
(2016) 04 AP CK 0043

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2178 of 2015

Vemula Chinnamma @ Chinnammai

APPELLANT

Vs

Battula China Kannaiah and others

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21

Citation : (2016) 166 AIC 740 : (2016) 4 ALT 592 : (2016) 5 AndhLD 221

Hon'ble Judges : M. Seetharama Murti, J.

Bench : Single Bench

Advocate : Mr. Sreenivasa Rao Velivela, Counsel, for the Appellant; Ms. S. Pranathi, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

M. Seetharama Murti, J.—;This Civil Revision Petition, under Article 227 of the Constitution of India, by the plaintiff is directed against the order dated 29.04.2015 of the learned Senior Civil Judge, Nuzvid, Krishna District passed in I.A. No. 33 of 2015 in O.S. No. 454 of 2014 filed by the defendants/respondents herein under Section 21 of Code of Civil Procedure requesting to decide the pecuniary limits of the suit claim and the jurisdiction of the Court to entertain the suit after considering the market value certificates dated 22.09.2014 and 08.12.2014 issued by the Sub-Registrar, Mylavaram in respect of the suit schedule property.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff (for short, "the plaintiff") and the learned counsel for the respondents/defendants (for short, "the defendants"). I have perused the material on record.

3. The case of the defendants in support of their aforementioned request in the above mentioned interlocutory application, in brief, is this:

The plaintiff brought the suit for declaration and injunction in respect of the property ad-measuring Ac.0.61 cents viz., Ac.0.12 cents in R.S. No. 167/2 and

Ac.0.49 cents in R.S. No. 170/2 situated at Mylavaram village and mandal of Krishna District, which is more fully described in the schedule annexed to the plaint. The defendants had obtained valuation certificates from the Sub-Registrar, Mylavaram. In the said certificates issued by the Sub-Registrar, the value of the property [without any structures] was mentioned as Rs. 42,64,900/-. However, in the suit, the plaintiff had shown the value of the suit schedule property at Rs. 5,52,706/- and that the said valuation includes the values of the structures in the property. Thus, by suppressing the real value of the properties, the plaintiff had played fraud on the Court. In view of the real value of the property as mentioned in the certificates issued by the competent authority, the Court is not having the jurisdiction to entertain and try the suit.

4. The case of the plaintiff, in brief, is this:

The plaint schedule property is classified as dry land. The defendants had obtained the valuation certificates, having shown the property as residential property. Further, they have sought for the value of the property on Square Yard basis. The plaintiff had obtained the valuation certificate in respect of the property on the basis of acreage as the property was classified as a dry land. The defendants are not having any tenable defence. Therefore, they have not filed their written statement.

5. On merits, the trial Court had allowed the petition of the defendants and had observed in the operative portion of its order that the plaintiff has to file the suit before proper Court on payment of the required Court fee. Aggrieved of the said orders, the plaintiff is before this Court.

6. The learned counsel for the revision petitioner/plaintiff while narrating the sequence of events, which are stated supra, and also the case of the plaintiff, would submit that a house was constructed only in a small portion of the land and that the property is being described as agricultural dry land in the revenue records and that the dominant purpose for which the property is being put to use is to be taken into consideration and that the plaintiff has shown the correct value of the property and had correctly valued the reliefs claimed in the suit based on the valuation certificates issued by the competent authority, wherein the valuation is shown on acreage basis. He, therefore, prayed for setting aside the order of the Court below.

7. On the other hand, the learned counsel for the defendants while supporting the orders of the Court below had reiterated the contentions of the defendants which are stated supra. He had further contended as follows: "As per Section 21 of the Code of Civil Procedure the objection in regard to the jurisdiction has to be taken at the earliest opportunity and at any rate before the settlement of issues and that unless such an objection is taken as stated in Section 21 of the Code of Civil Procedure the defendants are precluded from raising such objection before an appellate or revisional Court and that, therefore, the petition filed even before the filing of the written statement is maintainable. Admittedly, there is a house

(structure) in the plaint schedule property. Unless conversion from the agricultural purpose to residential purpose is sought for and accorded, no permission would be granted for construction of a house. Since a house was permitted to be constructed and the property is being put to use for residential purpose, the contentions of the plaintiff that the property is a dry land and that the dominant purpose has to be seen are not correct. In any view of the matter, since there is a house in a part of the property, that part of the property should at least be treated as a residential property/urban property and that portion of the property should be directed to be valued after taking into consideration the value of the property @ Rs. 1,500/- per Square Yard as mentioned in the certificates issued by the Sub-Registrar, Mylavaram." So contending it is submitted that the order of the Court below is sustainable and the revision is devoid of merit.

8. I have given earnest consideration to the facts and the submissions. I have carefully perused the material record.

9. In the light of the contentions urged by the learned counsel for the defendants it is necessary to refer to the provision of Section 21 of the Code of Civil Procedure, which reads as under:

21. Objections to jurisdiction.

1[(1)] No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

2[(2)] No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]

No doubt, the provision states that the objection as to the competence of a Court with reference to pecuniary limits of its jurisdiction has to be taken at the earliest opportunity and at any rate before the settlement of the issues. It is also true that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. But the provision does not ordain that the issue as to the competence of a Court with

reference to the pecuniary limits of its jurisdiction be invariably decided as a preliminary issue.

10. The suit is filed for declaration of title and consequential perpetual injunction. Along with the plaint the plaintiff had produced two valuation certificates issued by the Sub-Registrar, Mylavaram as mentioned in the list of documents appended to the plaint. A perusal of the plaint would show that on the basis of the said certificates obtained by the plaintiff and filed along with the plaint, the plaintiff had correctly shown the values of the land as well as the structures in relevant portion of the plaint and had correctly valued the reliefs claimed and had paid the appropriate Court fee on the reliefs claimed. Obviously, for that reason the suit was numbered. Be that as it may, at the time of hearing of the Interlocutory Application before the trial Court, the defendants having produced the two certificates obtained by them from the Sub-Registrar, Mylavaram, which are referred to supra, had placed reliance on the said certificates wherein the property value was assessed on Square Yard basis. On the other hand, as already noted in the valuation certificates produced by the plaintiff the value was assessed on the basis of acreage. Since there are two sets of certificates furnished by the same Sub-Registrar showing dissimilar/contrary valuations, the Court below had called the Sub-Registrar to explain the discrepancy and to ascertain the correct position. The Sub-Registrar in his written submission had given a clarification to the Court by stating that the market value certificate will be issued according to the contents mentioned in the requisition form and that if the applicant mentions or describes the property in the requisition form as Urban property, then the valuation certificate will be issued on the basis of Square Yard and that if the applicant mentions or describes the property in the requisition form as agricultural property, then the valuation certificate will be issued on the basis of rate per acre. The trial Court, having considered the submissions and the fact that there is a residential house in part of the plaint schedule property, had accepted the version of the defendants and had held that it has no jurisdiction to entertain and try the suit and that the plaintiff has to file the suit before a proper forum on payment of required Court fee. The trial Court did not pass any further consequential orders for return of the plaint for presentation to proper Court by following the procedure established by law. Be that as it may. Be it noted once again for emphasis that along with the plaint, the plaintiff had produced two valuation certificates issued by the Sub-Registrar, Mylavaram and that as per the contents of the said certificates the plaintiff had correctly shown the values of the land as well as the structures in relevant valuation portion of the plaint and had correctly valued the reliefs claimed and had paid the appropriate Court fee on the reliefs claimed. Be it also noted that in the valuation portion of the plaint, the suit land and the structure thereon are separately valued and necessary court fee is paid on the reliefs claimed. Obviously, for that reason the suit was numbered. Thus, the Court below having accepted the values mentioned in the certificates produced by the plaintiff and having further accepted the correctness of the valuation of the reliefs claimed and the correctness of the court fee paid had

registered the suit. It is an admitted fact that the defendants have not yet filed their written statement. There are two sets of certificates before the Court below showing different valuations of the same property. The certificates produced by the plaintiff on a perusal would show that the value of the property was furnished by the competent authority on acreage basis, that is, on the basis of rate per acre. The certificates produced by the defendants on a perusal would show that the value of the property was furnished by the same competent authority on Square Yard basis, that is, on the basis of rate per square yard. The case of the plaintiff is that the land is a dry land as per the revenue record and that though a house was constructed in a small portion of the property, the dominant purpose for which the property is being put to use is not residential purpose but only agricultural purpose. The questions whether the property is a dry land or a residential property or an urban property as per the entries in the relevant Government records and whether the property was converted as per procedure established by law from agricultural to residential use have to be gone into after full-fledged trial. Similarly, the further question - whether the property was and is being put to use as a dry land or a residential property and the other question in regard to dominant usage to which the property is being put to have to be adjudged after full-fledged trial. Therefore, the issues in regard to the correctness of the valuation of the properties and the reliefs claimed and the correctness of the Court fee paid on the reliefs claimed, which are complex issues of fact and law, cannot be prejudged unless the core questions which are adverted to supra are decided on merits after full-fledged trial. Therefore, the question of ignoring the certificates produced by the plaintiff and accepting the contents of the certificates produced by the defendants at this interlocutory stage does not arise for consideration, in the light of the findings supra. Further, the provisions of Sections 4 and 5 of the A.P. Court Fee and Suit Valuation Act, which are complementary and which are not in conflict with Order 7, Rule 11 of the Code of Civil Procedure, empower the Court to examine at any time the correctness of the valuation of the reliefs claimed and the sufficiency or otherwise of the court fee paid and further empower the Court to demand the deficiency in Court fee at any stage. Therefore, the said questions raised by the defendants in this interlocutory application have to be necessarily adjudged only after full-fledged trial and not in the instant interlocutory application filed by the defendants.

11. Hence, this Court is of the considered view that it would be appropriate to direct the trial Court to frame an issue in regard to the correctness of the valuation of the reliefs claimed and the Court fee paid thereon and decide it at the appropriate stage in case the defendants raise such a defence in their written statement to be filed by them. Viewed thus, this Court finds that the order passed at a preliminary stage without giving opportunity to the parties to enter trial is unsustainable and warrants interference.

12. In the result, the Civil Revision Petition is allowed and the order impugned in the revision is set aside giving liberty to the defendants to raise the issue in

regard to the correctness of the valuation of the reliefs claimed in the suit and the sufficiency or otherwise of the Court fee in the written statement to be filed before the trial Court. It is made clear that this Court did not express any opinion on the correctness of the valuation of the reliefs claimed in the plaint and the sufficiency of the Court fee paid. Therefore, if the facts of the case warrant and if an issue arises from the pleadings of the parties, the trial Court shall frame an issue in regard to the correctness of the valuation of the reliefs claimed in the plaint and the Court fee paid thereon and decide the said issue along with the other issues that fall for consideration in the suit, however, after both the parties enter trial and adduce evidence. There shall be no order as to costs.

13. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.