurisdiction of the Court of Senior Civil Judge at Ranga Reddy.

15. Since, the suit schedule properties are immovable properties situated in local limits of different Courts as detailed herein above, having regard to provisions of Section 17 CPC, the plaintiff has a choice to institute the suit at any of the above four Courts, subject to the pecuniary jurisdiction of that Court i.e., the Court should have pecuniary jurisdiction over the value of the suit by considering the aggregate value of all the suit schedule properties for the purpose of Court fee. As noted above, since the value of the suit comes under the pecuniary jurisdiction of the Senior Civil Judge Court, the petitioner is entitled to institute the suit by presenting it before the court of Senior Civil Judge at Kukatpally, where the Suit Schedule 'A' property is situate.

16. Thus, the return of the plaint by the Court below with the endorsement to present before the court having jurisdiction over Suit Schedule 'D' property as the value of such property is more, is not a valid reason, as it is not the purport of Section 17 CPC. On the other hand, Section 17 CPC gives a choice to the plaintiff to choose the territorial jurisdiction of a court, if different courts have jurisdiction.

17. In view of the above, this court is of the view that the return of the plaint as presented by the petitioner before the Senior Civil Judge, Kukatpally, by making the note that "the objection dt.27.10.2022 (to file in proper Court where the Schedule 'D' property situates, as the market value is more than

'A' schedule property) holds good as per law", such an interpretation is nowhere mentioned in the scheme of CPC, and appears to this Court is either due to ignorance and lack of understanding of operation of the provisions of Section 17 of CPC or otherwise is to evade the work amounting to dereliction of duties.

18. Further, the objection with regard to the Court fee not being paid before the Court below, it is to be noted that any Court fee paid goes to the credit of the Court fee account of the State with the treasury, and is not counted on unit wise basis. That apart, when a Circular dt.26.02.2005 issued by the Principal District & Sessions Judge, Ranga Reddy District, to the effect that if the Court fee is deposited already in the first Court in which a suit was filed, not to insist for depositing the Court fee, afresh, in the Court Account, the Judicial Officers are requested to accept the plaints/petitions on payment of enhanced Court fee, if any, the office objection taken / noted on the Docket order/endorsement, in the view of this Court is wholly unjustified, apart from being frivolous for it to be sustained.

19. Having regard to the conclusions arrived at as above, this Court is of the considered view that the docket order passed on 28.10.2022 by the Court of Senior Civil Judge, Medchal-Malkjgiri District at Kukatpally, returning the plaint, cannot be held to be valid and is liable to be set-aside.

20. Accordingly, the Civil Revision Petition is allowed, and the docket order dt 28.10.2022 passed by the Senior Civil Judge, Medchal-Malkjgiri District at Kukatpally is set aside. The Court below is directed to receive the plaint and

number the suit, if it is otherwise found to be in order, and take the same on record. Pending miscellaneous petitions, if any, in this petition shall stand closed. No order as to costs.