

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Civil Revision Petition No.1199 of 2023****ORDER:**

Assailing the order, dated 24.02.2023, passed in I.A. No.461 of 2022 in O.S.No.250 of 2015 on the file of the Court of IV Additional District Judge, Kakinada, whereby the petition filed under Order VII Rule 11 CPC, to reject the plaint, was dismissed, the instant Civil Revision Petition has been filed by the petitioner.

2) Heard learned counsel for the petitioner and Sri Challa Gunaranjan, learned counsel for the caveators – respondents.

3) The petitioner is the 1st defendant in the suit in O.S.No.250 of 2015. The respondents – plaintiffs filed the said Suit for partition alleging that they are in joint possession of the said properties along with the defendants. The defendants have opposed the said Suit and filed their written statement. At the time of filing the written statement, no plea that the said Suit is undervalued stating that only *ad valorem* court fee is paid and fixed court fee is not paid alleging that the plaintiffs are not in joint possession along with the defendants, was taken.

4) Thereafter, based on the pleadings that are available on record, issues were framed by the trial Court and trial

commenced. When the Suit stood posted for further evidence of the plaintiffs, the present petition under Order VII Rule 11 CPC was filed to reject the plaint. The said petition for rejection of the plaint is filed on the sole ground that the improper court fee is paid as stated supra.

5) The trial Court by the impugned order dismissed the said petition. The trial Court held that as the plaintiffs have been claiming share in the properties as Class-I heirs that the possession of the one co-sharer is the possession of the other co-sharer and that nothing is placed on record before the Court to show that the right of the plaintiffs is extinguished so as to hold that she is not in joint possession of the property along with the defendants. Therefore, the trial Court held that the Court fee that was paid is proper and it is not undervalued. Accordingly, dismissed the petition.

6) In the present Civil Revision Petition, the defendant questioned the validity of the said order.

7) When the plaintiffs clearly allege that they are in joint possession of the property along with other defendants in respect of the suit schedule property as legal heirs of the deceased, who is the owner of the property, even if it is the contention of the

defendants that the plaintiffs are not in joint possession along with them, it being purely a question of fact has to be decided in the final adjudication of the Suit after the evidence to that effect is adduced by both the parties. It is well-settled law that the plaint averments are to be taken into consideration at the time of fixing the court fee or at the time of accepting the said court fee by the Court. As it is pleaded in the plaint that they are in joint possession along with defendants, the Court has accepted the payment of *ad valorem* court fee. The defendants have to prove that the plaintiffs are not in actual joint possession along with them and that the plaintiffs are liable to pay the fixed court fee. These are all questions of facts, which require evidence to adjudicate the same. At this stage, there is nothing to indicate that improper court fee is paid or that the Suit is undervalued. Therefore, absolutely no valid legal grounds are emanating from the record to reject the plaint under Order VII Rule 11 CPC, as claimed by the defendants.

8) Therefore, the impugned order of the trial Court is perfectly sustainable under law and it suffers from no legal flaw or infirmity warranting interference of this Court. So, there are no grounds even to admit the Civil Revision Petition for hearing.

9) Therefore, the Civil Revision Petition is dismissed at the admission stage. No costs.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:05.05.2023.

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