
(1952) 09 AP CK 0017
In the Andhra Pradesh High Court
Case No : Civil R. P. No. 348 of 1952

Venkat Babaiah and Others	Vs	APPELLANT
. Venkat Ratnayya and Others		RESPONDENT

Date of Decision : 16-09-1952

Acts Referred:

Court Fees Act, 1870 — Section 7
Suits Valuation Act, 1887 — Section 8

Citation : (1952) 09 AP CK 0017

Hon'ble Judges : Palnitkar, C.J.;Srinivasachari, J

Bench : Division Bench

Advocate : Shah Ali Husaini, for the Appellant; Gopal Rao Tuljapurkar, for the Respondent

Judgement

1. Two questions arise in these two revision petitions. The first question is whether in a suit for partition of a joint family property, the valuation of the suit should be made taking into view the total value of the property or the share of the property which the Plaintiffs claim. In this particular case, the Plaintiffs not only claimed the partition but they have stated in the plaint that they are out of possession and that Defendants Nos. 6 to 9 are in possession of the property and they claim the relief that the property be given in their possession by dispossessing the said Defendants. In such a case, in our opinion, it is the whole property that is in dispute and not the share claimed by the Plaintiffs. We are fortified in our view by the ruling of the Calcutta High Court, reported in ? Rajani Kanta Bag Vs. Raja Bala Dasi and Others, , in Which it has been held that a suit for partition is triable by the Court which is competent to try the suit valued at the entire value of the property and not at the value of the share, the subject-matter of the suit, claimed by the Plaintiff. This is also the view expressed in ? 23 DL R 521 (B)". Taking this view of the case, it is admitted by the parties that the total value of the property according to the present Court-fees Act will be about rupees five thousand four hundred and odd. Thus, the suit cannot be heard and tried by the Munsiff. We direct that the plaint be returned to the Plaintiffs for

presenting it to the proper Court.

2. Now that the plaint has been directed to be returned as above, the other question with regard to the transposing of Defendants Nos. 2 and 3 as Plaintiffs need not be decided by us. The Sub Judge who will try the suit will decide the question and he will not be bound by the decision which the Munsif has given and which is under revision before us. The plaint which is to be returned should be returned as it was presented on the date of the institution of the suit, without the transposing of Defendants Nos. 2 and 3 as Plaintiffs.

3. The revision petitions are allowed as above. The revision Petitioners are entitled to costs of these revision petitions. Advocate's fee Rs. 300/-

4. This order will govern both the connected revision petitions