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A. Divakrupamani and Another Vs. A. Sakuntala Devi and Others

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Court : Andhra Pradesh

Decided On : Mar-07-2000

Reported in : 2000(2)ALD754; 2000(2)ALT275

Judge : B. Subhashan Reddy and;Ghulam Mohammed, JJ.

Acts : Andhra Pradesh Court Fees and Suits Valuation Act, 1956 - Sections 11 and 34(1 and 2)

Appeal No. : CCCA No. 4 of 2000

Appellant : A. Divakrupamani and Another

Respondent : A. Sakuntala Devi and Others

Advocate for Pet/Ap. : Ms. C.P. V. Suhasini Devi, Adv.

Judgement :
ORDER

B. Subhashan Reddy, J.

1. This appeal lias been directed against an order returning the plaint on the ground that the Court fee which is payable is under Section 34(1) of the A.P. Court Fee and Suit Valuation Act, 1956 and not under subsection (2) thereof.

2. Sub-section (2) of Section 34 of the A.P. Court Fee and Suit Valuation Act comes into play when the parties are in joint possession and a fixed Court fee is payable having regard to the valuation and the maximum being Rs.200/-. But, in a matter arising under Section 34(1) of the A.P. Court Fee and Suit Valuation Act, 1956, which is on the premise that the plaintiff is not in possession but is seeking for decree of partition and possession, the Court fee payable is according to the valuation of 3/4th of the market value of the share which the plaintiff sought for. The Court of the Chief Judge subsequently has now called upon the plaintiffs to pay the Court fee on the ground that the plaintiffs cannot be deemed to be in joint possession.

3. At the inception, the trial Court has to go by the recitals of the plaint and if the same is challenged by the defendants at a later point of time, the Court can always frame a triable issue as to whether the suit is properly valued and whether the Court fee paid is proper. Even otherwise, at any stage, the Court is always empowered under Section 11 of the A.P. Court Fee and Suit Valuation Act, if a fresh situation arises or fact is brought to its notice, to give check slip as to why proper Court fee in the view of the Courtshould not be paid. But, these are the stages which will arise later and suffice it to say, at this juncture the suit ought to have been numbered.

4. Hence, we direct the lower Court to number the suit and proceed further and issue notices to the defendants.

5. Learned Counsel for the appellants has cited a judgment of the Supreme Court in Neelavalhi v. N. Natarajan, : [1980]2SCR307 , but the same cannot be considered at this juncture and the same may be projected whenever a requisition is given to the appellants to pay more Court fee and if a contest is made on the valuation issue.

5. The CCCA is allowed in part to the extent indicated above.

No costs.

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