

**Sevanthi Bai and ors. Vs. Mandodhari and ors.**

**Sevanthi Bai and ors. Vs. Mandodhari and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/441989](http://sooperkanoon.com/441989)

**Court :** Andhra Pradesh

**Decided On :** Oct-05-2001

**Reported in :** 2002(1)ALD151

**Judge :** Bilal Nazki and ;E. Dharma Rao, JJ.

**Acts :** [Andhra Pradesh Court Fees and Suits Valuation Act, 1956](#) - Sections 34, 34(2), 34(3) and 37

**Appeal No. :** CCCA No. 52 of 1996

**Appellant :** Sevanthi Bai and ors.

**Respondent :** Mandodhari and ors.

**Advocate for Def. :** L. Prabhakar Reddy, Adv.

**Advocate for Pet/Ap. :** Nemalikanty Lakshminarayana, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Bilal Nazki, J.**

1. A suit was filed by the plaintiffs for partition of plaint 'A' and 'B' schedule properties by metes and bounds. They claimed 1/7th share. They also claimed a share in 'C' schedule property'. They also sought a direction that defendants 1, 4

to 8 should account for the income derived and collected from A and B schedule properties and pay their share out of the rents. They also claimed costs.

2. In the plaint it was contended that one Sharfaji Neemkar the ancestor of the parties died in the year 1980, he had two wives one by name Balubai who died in the year 1985. Sharfaji Neemkar through her had two sons Nagender Rao Neemkar defendant No. 1 and late Laxminarayana the husband of plaintiff No. 1 and father of plaintiffs 2 and 3. He had also one daughter by name Kamalabai defendant No. 2. The second wife of Late Sharfaji Neemkar was Savanthi Bai, the defendant No. 3 and through her he had five sons Subash, Suresh, Shivaji, Ashok and Raju @ Sachidanand who were arrayed as defendants 4 to 8. He had six daughters by name Shivkala, Renukala, Sashikala, Shoba, Sundar and Sangeetha who were arrayed as defendants 9 to 14. Late Sharafaji Neemkar left properties in the shape of mulgies, residential house and an open area. He left about 22 mulgies along with open space and a residential house bearing No. 7-2-1 and an open area of about 3 acres of land. The property- is situated in different places at Hyderabad. After the death of Sharfaji Neemkar there was an oral partition between Laxminarayana i.e. husband of plaintiff No. 1 and father of plaintiffs 2 and 3 on one hand and between defendants 1 to 14 on the other. Whereas the mulgies bearing Nos. 7-2-1/A2 to 5 and some open space and a portion of residential house bearing No. 7-2-1 along with open space fell to the share of Laxminarayana. 3 acres of land was kept joint and undivided subject to partition later. After the oral partition Laxminarayana leased out the mulgies and open space, which fell to his share, to the tenants namely defendants 15 to 19 under lease deeds and started collecting rents. Laxminarayana died on 17-10-1986. The defendants 1 to 14 took advantage of plaintiff No. 1 being a widow and plaintiffs 2 and 3 being minors, prevailed upon the tenants, defendants 15 to 19, and started collecting rents from them, Therefore, it is submitted that, they are bound to account for the same. Notice was given on 17-8-87 for partition and mesne profits. The defendants admitted the relationship of the parties but denied oral partition and stated that during the life time of Sharfaji Neemkar everybody were empowered to collect rents and during the lifetime of Laxminarayana defendant No. 4 was collecting the rents. Defendant No. 4 was manager and kartha and was managing during the life time of Sharfaji Neemkar. The details and particulars of

the properties were given in the suit and a decree was sought for partition of properties shown in 'A' and 'B' schedules by metes and bounds giving plaintiff No. 1. 1/7th share by delivery of possession and for payment of rents. About mulgies also separate possession was claimed. Delivery of possession of 'C' schedule property i.e.. jewellery was also claimed. It was also prayed that defendants 1. 4 to 8 should be directed to account for the rents and to pay the plaintiffs. Costs were also sought.

3. In the written statement relationship was admitted and some admissions were made. Para-5 of the written statement states:

'5. The allegations that the defendant No. 1 and 4 to 8 have no right to collect the rents from the defendants 15 to 19 is false and misconceived. There cannot be any restraint on the defendants from collecting the rents as they are all joint family members. The properties mentioned in Schedule A and B are to be partitioned and the property mentioned in schedule C are false and are only created for the purpose of enriching plaintiff themselves at the cost of the other joint family members. This defendant denies the existence of properties in schedule C and plaintiffs may be put to strict proof of all the allegations of the properties mentioned in schedule C.'

Although the defendants claim that there had been no partition before the death of husband of plaintiff No. 1 they admitted that, properties mentioned in schedule A and B are to be partitioned. They denied existence of property schedule C. There was no objection taken in the written statement with regard to the Court fee. But while framing issues, the learned trial Court framed several issues, one of the issues was issue No. 3 which reads: 'whether the plaintiffs are liable to pay separate Court fee for any reliefs.' The decree was passed only with regard to A and B schedule properties and on the basis of the evidence the Court held that the property be divided in 9 shares by metes and bounds and plaintiffs were allotted 19th share by delivering separate possession. The defendants 1 and 4 to 8 were directed to account for the rental amounts derived from the plaint A and B schedule properties from the date of death of Laxminarayana. The plaintiffs have not filed any appeal. The defendants filed the appeal and only two contentions

were raised before this Court, one was that the Court fee was not paid for the relief of rentals and secondly it was contended that documents Ex.AS and A9 were not proved therefore the issue relating to the rents i.e, issue No. 6 was decided wrongly.

4. The Court fee had been paid under Section 34 of A.P. Court fees & Suits Valuation Act, 1956. Section 34(2) lays down that in a suit for partition and separate possession of joint family property the fee shall be paid at the rates given thereunder and if the plaintiff's share is above Rs. 10,000/- the Court fee is Rs.200/, which has been paid in the present case it is submitted that, in the suit rents were also claimed and for rents a separate Court fee had to be paid. But. Sub-section (3) of Section 34 makes it clear that the additional Court fee would have only to be paid where plaintiff or defendant seeks cancellation of decree or any other document of the nature specified in Section 37. Therefore, if in a suit for partition separate possession of joint family property is claimed the consequential reliefs can be sought on payment of Court fee under Section 34(2). Additional Court fee would be payable only if any cancellation of the decree or other documents is sought for which is in the nature specified in Section 37. Therefore, this argument cannot succeed and we find that the Court fee has been sufficiently paid.

5. Coming to the second argument that Ex.AS and A9 have not been proved therefore issue No. 6 was decided wrongly, although the first plaintiff the wife of Laxminarayana who had entered into the agreement, had stated that these agreements were entered into by her husband yet on the evidence the trial Court found that Laxminarayana was collecting the rents before his death and it had been admitted by the defendants that they were collecting the rents and appropriating it to themselves after the death of Laxminarayana. In the written statement the defendants had categorically stated that there cannot be any restriction on the defendants from collecting the rents as they are joint family members. So, the collection of rents by defendants was admitted and it was nowhere pleaded that any portion thereof was being given to the plaintiffs. Since the plaintiffs themselves admitted that they had received the rents till Laxminarayana's death, therefore, they were entitled to rents after his death. So

proving of documents Ex.AS and A9 will not alter the position.

6. For these reasons, we do not find merit in this appeal which is accordingly dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**