
(1932) 02 MAD CK 0023
In the Madras High Court

Chintakayala Thammayya Naidu	APPELLANT
Vs	
Chintakayala Venkataramanamma and Another	RESPONDENT

Date of Decision : 03-02-1932

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1932) ILR (Mad) 641 : (1932) 35 LW 618 : (1932) 62 MLJ 541

Judgement

1. This is a petition by the appellant in Appeal Suit No. 277 of 1929 on the file of this Court for refund of the excess court-fee paid on the memorandum of appeal. The appeal was in a land acquisition matter. On a reference by the Land Acquisition Officer u/s 18 of the Land Acquisition Act the District Judge held the third claimant, who is a widow, entitled to a life-interest in the compensation money awarded for the melwaram, but on account of the limited interest held by this widow he, u/s 32 of the Act, ordered the money to be invested in the Imperial Bank and that was so done in April, 1929. The present petitioner, who was the second claimant, appealed, claiming that the compensation was payable to him alone. He paid a court-fee ad valorem of Rs. 2,332-7-0 on the amount of the award, but he now claims that the proper court-fee was as for a mere declaration, and that Rs. 500 would have been sufficient, and he claims refund of the difference. Notice was given to the learned Government Pleader and we heard the petition argued.

2. Two points arise, first, whether the court-fee paid was right or in excess, and secondly, whether the Court has power to order the refund. On the first point it cannot be doubted that as a general principle where a successful claimant before the District Judge is declared entitled to immediate payment, the appeal against such an order would be an appeal praying for the recovery of the money from the successful claimant and would have to be valued ad valorem as a claim for money. See Mahalinga Kudumban v. Theetharappa Mudaliar (1928) 56 M.L.J. 387 which enunciates the general practice of this Court. The petitioner however maintains that his case has to be distinguished from the general case because here the compensation money was not payable to the widow in person but was

held in trust for her by the Court, and that therefore a mere declaration of this Court to the Lower Court directing that the money is not any longer to be so held in trust for the widow but is to be handed over to the petitioner is sufficient. We think that the contention is well founded. The widow never got possession and never could get possession of the principal amount. The possession and control of it lies with the District Court and the property is in custodia legis. No doubt, if any interest on the principal had been paid out to the widow, the petitioner, if he sought to recover that also, would have to pay court-fee ad valorem on that, but there is no question of that sort here since the petitioner does not include any such interest in his appeal memo of valuation. The ruling in *Mangaldas Girdhardas v. The Assistant Collector of Prant, Ahmedabad* (1920) ILR 45 B. 277 which was cited by the learned Government Pleader, enunciates the same principle as in *Mahalinga Kudumban v. Theetharappa Mudaliar* (1928) 56 M.L.J. 387 and does not cover the present point. The ruling in *Vedanayaga Mudaliar v. Vedammal* (1904) ILR 27 M. 591 : 14 M.L.J. 297 although not a parallel case, is on a similar point and supports the petitioner. We, therefore, think that the proper stamp-fee payable was Rs. 500. As to the second point the learned Government Pleader maintains that this Court has no power to go beyond the provisions of the Court Fees Act, which allow refund of court-fee stamps only in cases covered by sections 13, 14 and 15 and these sections do not cover the present case. It is true that an early Bench of the Calcutta High Court in 1873 has taken this uncompromising view. See *In re Peary Mohun Gooho* (1873) 11 Beng. L.R. 312 at 317. But there is a series of decisions in Calcutta itself and by other High Courts, based on a still earlier decision of the Calcutta High Court, *In re Mr. G.H. Grant* (1870) 14 W.R. 47, which lay down that Section 151, Civil Procedure Code, enables a High Court to order refund of court-fee paid in excess when obvious injustice would be done if it were not repaid. See *Harihar Guru v. Ananda Mahanty* (1912) ILR 40 Cal. 365, *Girish Chandra Mali v. Girish Chandra Dutta* (1931) 36 C.W.N. 190 a judgment of the Allahabad High Court in *In re Chaube* (1930) ILR 52 A. 546. Munna Lals and judgments of the Patna High Court in *Chandra Hari Singh v. Tippan Prasad Singh* (1918) 3 Pat. L.J. 452, *Muhammad Reza v. Rajballabhnath Singh* (1927) 107 LC. 320 and *Sasibushan Mazumdar v. Manik Lal Chandra* (1928) 107 I.C. 825. This seems to us the reasonable view to take. It would be unreasonable and unjust for the High Court not to assist a party to recover excess court-fee erroneously paid under its own order or under the orders of Courts subordinate to it. Of course, what the High Court really does judicially in such a case is to decide judicially what is the proper court-fee and then issue a certificate to the party that excess court-fee has been levied. It still lies with the revenue authorities to decide whether or not they will refund the excess in the circumstances. We direct that in this case the necessary certificate do issue. In the circumstances of the case we pass no order as to costs.