

B. Anusha and ors. Vs. B. Laxmikanth Reddy and ors.

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Court : Andhra Pradesh

Decided On : Mar-24-2004

Reported in : 2004(3)ALD274; 2004(3)ALT721

Judge : N.V. Ramana, J.

Acts : [Andhra Pradesh Court Fees and Suits Valuation Act, 1956](#) - Sections 34(1)(2)

Appeal No. : CRP No. 902 of 2004

Appellant : B. Anusha and ors.

Respondent : B. Laxmikanth Reddy and ors.

Advocate for Pet/Ap. : N. Sridhar Reddy, Adv.

Disposition : CRP allowed

Judgement :
ORDER

N.V. Ramana, J.

1. In this CRP, the petitioners are impugning the docket order dated 30-12-2003, passed by District Judge, Ranga Reddy District, in O.S. (SR) No. 9444 of 2003, returning the plaint and directing the petitioners to pay Court fee under Section

34(1) of the A.P. Court Fee and Suit Valuation Act, 1956 (for short 'the Court Fee Act').

2. Heard the learned Counsel for the petitioner.

3. The learned Counsel for the petitioners-plaintiffs submits that inasmuch as the petitioners have filed the suit for partition and separate possession of the properties mentioned in plaint 'A' and 'B' schedule, they are liable to pay Court fee as required under Section 34(2) of the Court Fee Act and merely because defendant No. 1 is living elsewhere on account of strained relations with them, it cannot be said that the properties have lost the joint family property status, and the Court below taking an erroneous view that the properties have lost the joint family property status, directed the petitioners to pay Court fee as required under Section 34(1) of the Court Fee Act, which is illegal and arbitrary. He submits that for the purpose of determining the Court fee, the averments made in the plaint have to be taken into consideration, and in support of this argument, he placed reliance on the judgment of this Court in *Shanta Bai v. Trilok Chand and Ors.*, : 2004(1)ALD643 .

4. Admittedly, the petitioners filed the suit for partition of the suit 'A' and 'B' schedule properties. It is their case that the properties between them and the defendants had not been partitioned, and merely because Defendant No. 1 is living separately, it cannot be said that the suit schedule properties have lost joint family property status. Admittedly, for the purpose of determining the Court fee the averments made in the plaint alone have to be taken into consideration at the stage of numbering the plaint, and that being the position in law, it was not proper on the part of the Court below to treat that as Defendant No. 1 was living separately, the joint family status of the suit schedule properties was lost, and the Court below erred in directing the petitioners to pay Court fee as required under Section 34(1) of the Court Fee Act, and more so when the Court below is always empowered to frame a triable issue if such an issue is raised by the defendants or issue cheque slip at any stage under Section 11 of the Court Fee Act.

5. In *Shanta Bai v. Trilok Chand and Ors.* (supra), it was contended by the plaintiff therein that merely because he had pleaded possession and delivery of the suit

schedule property after evicting the defendants therefrom, it cannot be said that property had lost the joint family property status, and therefore, he was not liable to pay Court fee as required under Section 34(2) of the Court Fee Act, and in support of the said contention, he placed reliance on the judgment of this Court in *A. Divakrupamani v. A. Sakuntala Devi*, : 2000(2)ALD754 . A learned Single Judge of this Court having considered the said contention in the light of the judgments in *In re Mathali Goundar*, : AIR1952 Mad812 and *Kanuri Venkata Rangadass v. Kanuri Venkata Krishna Rao*, : AIR 1982 AP60 , upheld the contention of the plaintiff, and finding fault with the Trial Court in upholding under Section 34(2) of the Court Fee Act, set aside the impugned order and directed the plaintiff to pay Court fee as required under Section 34(1) of the Court Fee Act.

6. In the instant case, it is the case of the petitioners in the plaint that Defendant No. 1 the suit schedule properties have not been partitioned between the plaintiffs and the defendants, and on account of strained relations, Defendant No. 1 is living separately, and that merely because Defendant No. 1 is living separately, it cannot be said that the suit schedule properties have lost their joint family property status. When such is the case of the petitioners in the plaint, it was not proper on the part of the Court to assume that as Defendant No. 1 is living separately, the suit schedule properties had lost the joint family property status, and as such, the petitioners are liable to pay Court fee as required under Section 34(2) of the Court Fee Act. The Court below for the purpose of determining the Court fee payable by the petitioners, ought to have taken the averments in the plaint, and ought not to have assumed that the suit schedule properties have lost the joint family property status as Defendant No. 1 was living separately, and as such, was liable to pay Court fee as required under Section 34(2) of the Act. In that view of the matter, and considering the law governing the field, I am of the considered opinion that the Court below committed an error in directing the petitioners to pay Court fee as required under Section 34(1) of the Court Fee Act, holding that the suit schedule properties have lost their joint family property status.

7. In the result, the CRP is allowed. The Court below is directed to number the suit, if it is otherwise in order, without insisting payment of Court fee as required under Section 34(1) of the Court Fee Act. This order, however, does not preclude

the Court below from framing an issue if an objection is raised by the defendants with respect to payment of Court fee or it is always at liberty to issue cheque slip at any stage under Section 11 thereof. No costs.

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