

(2010) 08 AP CK 0029

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3577 of 2007

Koka Venkata Ramanaiah Naidu,
Koka China Ramanaiah Naidu,
Koka Lakshamma and Gurram
Ramanamma

APPELLANT

Vs

Kamam Venkata Ratnam and
Others

RESPONDENT

Date of Decision: Aug. 5, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2010) 6 ALD 45 : (2010) 6 ALT 133 : (2011) 6 RCR(Civil) 2387

Hon'ble Judges: B. Prakash Rao, J

Bench: Single Bench

Advocate: M.V.S. Suresh Kumar, for the Appellant; M. Venkata Narayana, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Prakash Rao, J.

This Civil Revision Petition is filed by the Petitioners, who are the Defendants in the suit, aggrieved by the order dated 22-6-2007 in I.A. No. 18 of 2007 in O.S. No. 72 of 2005 wherein and whereby the learned Senior Civil Judge, Kavali, allowed the application filed by the Respondents/Plaintiffs under Order 6 Rule 17 to amend the para 9 of the plaint.

2. The facts in brief are that the Respondents/Plaintiffs filed the suit for declaration of preliminary decree dated 11.7.2001 and final decree dt. 22.1.2004 passed by the Court below in a suit for partition in O.S. No. 35 of 1995 as null and void as against the Petitioners/Defendants. As the suit was notionally valued at Rs. 1 0,000/- as per

Section 24(D) of the APCF and SV Act, 1956, the Petitioners/Defendants contended that the suit is not maintainable in the Court of the Senior Civil Judge, Kavali. Therefore, the present impugned application was filed to amend the plaint by enhancing the value of the suit to Rs. 1,09,087.57 Ps mentioned in the preliminary decree passed in O.S. No. 35 of 1994 and upon contest by the Petitioners, it was allowed.

3. It is the main submission of the learned Counsel for the Petitioners that by taking into account the original valuation of the suit property value, the suit is not maintainable in the Court of the Senior Civil Judge and therefore they can not now seek amendment to enhance the value for the purpose of bringing the suit within the jurisdiction monetary of the Court.

4. It is to be seen that though injunction orders have been obtained in the year 2005 and the matter is coming up since then, the Petitioners/Defendants have not taken any objection on the basis of jurisdictional value of the suit at any point of time. It is stated that the Petitioners have also not filed any written statement nor any such plea was raised with regard to the same in any form whatsoever. Having failed to raise any objection at appropriate time, it is not permissible for the Petitioners to raise such objection at this stage through the counter of the present application or in this revision. Further, it is to be seen that plaint has to be valued on the market value of the property and not on the valuation given by the Plaintiff in the suit, Which can always be re-looked for ascertaining correctness there of, in exercise of ample powers u/s 11(2) of the APCF and SV Act 1956 which reads as follows:

Any Defendant may plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908). If the Court decides that the subject matter of the suit is not properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the subject matter of the suit shall be valued in accordance, with the Courts decision and the deficit fee shall be paid. If within the time allowed, the subject matter of the suit is not valued in accordance with the Court's decision or if the deficit fee is not paid, the plaint shall be rejected and the Court shall pass such orders as it deems just regarding cost of the suit.

5. Normally as it contemplates such question to be taken up as early as possible, even as a preliminary issue. However, that does not bar the jurisdiction of the Court to entertain such question at any later stage, even the arguments for deciding the due and correct valuation and the Court fee thereon. Unless such question is gone into and decided, it cannot be said which would be the correct one. Therefore, irrespective of such right conclusions to be arrived at every corner. Whatever a suit is filed can go into see its valuation and correct and then consequently appropriate orders can be passed either to return or otherwise for filing before appropriate

Court. It follows thus that though the suit might have been valued at lesser, whereby the concerned Court does not get preliminary jurisdiction, yet as long as the objection is not raised and decided thereon, it cannot simply throw it out. Since in this case, the suit was valued less earlier, but now, on showing the correct valuation, on higher side, the Court below gets jurisdiction. As such, the Court below rightly allowed the amendment petition filed by the Respondents/Plaintiffs for enhancing the jurisdictional value of the suit to Rs. 1,09,087.57 Ps as per prevailing market value of the suit property subject to payment of the court fee.

6. For the foregoing discussion, I do not see any merit in the Civil Revision Petition and the same is accordingly dismissed. No order as to costs.