

**(1965) 07 MAD CK 0011**

**In the Madras High Court**

**Case No :** Civil Revision Petition No. 1374 of 1965

A.S. Sheik Mohamed Maracair

APPELLANT

Vs

K.T. Mohamed Ibrahim Ummal and Another

RESPONDENT

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**Date of Decision :** 23-07-1965

**Acts Referred:**

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 69

**Citation :** AIR 1967 Mad 311 : (1966) ILR (Mad) 311

**Hon'ble Judges :** Natesan, J

**Bench :** Single Bench

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## **Judgement**

(1) This is a petition by the plaintiff against the order of the Court below, holding that the plaintiff will not be entitled to a refund of half of the

Court-fee paid on the suit claim. The suit was on the basis of a mortgage by deposit of title deeds. It is found from the records that on an earlier

occasion the suit had been decreed ex parte. Then the plaintiff had also been examined as a witness, and documents Exs. A-1 to A-17, were

marked is evidence. Later, the ex parte decree was set aside, and, the defendants entering appearance, issues were framed and the case was

getting adjourned for trial. Before the case was taken up for disposal on the merits on contest, a memorandum of compromise was filed in Court,

and with reference to this the endorsement on the plaint by the plaintiffs counsel run thus:-

Compromise memo has been filed. It may be recorded. The suit is reported settled out of Court. Half the Court fee paid on the plaint may be

refunded to the plaintiff"".

The memo of compromise, which is in the usual form of memo of compromise filed in Court, refers to the plaintiff having received, on the day in

question, Rs. 10,000, in cash from one Sheik Abdul Khader, on behalf of defendants 1 and 2 in full settlement of the claims between them. There

is a clause there that, in view of the said settlement between the plaintiff and the defendants, the suit shall be withdrawn by the plaintiff as settled out

of Court. There are other provisions about stamp papers, which had been handed over to plaintiff by the defendants, so that they might get refund.

There is an embargo against the plaintiff using those stamp papers for any other purpose, except for getting a refund. The compromise provides

that the defendants will no way be responsible and liable, if the plaintiff was not able to get refund of the stamps. When the case was taken up the

parties did not stop with merely filling the Memo into Court and intimating to the Court that the case withdrawn as the matter had been settled out

of the Court and praying that the suit might be dismissed.

The counsel for the plaintiff wanted the compromise petition to be recorded while reporting settlement out of Court and insisted on the compromise

being specifically recorded. The learned VIIth Assistant Judge, City Civil Court, Madras before whom the matter came, observed in the judgment

passed on the occasion, that from the insistence of the defendants counsel it was obvious that the Court was required to set its seal of approval on

the arrangement, by recording the compromise. The Court observed that the arrangement could not be recorded as a mere report to the Court that

the suit had been settled out of Court. The actual order of Court was for recording the compromise, a decree to be drawn up in terms of the

compromise in so far as it related to the subject-matter of the suit. In the circumstances, the learned City Civil Judge held that the plaintiff would

not be entitled to refund of half the court fee paid on the suit claim.

(2) Learned counsel appearing for the petitioner contends that all the Section 69 of the Madras Court Fees Act, 1955 required was a dismissal; of

the suit as settled out of Court before any evidence had been recorded on the merits of the claim., and that as it was the ultimate result of the

compromise in this case he would be entitled to refund of half the Court fee. It is pointed out that, in the decree as drafted, there is a clause

regarding the withdrawal of the suit as settled out of the Court. But there is another clause also in the decree relating the documents. In this case,

the parties were not satisfied with merely getting the suit dismissed; but wanted

the compromise to be recorded by the Court. It is quite apparent that the parties wanted not merely dismissal of the suit as settled out of Court, but a record by the Court of the satisfaction of the plaintiffs claim. A settlement out of court may contain executory agreements. The settlement might still keep the claim outstanding. Here, what the parties wanted was a record by the court that the claim had been settled and satisfied.

In fact, there is no prayer in the compromise for dismissal of the suit as settled, though there is a provision for the withdrawal of the suit as settled out of Court. Standing by itself, the suit would be dismissed though they have not asked for a dismissal of the suit as settled out of Court. But, where the matter came up before the Court, the plaintiffs counsel wanted the compromise to be recorded, and the counsel for the defendants insisted upon a decree in terms of the compromise. In fact, the matter has been proceeded with under Order XXIII Rule 3 C.P.C. The language of Section 69 of the Court Fees Act does not provide for a refund of Court-Fees where a compromise is got decreed by the Court. Refund is provided for only in cases where the suit is got dismissed as settled out of Court.

(3) Learned counsel submits that merely because a memo of compromise is put into Court, setting out the terms of the settlement. When the suit is ultimately dismissed as settled out of Court, the plaintiff should not be deprived of the benefit of the provision of Section 69. But that is unfortunately not the case here. When the parties desire to report settlement of a case to Court, and pray for its dismissal, they might and counsel as a matter of caution insist upon a memo being filed in court to that effect. The memo may even contain the terms of the settlement but the prayer to court is for dismissal of the suit as settled. Getting the terms also recorded is a quite different thing. While seeking a record of compromise and the terms of the settlement, if a term is first put into the memo to the effect that the suit is settled out of Court and is being withdrawn, it looks like a camouflage, for the purpose of getting refund of Court fee, the other terms of the compromise and the prayer in Court for recording the terms being inconsistent with a plain decree of dismissal of the suit.

The learned City Civil Judge has set out exactly as to what had happened in Court and what was required of the Court on the memo of compromise. The Court was asked to record the compromise, and a decree has

been directed by the Court, in terms of the compromise in so far as they related to the suit. The submission to Court was not for recording the suit as settled out of Court. I do not think that, in the circumstances, the Court below could be said to have erred in refusing to direct refund of half the Court fee, in terms of Section 69 of the Madras Court Fees Act and suits Valuation Act of 1995.

(4) In the view I take the Memo of compromise and the proceedings thereon, it is unnecessary to consider whether merely recording of evidence on the merits at an earlier stage of the suit, when the defendants had not even entered appearance, but were set ex parte, will by itself, de bar the plaintiff from claiming refund of half the Court fee, if later, the suit is got dismissed as settled out of the Court

(5) The revision fails and is dismissed. No costs.