

THE HON'BLE SRI JUSTICE UJJAL BHUYAN
CIVIL REVISION PETITION No.2058 OF 2021

ORDER:

Heard Md. Imran Khan, learned senior counsel for the petitioner;
Mr. Bajrang Singh Thakur, learned counsel for respondents No.1 and 4;
and Mr. S.Ravi, learned senior counsel for respondents No.2 and 3.

2. This Civil Revision Petition has been filed under Article 227 of the Constitution of India assailing the legality and validity of order dated 01.12.2021 passed by the learned I Additional Chief Judge, City Civil Court, Secunderabad in I.A.No.565 of 2018 in O.S.No.221 of 2017.

3. By order dated 30.12.2021 this Court had summed up the controversy in the following manner:

Petitioner, as the plaintiff, has instituted the related suit O.S.No.221 of 2017 for partition of suit property. Defendants filed a petition under Order VII Rule 11 of Civil Procedure Code, 1908 (CPC) for rejection of the plaint on the ground that there was no cause of action and that the suit was barred by limitation. It is submitted that defendants also raised the contention that the suit was undervalued and, therefore, it should be rejected on that ground as well.

By the order dated 01.12.2021, learned court below rejected I.A.No.565 of 2018. However, plaintiff (petitioner herein) was directed to pay the deficit court fee within a period of one month i.e., on or before 30.12.2021.

Aggrieved by the order dated 01.12.2021, the present civil revision has been filed.

Order VII Rule 11 deals with rejection of plaint. As per clause (b), a plaint shall be rejected where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court fails, to do so. A reading of this provision would go to show that there must be a prior order or direction of the court to the

plaintiff to correct the valuation within a stipulated period, failing which the plaint shall be rejected.

In the instant case, what has happened is that on a petition filed by the defendants for rejection of plaint, learned court below found the same to be merit less and accordingly rejected the same. However, while so rejecting the petition, plaintiff was directed to pay the deficit court fee on or before 30.12.2021. When petition under Order VII Rule 11 was dismissed, question of the court below directing the plaintiff to pay deficit court fee on such petition does not arise. Learned court below could not have issued such direction on the rejected petition of the defendants.

Issue notice.

Since respondent Nos.2 and 3 are represented, formal notice to the said respondents stands obviated. However, petitioner to take steps for service of notice on respondent Nos.1 and 4 through the court process.

In the meanwhile, the direction of the court below contained in paragraph 6 (j) of the order dated 01.12.2021 shall remain stayed.

4. Learned counsel for the petitioner submits that the petitioner is in joint possession of the suit schedule property and denied execution of the partition deed entered into by the defendants as per which she was allotted only one flat out of 67 flats. He therefore, submits that the plaint has been correctly valued under Section 34 (2) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. In support of his submissions learned counsel for the petitioner has placed reliance on the following decisions: **NEELAVATHI V. M. NATARAJAN¹, N. SAVITHRI V. N. HANMAPPA², A. DIVAKRUPAMANI V. A. SAKUNTALA DEVI³, CRP No.4562 of 2018** decided on 31.10.2018,

¹ AIR 1980 SC 69

² MANU/AP/0599/2016

³ 2000 (2) ALD 754

MS. NEERI KOSARAJU RAO NEERAJA V. SMT. N. JYOTHSNA DEVI.

He has also placed reliance on **CRP No.446 of 1982** decided on 30.08.1989, **SRI SATYANARAYANA V. SRI OM PRAKASH.**

5. On the other hand, learned counsel for the respondents submits that the plaint has been insufficiently stamped. Plaintiff having specifically pleaded to have been excluded from possession of the suit schedule property ought to have valued the plaint under Section 34 (1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. By not doing so, petitioner has avoided payment of court fee of about Rs.6,00,000/-. This is fortified by the fact that petitioner had admitted not being in possession of the suit schedule property. Therefore, the relief sought for by her virtually amounts to recovery of possession. If that be so, she is liable to pay court fee under Section 34 (1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. That being the position, learned court below was justified in directing the petitioner to pay the deficit court fee while dismissing the petition filed by the defendants under Order VII Rule 11 C.P.C. Therefore, no interference is called for.

6. Additionally, Mr. Bajrang Singh Thakur, learned counsel for respondent Nos.1 and 4 submits that the civil revision petition is also not maintainable inasmuch as in terms of the recent decision of the Supreme Court in **SAYYED AYAZ ALI V. PRAKASH G. GOYAL**⁴, the order of the trial Court rejecting the plaint under Order VII Rule 11

⁴ 2021 (4) ALD 222

C.P.C. would be a decree which can be challenged only by way of first appeal under Section 96 C.P.C. Therefore, the civil revision petition is not maintainable.

7. Submissions made by learned counsel for the parties have received the due consideration of the Court.

8. Issue before the trial Court was as to whether the plaint should be rejected under Order VII Rule 11 C.P.C on the ground that there was no cause of action for institution of the suit and that it was barred by limitation. In fact, those were the only points which were considered by the learned trial court. After referring to various judgments, learned court below held that *prima-facie* there was cause of action for institution of the suit. It was also held that the suit was filed within limitation. It was further held that cause of action arose on 31.10.2017 and the suit was filed on 21.12.2017; thus within time. While dismissing the petition filed by the defendants under Order VII Rule 11 C.P.C for rejection of plaint, being I.A.No.565 of 2018, learned court below ventured into the question of court fee. Petitioners (defendants) contended that mother of the plaintiff (petitioner) had executed her will and testament on 15.02.2013. She had attested before the registering authority in the presence of witnesses in which reference was made to the partition deed dated 27.10.2010. Therefore, on the death of the mother her will had come into effect. Thus, the suit schedule property was partitioned between the parties in terms of the partition deed. It is not open to the plaintiff (petitioner) to claim joint possession. If that be

so, plaintiff (petitioner) was required to pay court fee under Section 34 (2) and not the fixed court fee paid under Section 34 (1). It was thereafter held as follows:

(i) On perusal of the pleadings of the entire plaint it is clear that no where in the plaint, plaintiff pleaded that she is in joint possession of the suit schedule properties except stating in para 8 pertaining to valuation of suit. On the other hand in para 4 of the plaint it was stated that the plaintiff marriage was performed in the year 1979 and thereafter she left the matrimonial home and she never resided at H.No.5-2-349, SN Puram, Hyderbasti, Secunderabad after 1979. There is no whisper in the entire pleading of the plaint about the possession and enjoyment over the plaint schedule properties. Though it was stated in para 8 pertaining to valuation of the suit that the plaintiff is in joint possession of the plaint schedule property and court fee of Rs.200/- is paid U/Section 34 (2) of APCF and SV Act, she did not stated in the pleadings of the plaint in what way she has been in joint possession of the plaint schedule properties. It is clear from para 4 of the plaint that after her marriage in the year 1979 she left to her matrimonial home and in such circumstances it shows that the respondent/plaintiff was not in joint possession of the suit schedule properties and as such she is liable to pay the court fee U/Section 34 (1) of APCF and SV Act but, not U/Section 34 (2).

(j) Therefore as per Section 11 (2) of APCF and SV Act, 1956 respondent/plaintiff is directed to pay the deficit court fee by valuing the suit U/Section 34 (1) of APCF and SV Act within a period of one month i.e., on or before 30.12.2021. Accordingly this petition is dismissed by directing the respondent/plaintiff to pay court fee U/Section 34 (1) on or before 30.12.2021.

In the result, the petition is dismissed. The respondent/plaintiff is directed to pay the deficit court fee by valuing the suit U/Section 34 (1) of Andhra Pradesh Court Fee and Suit Valuation Act, within a period of one month i.e., on or before 30.12.2021.”

9. This Court had already expressed its tentative view in the order dated 30.12.2021, the relevant portion of which has been extracted above. Learned court below ought to have confined its adjudication to the petition filed under Order VII Rule 11 C.P.C

which sought for rejection of the plaint on two grounds – no cause of action and being beyond limitation. Both the grounds were found to be untenable by the court below. If that be so, then learned court below ought not to have traversed beyond the two grounds while rejecting the petition filed under Order VII Rule 11 C.P.C. At the stage of deciding a petition under Order VII Rule 11 C.P.C, learned court below was not justified in coming to the conclusion that the plaintiff was not in joint possession of the suit schedule property and therefore, she is liable to pay court fee under Section 34 (1) of the Act. This aspect of the matter can be gone into by the learned court below during the course of trial because it is intrinsically linked with the merit of the suit itself.

10. In **Sri Satyanarayana Case** (Supra) a Division Bench of this Court had examined the provisions of the Andhra Pradesh Court Fee and Suit Valuation Act, 1956 and observed that the purpose of the above provisions is only to see that proper court fee is collected from the plaintiff by the court and that the defendant is only given a right to point out deficiency on court fee. The question as to in what cases the issues relating to payment of court fee should be tried as a preliminary issue and in what cases the same should be tried jointly along with the other issues should be left to the discretion of the trial court. A defendant is given a right to contest valuation. It should not be extended to enable him to protract the litigation. Only in cases where question of payment of court fee

affects the very pecuniary jurisdiction, it is necessary for the court to investigate, examine and then decide it as a preliminary issue. In other disputes relating to court fee, it should be left to the discretion of the court either to try it as a preliminary issue or to try jointly along with other issues. This discretion can only be exercised by the trial court after necessary investigation into the plaint and written statement of the defendant.

11. This Court in **N. Savithri's case** (Supra), observed that at the threshold the trial court should not deal with the valuation of the suit for the purpose of court fee when the plaintiff claims joint possession which is disputed by the defendants. If this is done it would amount to pre-judging one of the crucial issues arising for consideration in the main suit.

12. Likewise in **A. Divakrupamani's case**, a Division Bench of this Court held that at the inception the trial court has to go by the recitals in the plaint and if the same is challenged by the defendants at a later point of time, the trial court can always frame a triable issue as to whether the suit is properly valued and whether the proper court fee has been paid or not.

13. Again in **Neeri Kosaraju Rao Neeraja's case**, a single bench of this Court referred to clauses (b) and (c) of Rule 11 of Order VII C.P.C and held that those provisions can be invoked only when the court had determined valuation of the suit and had directed the plaintiff to pay the requisite court fee within a specified period.

Only then the court may reject the plaint under Order VII Rule 11 C.P.C. Insofar as determination of the proper court fee payable is concerned, the same can be decided at a subsequent stage but, not in a petition under Order VII Rule 11 C.P.C.

14. I am in respectful agreement with the opinion expressed in **Neeri Kosaraju Rao Neeraja (Supra)**. That being the position, learned court below was not justified in directing the plaintiff to pay the deficit court fee by valuing the suit under section 34 (1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, since by doing so it virtually amounts to deciding one of the issues arising out of the suit.

15. Before parting with the record, the decision rendered by the Supreme Court in **Sayyed Ayaz Ali (Supra)** may be referred to. In this case Supreme Court has referred to Section 2 (2) C.P.C which defines the expression “decree” and thereafter held that definition of decree in Section 2 (2) C.P.C shall be deemed to include an order rejecting a plaint. Therefore, order of the trial court rejecting a plaint under Order VII Rule 11 C.P.C would be amenable to a first appeal under section 96 C.P.C.

16. I am afraid the said decision would not be applicable to the case of the petitioner. In the instant case, the plaint of the petitioner has not been rejected under Order VII Rule 11 C.P.C; rather the petition seeking rejection of plaint was dismissed by the learned court below but while doing so learned court below

exceeded its jurisdiction and ventured into the merit of the case by holding that plaintiff was not in joint possession of the suit schedule property and therefore, she should pay the court fee under section 34 (1) of the Act. This direction of the learned court below, that too at the threshold is totally un-warranted and beyond jurisdiction.

17. For the aforesaid reasons, the direction contained in clauses (i) and (j) of para 6 and in para 7 of the order dated 01.12.2021 passed by the learned I Additional Chief Judge, City Civil Court, Secunderabad in I.A.No.565 of 2018 in O.S.No.221 of 2017 for payment of court fee under section 34 (1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 cannot be sustained. Those are accordingly set-aside and quashed.

18. However, all contentions are kept open.

19. In view of the above, this civil revision petition succeeds and is allowed to the extent indicated above. No order as to costs.

20. Miscellaneous petitions if any, pending in this civil revision petition shall stand closed.

UJJAL BHUYAN, J

Date: 11.04.2022.

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