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**(1945) 08 MAD CK 0031**  
**In the Madras High Court**

Athipalli Sundararamireddi

APPELLANT

Vs

Athipalli Pattabhiramireddi

RESPONDENT

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**Date of Decision :** 06-08-1945

**Acts Referred:**

Stamp Act, 1899 — Section 41

**Citation :** AIR 1946 Mad 50 : (1945) 58 LW 461 : (1945) 2 MLJ 253

**Hon'ble Judges :** Kuppuswami Aiyar, J

**Bench :** Division Bench

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**Judgement**

Kuppuswami Aiyar, J.—The appellant and the respondent are brothers. They became divided and the partition was evidenced by certain documents. The partition was in 1933. In 1936 the plaintiff who was one of the brothers presented these documents to the Revenue authorities for ascertaining whether the documents should be stamped. Proceedings were accordingly taken u/s 41 of the Stamp Act. The Collector found that they had to be stamped and wanted action to be taken under Sections 33 and 40. He impounded the documents for collection to be made u/s 41. The duty payable and penalty were collected from the plaintiff. The plaintiff paid the amount and has now filed this suit against his brother claiming half the amount paid by him together with interest thereon as also half the expenses incurred by him as costs in the revenue proceedings. He also stated that there was an agreement between him and the defendant under which the defendant has agreed to pay half the amount.

2. Both the Courts held that under the agreement no amount was payable and the so called agreement was a list of the disputes to be settled between the two parties in future; and they also held following the decision in Raman Chetti v. Nagappa Chetti (1915) a L.W. 1024, that the appellant is not entitled to recover any portion of the duty paid on the documents when he made the payment under orders of the revenue authorities u/s 40. It is against this decision dismissing the suit that the second appeal has been filed.

3. It is urged by the appellant that u/s 29(g) the parties to the partition deed

have to pay the duties in proportion to their respective shares of the whole property partitioned and secondly the defendant is bound to pay half the amount of both the duty and penalty paid. It was pointed out by a Bench of this Court in Raman Chetti v. Nagappa Chetti (1915) L.W. 1024, " Section 44 of the Stamp Act was intended to give a right to an innocent party, who himself was not guilty of any default in the matter of the proper stamping of a document, to recover the duty or penalty he was obliged to pay from the person or persons guilty of the default and that it was not intended to enable one of several persons, who were under a common duty to pay the proper stamp in proportionate shares, to claim recovery of the proportionate amount of the duty or penalty, the whole of which he was afterwards obliged to pay owing to the common default." Both the Courts following this decision dismissed the suit.

4. It is urged by the learned Counsel for the appellant that so far as the claim for payment of half the duty which was payable by the defendant and which has been paid by the appellant is concerned, he is entitled to recover half of it u/s 29(g) and since both of them were bound to pay it jointly he is entitled to sue the defendant to contribute his half share. There may be some force in this argument if the amount was paid originally on the document by the appellant and he sought to recover the half share due by the defendant. When both of them failed to pay a common duty and it was by proceedings in Court that he was Compelled to pay, the question is whether under the circumstances he would be entitled to recover the half share. The observation of the Bench in Raman Chetti v. Nagappa Chetti (1915) 2 L.W. 1024 is general and definite. " It deals both with the liability to pay duty as well as penalty. The principle of law enunciated in this decision is binding on me and sitting singly I do not think I will be justified in holding that the plaintiff is entitled to recover any amount.

5. With regard to the suit based on the agreement, Ex. F, I am in entire agreement with the construction of the document by both the lower Courts that the disputes are to be settled in future, indicating thereby that the disputes had not been settled.

6. The appeal fails and is dismissed with costs. No leave.