



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3494]

FRIDAY, THE TENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

APPEAL SUIT NO: 446 OF 2024

Between:

Lingareddy Nirujitha, and Others

...APPELLANT(S)

AND

Anapalli Janardhan Reddy and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. G VIVEKANAND

Counsel for the Respondent(S):

1. P V A PADMANABHAM

2. SARANU PHANI TEJA

The Court made the following ORDER: (Per NJSJ)

In view of the objection raised by the learned counsel for the respondent No.1 and 2, *inter alia*, with regard to the payment of Court Fee, for the present, the said issue is decided with the consent of both sides.

2) The present appeal has been preferred by the appellants along with I.A.No.1 of 2024, seeking leave of the Court to file the appeal against the Judgement and Decree in O.S.No.38 of 2017 on the file of the Court of V Additional District Judge, Nellore, granting decree for specific performance of an agreement of sale dated 17.02.2014, stated to have been executed by the 3rd respondent in favour of the respondents 1 and 2. It is the case of the appellants that the respondent No.3 sold plots situate in Sy.Nos.247/1, 247/2, 247/3, 246-B (Part) etc., of Kondayyapalem to the appellants for a valuable consideration through Registered Sale Deeds in the years 2008 to 2011 etc., the details of which are set out in the above petition, much prior to execution of the said agreement of sale dated 17.02.2014.

3) At the time of filing of the Appeal, they paid a sum of Rs.1,02,426/- towards Court Fee. This Court vide orders dated 14.08.2024, while considering the submissions made by the learned counsel for the appellants with reference to the decision of the Hon'ble Supreme Court in

My Place Mutually Aided Co-operative Society v B. Mahesh¹, granted leave to appeal.

4) The learned counsel for the respondent No.1 and 2, *inter alia*, contended that the appeal as filed by the 19 appellants, who are third parties i.e., not parties to the agreement of sale referred to above, is not maintainable. He submits that the appellants filed the present appeal by paying a single Court Fee, which is not tenable and as the appellants lay their claim on the basis of different sale transactions, the cause of action is relatable to different dates, without prejudice to the contention regarding maintainability, separate Court Fee in respect of each of the appellant with reference to the relief sought for has to be paid. He submits that non-payment of Court Fee individually by the appellants is fatal and the appeal is liable to be rejected on the said ground.

5) Stating that the suit schedule lands are different from that of the lands / plots stated to have been purchased by the appellants, the learned counsel further contends that it is not in dispute that the appellants are not parties to the agreement of sale and even assuming, for any relief on the basis of the said sale deeds they would have to file suits, in which event, separate Court Fee in terms of the Andhra Pradesh Court-Fees and Suits Valuation Act, 1956 (for short “the Act”) has to be paid. The learned counsel also refers to Sections 6 and 49 of the Act and further contends that in the light of the statutory provisions and since the

¹ 2022 SCC OnLine 1063

cause of action is not the same, payment of separate / individual Court Fee is imperative. Citing ***Kasturi v Iyyamperumal and Others***², the learned counsel sought to further impress upon this Court, that if the appellants are parties to the agreement, then they can be treated as necessary parties, but they are not even proper parties as no relief is sought against them in the suit. He also refers to ***Komanduri Bhanumathi and Ors. vs. The Guntur Municipal Council, rep. by its Commissioner and Anr.***³ He submits that the appeal, in the afore mentioned circumstances is liable to be rejected for non-payment of individual Court Fee.

6) Per contra, learned counsel for the appellants while refuting the said contentions, made submissions justifying the payment of single Court Fee. It is his contention that the appeal is filed by the appellants to the extent of granting decree for specific performance of agreement of sale dated 17.06.2014 i.e., relief portion “A” in the suit and the appellants are not concerned with the relief portion “B”, therefore payment of Court Fee of Rs.1,02,426/-, as per the value shown in the suit, is valid and tenable. Disputing the submission that the suit schedule property and the plots purchased by the appellants is different, the learned counsel argues that Section 6 of the Act is not applicable to the case on hand and as it is an appeal, the Court Fee payable shall be the same as was paid in the

² (2005) 6 SCC 733

³ 1996 (4) ALT 730

trial Court on the subject matter of appeal, that it is valid and sufficient in terms of Explanation (4) of Section 49 of the Act.

7) The learned counsel while submitting that the decisions relied on by the counsel for the contesting respondent Nos.1 and 2 are not applicable to the facts of the case, adds that if the suit is filed for cancellation of sale deeds, then separate Court Fee has to be paid, but as the appellants are challenging the decree for specific performance, no separate Court Fee, individually by each of the appellant need be paid. He also refers to the decision of the Hon'ble Supreme Court dated 19.02.2014 in Civil Appeal Nos.2456 and 2457 of 2014.

8) On an appreciation of the rival contentions, the point for adjudication is – Whether the Court fee as paid by the appellants is sufficient and if not, the appeal is liable to be rejected on that ground?

9) At the outset, it may be pertinent to state that at the time of filing of the suit, it would appear that Rs.1,02,426/- was paid towards Court Fee on 16.02.2017 and subsequently an amount of Rs.84,500/- was paid towards deficit Court Fee on 24.08.2018. Thus, the respondent Nos.1 and 2 paid a sum of Rs.1,86,926/- in all towards Court Fee. According to the learned counsel for appellants the deficit Court Fee was paid in respect of the alternative relief sought for the refund of the advance amount paid to the 3rd respondent, that the grievance of the appellants is only to the extent of granting a decree for specific performance, therefore,

the Court Fee of Rs.1,02,426/- paid in the appeal is sufficient. The submission merits acceptance as the appellants would not in any way have any grievance with regard to alternative prayer of refund of advance amount claimed against the 3rd respondent. Therefore, the only question that remains is whether the said amount of Rs.1,02,426/- has to be paid individually/separately by all the appellants as contended by the learned counsel for the respondent Nos.1 and 2.

10) So far as Section 6 of the Act, it deals with multifarious suits and provides that the plaint shall be chargeable with reference to the cause/s of action and the aggregate value of the relief/s as enumerated therein. In terms of Section 6 (4) of the Act, the provisions of Section 6 of the Act shall apply mutatis mutandis to memorandum of appeals, applications, petitions and written statements. But, evidently the said section relates to multifarious suits and not applicable to the case on hand. In the suit i.e., O.S.No.38 of 2017, only alternative relief was sought, but no separate and distinct reliefs were prayed for.

11) Coming to Section 49 of the Act, for ready reference, the same is extracted hereunder:

“49. Appeals - The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal:

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee

paid by such person in the appeal against the preliminary decree.

Explanation (1) – Where the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of the first instance.

Explanation (2) – Costs shall not be deemed to form part of the subject –matter of the appeal except where such costs form themselves the subject – matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit.

Explanation (3) - In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation (4) – Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5) – Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.”

- 12) A plain reading of the above statutory provision would indicate that the fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject matter of appeal. Explanation (4) of Section 49 of the Act referred to above, makes it further clear that the fee payable in the appeal shall be the fee that would be

payable in the Court of first instance on the relief prayed for in the appeal. The present appeal is filed challenging the relief of decree for specific performance in respect of which fee was paid in Court of first instance and the fee payable in the appeal would be the same. Further, the appellants are not seeking any declaration of their title in respect of the property in question, requiring them to pay individual court fees, as in the case of suits. Had the appellants been impleaded as party defendants in the suit pursuant to the legal notice got issued by them and suffered a decree thereafter, they would have filed appeal with reference to the relief granted against them, by paying a single Court Fee. Therefore, the submissions made by the learned counsel for the appellants are upheld.

13) In the decision relied on by the learned counsel for the respondent Nos.1 & 2 in ***Komanduri Bhanumathi case supra***, a learned Judge of the erstwhile High Court of A.P., was dealing with an order under Revision wherein, the objection of the inspection staff raised with regard to payment of single Court fee by 19 plaintiffs seeking permanent injunction in respect of 19 plots, as if it is a single transaction under Section 26 (c) of the Act, was upheld by the learned subordinate Judge. The High Court approved the same holding that the petitioners / plaintiffs have to pay separate Court fee on individual reliefs claimed by them. The said decision is not applicable to the case on hand, as the appellants are not seeking individual reliefs.

14) The other decision ***Kasturi case*** referred to above, in the context of the present issue of payment of Court fee, would be of no aid.

15) In the light of the aforementioned conclusions, the contentions with regard to the payment of Court Fee raised by the learned counsel for respondents 1 and 2 are not accepted. The appeal filed with a Court fee of Rs.1,02,426/- is maintainable. Point is answered in favour of the appellants accordingly.

NINALA JAYASURYA,J

SUMATHI JAGADAM,J

Date:10.01.2025

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