
(1951) 02 MAD CK 0008

In the Madras High Court

Case No : Civil Revision Petition No. 150 of 1948

Chandrala Seshayya and Others

APPELLANT

Vs

Chandrala Lakshmmamma and Others

RESPONDENT

Date of Decision : 01-02-1951

Acts Referred:

Citation : AIR 1952 Mad 88 : (1951) 64 LW 652 : (1951) 2 MLJ 72

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : M. appa Rao, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—The only point for determination in this civil revision petition is whether the learned District Judge, Krishna, erred

in law in holding that the Full Bench decision in P. Kesanna Vs. Boya Bala Gangappa and Another, would apply to the petitioners' case and make

court-fee payable u/s 7, Clause 5 (d) of the Court-fees Act on the "market value" of the property, as the petitioner was, claiming not a partition of

a fractional share of undivided land but was claiming a specific portion of that undivided land, namely, the "northern half of the suit land. After

perusing the entire records, and hearing Mr. M. V. Sri-nivasa Rao for Mr. M. Appa Rao, the learned counsel for the petitioner, and Mr. Ch.

Rama-krishna Rao, for the Government Pleader, I have absolutely no hesitation in holding that the lower Court's view is correct and is not vitiated

by any error. The Full Bench ruling has laid down that when a person is suing for a decree for possession of "specific immove-able property" the

court-fee must be paid on the "market value" of the lands. That position is not disputed by the [learned counsel for the petitioner, as, indeed, it

cannot be before this Court. What he contends is that the petitioner was only asking for an "unspecified fractional Share" of an undivided land,

namely, a half share. If that had been so, his argument would have been correct and court-fee would have been payable only u/s 7(6)(b)(sic.). But

the petitioner has really asked for a "specific portion" "of the land, namely, the "northern half of the land, and not for a mere unspecified half of the

land, with reference to good and bad qualities. It is obvious that a man claiming the "northern half, or the "eastern half, or, a half "to be carved out

in the middle of a "land" leaving only the margins for the other half, is asking for a "specific portion" of the land, and not just "an unspecified half

wherever it is allotted. A specific property that is claimed can never be an unspecified fractional share of the property, though, of course, it will be,

like any portion of land, "some fraction of the entire land". The matter is not merely academic or technical, but will have important practical

consequences. For instance, a man asking for and getting the "western half of Rajasthan will get only a desert whereas a man asking for and getting

the "eastern half" of Rajasthan will get fertile lands of great value. A mere suit for a half of Rajasthan, with reference to good and bad qualities, will

give the plaintiff half the desert and half the good lands where a suit for only the "eastern half" will give him very valuable lands worth very much

more than the half value of the whole. The rule is thus laid down by a Bench decision, to which I was also a party in "Venkatasubba Rao v.

Venkata Rao", 1951 1 M.L.J. 73 : ""A fractional share predicates that the owner of that share is entitled to every bit of the total extent of the land

till a partition is held and specific part is allotted to him."" In other words, he has a half share, in a case like this, in every blade of grass or other

property "all over the land", and his right will not be confined to, nor will he be allotted, the whole of the crops or properties in the northern half of

the land, giving him no right whatever in the southern half of the land. So, this case is one where the petitioner was suing for a "specific share of the

land", namely, the "northern half of the land in question, and "not for a fractional half of an undivided land where nobody has been given any

specific share in any portion. The learned counsel for the petitioner made his position even worse by saying that the petitioner could not claim any

share in the "southern half of the land as he has been "gifted only the northern half of the land". In other words, he admitted that a "specific portion"

of this land was gifted to him and was claimable by him, and he was bound, to pay court-fee u/s 7(5)(d) of the Court-fees Act.

2. No doubt, the learned counsel for the petitioners was right in urging that the Full Bench decision holding that court-fee u/s 7(5)(d) had to be paid

on such specific portions of land leads to some anomalies. That is so. In the decision in "Venkatasubba Rao V. Venkata Rao" 1951 1 M.L.J. 73

referred to above, we observed, at page 80, as follows :

We may point out that by reason of the Full Bench decision many anomalies are introduced in the application of Section 7(v)(d) and the

notification issued by the Government. In a suit for possession of a specified plot a larger court-fee may be payable, whereas for partition and

possession of a fractional share in regard to a larger extent, a smaller court-fee may suffice. In the case of a fractional share, a suit for its recovery

may be filed in a District Munsif's Court whereas for a smaller extent, if the property is a specified one with boundaries, it will have to be filed in

the Subordinate Judge's Court. This situation is not only illogical but sometimes makes the members of the litigant public feel its oppressiveness by

contrast. Though this decision was made as early as 6th January 1947, no attempt has yet been made by the Legislatures to remove the anomalies,

without at the same time overburdening the litigant public.

But those observations of ours will not affect the, position in Jaw, and it is for the Legislature, which is now busy with more important matters, like

food, yarn, religious endowments, adult suffrage prohibition etc., to move in the matter and remove the anomalies. This petition deserves to be, and

is hereby, dismissed with costs.