
(2012) 04 AP CK 0060

In the Andhra Pradesh High Court

Case No : Civil Revision Petition 5489 of 2011

Tadishetty Padma Rao and Tadishetty Pramod Kumar

APPELLANT

Vs

Tadi Shetty Jaihind and Others

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 34(1), 34(2)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 5, Order 2 Rule 2, 151

Citation : (2012) 3 ALD 756 : (2012) 4 ALT 6

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : C.A.R. Seshagiri Rao, for the Appellant; P. Narsing Rao, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. This Civil Revision Petition is filed against order dated 12-9-2011 in I.A. No. 745/2011 in O.S. No. 176/2007 on the file of the learned XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad. Respondent Nos.1 to 7 filed the above mentioned suit for partition. The petitioners, who are defendant Nos.1 and 2 in the said suit, filed I.A. No. 745/2011 under Order XIV Rule 5 r/w. Section 151 of the Code of Civil Procedure, 1908 (for short "the Code") requesting the lower Court to frame the following additional issues:

1. Whether the payment of court fee u/s. 34(2) of A.P.C.F. & S.V. Act is sufficient when the plaintiffs are not in joint possession of the suit schedule property and the suit is liable to be dismissed on this ground ?

2. Whether the suit is liable to be dismissed for non-payment of sufficient court fee u/s. 34(1) of A.P.C.F. & S.V. Act ?

3. Whether the present suit is not maintainable under Order II Rule 2 CPC on the

ground that the plaintiffs already filed previous suit being O.S. No. 384/2006 for partition and separate possession of their father properties and the same is still pending? And this suit is liable to be dismissed on this ground?

2. However, this application was dismissed by the lower Court by order dated 12-9-2011. Feeling aggrieved thereby, the petitioners filed the present Civil Revision Petition.

3. The lower Court dismissed the application accepting the plea of respondent Nos.1 to 7/plaintiffs that they are in constructive possession of the suit schedule property and that therefore the Court fee paid by them u/s 34(2) of the A.P. Court Fees and Suits Valuation Act, 1956, (for short "the Act"), is correct. The lower Court has also accepted the plea of respondent Nos.1 to 7/plaintiffs that the subject matter of O.S. No. 384/2006 is different from the one in the present suit.

4. On a careful perusal of the order under revision, I am of the opinion that the lower Court has not made a correct approach in dealing with the application filed by the petitioners. The petitioners sought for framing of the additional issues on the ground that even according to the averments in para-7 of the plaint the petitioners misrepresenting as the only legal representatives and successors of late T. Pentaiah and defendant Nos. 8 to 17 misrepresenting as the legal representatives and successors of late T. Narsaiah, executed sale deed in favour of defendant Nos.18 to 25 conveying the suit land vide document No. 6371/2006 without any partition by metes and bounds and that therefore the Court fee u/s 34(1) of the Act was payable as respondent Nos.1 to 7/plaintiffs were not in joint possession of the property. In this context, it is relevant to note the averments made at para-19 of the written statement filed by the petitioners, which read as under:

That admittedly the plaintiffs and these defendants are not in possession of the suit land and as such the plaintiffs cannot pay the fixed court fee u/s 34(2) of the A.P. Court Fee and Suits Valuation Act. And the plaintiffs have grossly under valued the reliefs and thereby paid most insufficient court fee under improper provisions of law.

5. With respect to the proposed additional issue based on Order II Rule 2 of the Code, even though no specific plea was raised, in para-11 of the written statement filed by the petitioners it was specifically stated that respondent Nos.1 to 7/plaintiffs have earlier filed O.S. No. 384/2006 in respect of the same land which was owned and possessed by defendant No.1 and that the same is pending before the lower Court and by jumbling the names, they have filed the present suit. Thus a foundation was laid in the written statement to show that the present suit is hit by Order II Rule 2 of the Code even though no specific plea in this regard was raised.

6. Under Order XIV Rule 1 of the Code, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Under sub-rule

(2) thereof, material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Under sub-rule (3), each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. Sub-rule (4) adumbrated two kinds of issues, namely, (i) issues of fact and (ii) issues of law. It is the duty of the Court to frame issues on the basis of material propositions of facts within the meaning of Order XIV of the Code.

7. Neither party has placed before this Court the issues framed by the lower Court in the suit. Except observing that the points on which the petitioners sought for framing of the additional issues are covered by the comprehensive issues that are already framed in the suit, the lower Court has not discussed the scope of those issues. The suit cannot be comprehensively adjudicated unless all the material propositions of fact and law are deduced in the form of issues and evidence is let in by both the parties. From the above noted contents of the written statement filed by the petitioners, it cannot be denied that at the earliest point of time they have taken the specific plea of payment of insufficient Court fee by pleading that respondent Nos.1 to 7/plaintiffs are not in physical possession of the property. This certainly constitutes a material proposition of fact which requires framing of an issue. As in the case of limitation, it is the duty of the Court to frame appropriate issues with respect to payment of Court fee as well. Instead of framing such an issue, the lower Court has readily accepted the plea of respondent Nos. 1 to 7/plaintiffs that they are in constructive possession of the suit schedule property. Such a perfunctory approach on the part of the lower Court cannot be appreciated. For the above mentioned reasons, the order under revision is set-aside and the Civil Revision Petition is allowed. The lower Court is directed to frame additional issues as proposed by the petitioners. If further evidence needs to be adduced, the parties shall be permitted to adduce such evidence and the trial shall be completed within a period of one month from the date of framing of the additional issues. Since the suit is of the year 2007, the lower Court is directed to dispose of the same within a period of two months, thereafter.