(1956) 04 AP CK 0006

In the Andhra Pradesh High Court

Case No : S.R. No. 8007 of 1956

Damisetti Satyanarayana Murthi and Another — APPELLANT

Vs

Damisetti Bhavanna and Others — RESPONDENT

Date of Decision : 18-04-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 20 Rule 12, Order 20 Rule 12(2), Order 20 Rule 18, 2(12)

Citation : (1956) 04 AP CK 0006

Hon'ble Judges : Umamahswaram, J

Bench : Single Bench

Advocate : K. Ramachandra Rao, for the Appellant; A. Gangadhara Rao, for Government Pleader for the State, for the Respondent

Judgement

Umamahswaram, J.—The taxing officer has made this reference u/s 5, Court-fees Act. The question that arises for decision is, whether in respect of an appeal filed against a final decree in a partition suit, court-fee is payable under Sch. II, Article 17-B, Court-fees Act or ad valorem court-fee should be paid on the amount decreed against him under Article 1, Sch. 1. The taxing officer referred this matter to me on the ground that the decisions of Krishnaswamy Nayudu J., in Veluchami Pillai by next friend, Chellathayee alias Meenakshi Ammal Vs. K.R. Sankaralingam Pillai and Others, and Chandra Reddy J. in Kamalam Vs. Saradambal and Others, are hi conflict with an earlier Bench decision in Balarama Naidu v. Sangan Naidu ILR Mad 280 : AIR 1923 Mad 19) (C).

2. Section 5, Court-fees Act, in so far as it is relevant is in the following terms:

When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, except when the question is in his opinion, one of-general importance, in which case b-e shall refer it to the final decision of the Chief

Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf........

The Chief Justice shall declare who shall be taxing officer within the meaning of the first paragraph of this section.

In exercise of the powers conferred by Section 5, the Chief Justice of the Andhra High Court has appointed the Deputy Registrar, Sri V.K. Krishnaswamy, as the taxing officer. As, in his opinion, the question arising for decision in the case was one of general importance, there being conflict of authority, he referred the matter to me as the taxing Judge as the Chief Justice has by a general order directed that all references u/s 5, Court-fees Act, should be placed before me for final decision.

3. One of the questions that was debated before me was, whether, in exercise of my powers as the Taxing Judge u/s 5, it is open to me to refer the matter to a Division Bench or a Pull Bench of this Court in order to solve the conflict of authority. The contention that was put forward by Sri K. Ramachandra Rao, the learned advocate for the Petitioner, was that, under the terms of S. 5, die taxing Judge acts as a persona designate and not as a Judge of the High Court and that he is not entitled to refer the matter to a Bench under R. 1 of the Appellate Side Rules.

There is considerable force in this argument. Rule 1 sets out the several matters which a single Judge might hear arid dispose of and the reference u/s 5, Court-fees Act, is not mentioned as one of such matters in that rule. The power of a Judge of the High Court to decide the reference is derived specially i.e., by the appointment or nomination by the Chief Justice, under the terms of Section 5. u/s 5 it is no doubt open: to the Chief Justice to appoint a Judge of the High Court either generally or specially as the taxing Judge.

The right to hear the reference springs into existence only when the taxing officer makes the reference on the ground that the question involved is in his opinion, one of general importance. He might refer the question to the final decision of the Chief Justice or of such Judge of the High Court as the Chief Justice might appoint either generally or speciality.

On the plain language of the section, once the question is referred to the taxing Judge, he is bound to decide it and he is not entitled to Kay that the question is one of great difficulty and that the matter should be settled by a Division Bench or a Full Bench of the High Court.

4. The earliest case referred to on this point is the decision in Kachera v. Kharag Singh ILR All 20 (D). When the taxing Judge Tudball J., referred the case to a Bench to obtain an authoritative decision, Knox and Karamat Hussain JJ., held that they had no jurisdiction to decide-the reference and directed the papers to be returned to Tudball J. In doing so they invited the attention of the taxing Judge to the case in Reference u/s 28 of Act 7 of 1870 1895 All WN 56 (E), and

also to S. 5, Court-fees Act, 1870-The latest decision of the Allahabad High Court in this question is that reported in Murari Lal Vs. Chhidda and Others, . . Malick C. J... delivering the judgment of the Bench held that, the jurisdiction of the Taxing Judge arises on a reference by the taxing officer and that when a question has been referred by the taxing officer to the Taxing Judge, the latter cannot make a further reference to a Bench. The relevant observations are at page 500 and are in the following terms:

It is thus on reference by the taxing officer that the jurisdiction of the Chief Justice or the Judge arises. There is no provision for any of other reference either by the Chief Justice or by, the Taxing Judge, Learned Counsel for the Appellant has, however, urged that the words "such Judge" in Section 5 may mean "such Judges" and the has relied on the provisions of Sub-section (2) of Section 13, General Clauses Act, that singular includes plural. That might, however, cover a case where more than one Judge have been nominated as Taxing Judges, and the Taxing Officer makes a reference to the Judges or Bench of Judges so-nominated.

Those observations- apply with great force to this case. Even assuming that the words such Judge may mean such Judges the Chief Justice has not nominated a Bench of Judges to exercise the power u/s 5, Court-fees Act. In Haribunsha Singh Deo Vs. Sudhanshu Sekhar Singh Deo and Others, , Jagaraiadhadas "J.", (as he then was) delivering the judgment on behalf of the Bench took the same view that there is no provision for the determination of the question by a Bench of the Court or any other Judge of the Court un-less the Chief Justice constituted that Judge as ''taxing Judge. On the construction of the terms of S. 5, he observed as follows:

It appears me to be clear that the juxta position of the phrase "such Judge with the Phrase Chief Justice indicates that a single Judge is meant and that it can have no reference v. to a. Bench of Judges.

The Patna High Court took the same view in the earlier cuses in Kuldip Sahay and Others Vs. Harihar Prasad Jha and Others, and Dhanukdhari Prashad Pandey and Others Vs. Ramadhikari Missir, . At page 71 (of ILR Bom): (at page 647 of AIR) Marten C.J." observed in Gangaram Tillockchand Vs. The Chief Controlling Revenue Authority, , as follows:

But it may be argued that, u/s 5, Court fees Act the Court is not really exercising its original or appellate jurisdiction, and that the Judge there appointed by the Chief Justice is /more in the nature of persona designata, as in the case of the Chief Judge of the Small Cause J Court in certain matters arising under Municipal flections............... But I wish to make it ''ie ''clear that Mr. Justice Crump was not sitting as the'' Testamentary Judge or in exercise of the ordinary testamentary jurisdiction of the High Court. He was sitting on this occasion solely as Judge specially designated to decide this case u/s 5, Court-fees Act.

5. Sri Gangadhara Rao on behalf of the Government Pleader suggested on the

strength of certain decisions: to bet referred to infra, that might either keep the reference on my file and prefer the point of law for decision to a Division Bench or a Full Bench, or, that I might place v,the" entire papers before the Chief Justice in order to enable him to refer the case to a Bench or a J Full Bench.'' He relied upon the Full Bench decision of the Allahabad High Court in Kalu Ram v. Babu Lai ILR All 812 at p. 817 : AIR 1932 AH 485 at P. 485) (K), in support of his first "Suggestion. In that case, the Taxing Judge for insulated two Questions of law to be referred to Pull Bench by the Chief Justice. The opening ''paragraph of the Full Bench judgment is as follows:

The Taxing Judge has referred two questions of law to a Full Bench. The case itself has '';,not been referred to us. Section 5 of the Court-fees Act has no way been contravened. The Anal 4-wder, will be passed by the Taxing Judge him self, in the light of the observations of this Full Bench.

With great'' respect I am unable to follow how, sir" the Jurisdiction is exercised by the Taxing ''?Judge under the terms of Section 5 he is entitled to refer questions of law to a Full Bench. Rule 1 cf the Appellate Side rules does not apply and there is no provision under which the Taxing Judge is empowered to frame questions of law -and refer to a Bench or a Full Bench.

6. In sadder of his second suggestion, my attention was drawn to the decision of the Tatna High Court in Deoji Goa v. Tricurnji Jivan Das ILR Pat 658 at p. 664 : AIR 1935 Pat 396 at p. 397) (L). The view taken by Worth J., was as follows:

......although the singular is used in Section 5 when reference is made to the Judge of he High court there is nothing in the section to prevent a deference in ; any particular case, that is, to use words of the section, "specially in this behalf,"

to more than one Judge in other words to a Bench.

The other two Judges who constituted the Bench did not deal with this point. I have already referred to the decision of the Orissa High Court in which Jagannadhadas J. (as he then was) took a different view on the construction of the section and the meaning to be placed on the words "such Judge." "I am inclined to agree with the view of the Orissa High Court that in the context the provisions of the General Clauses Act cannot be applied and the word "Judge" should not be read as "Judges". Even assuming that it might be so read and that it is open to the Chief Justice to constitute more than one Judge as Taxing Judges, it has not been so done in this case and the taxing officer has not referred the matter to any such Judges, specially empowered by the Chief Justice.

7. The Lahore High Court has in Megh Raj v. Rupchand''Uttamchand ILR (1947) Lah 47 at p. 54 : AIR 1946 Lah 280 at p. 283) (FB) (M), taken a view similar to the Patna High Court in ILR Pat 658 : AIR 1935 Pat 396) (L). The way in which the.learned Judges steered clear of the difficulty: may be gathered from the following observations.

The Administration Judge of this Court has been appointed by a general order of the Chief Justice as the Judge to whom references by the taxing officer have to be made. The matter can, therefore, be said to have been referred by the Chief Justice to the Administration Judge u/s 5, Court-fees Act. But the Administration; Judge did not himself determine the question and requested the Chief Justice to constitute another Bench and the Chief Justice did so.

There is, in our opinion, no bar to the Chief Justice appointing a Judge or Judges for hearing a reference from the taxing officer, in a special case. The general order appointing the Administration Judge to hear such references can always be recalled by the Chief Justice in a particular case and he can constitute another Judge or Judges to hear the reference in that case. The singular includes the plural, and we are unable to accept the contention that, because the words used'' in S, 5 are "such judge" the Chief Justice has no jurisdiction to constitute a Bench of more Judges than,one to hear a reference.

With great respect to the learned Judges, I" am unable to follow the observations. As already stated by me under the terms of S. 6, the reference might be heard by the Chief Justice or by the Taxing Judge or taxing Judges appointed by him "assuming that the singular includes the plural." The jurisdiction to hear the reference arise.'' immediately when the taxing officer makes the reference: where the reference is so made by the taxing officer to a Taxing Judge nominated by the Chief Justice, there is no further power in the Chief Justice to withdraw the reference and place it before Taxing Judges to be specially nominated by him or for the Taxing Judge to return: the reference to the Chief Justice with a request that it might be placed before Taxing Judges to be nominated by him as held by the Lahore Hi"h; Court. It is only before a reference is made by the taxing officer that the Chief Justice may constitute Taxing Judges and enable the taxing'' officer to refer the matter to them.

8. My attention was next invited to two decisions of the Madras High Court in Reference under Court-fees Act. S. 5, 4.i Mad LJ 22 (N) and Gummadi Appayya and Others Vs. Gavini Venkataratnam, ,, and .a. decision, of the Nagpvir High Court in Manohar v. Manoramabai ILR (1952) Nag 457 : AIR 1952 Nag 350) (FB) (P), where references were made to a Division Bench and a Pull Bench respectively. Those decisions are not of much assistance, as there is no discussion about the terms of S. 5, Court-fees Act.

Similarly, in the decisions of. this Court in Amara Eswaramma and Others Vs. Makkam Seethamma, and the unsorted decision in In re, K. Subbanna, S. R. 3966r 1956, D/- 20-3-1956, since reported AIR 1957 AP 6) (R), this question was not discussed and no objection appears to have been taken, under the terms of S. 5, that the Full Bench and the Bench had no jurisdiction to hear the cases respectively,

9. A discussion of all. the above cases leads me to the conclusion that it is not open to the Taxing Judge to refer the matter to a Bench or a. Full Bench and that he himself should hear and dispose of the reference even if there is conflict of

authority. It is only for the Legislature to appropriately amend the terms of S. 5 and remove 17-B, Plaint or memorandum of appeal in every when the Plaint is presented to or the memorandum of appeal suit where it is not is against the decree of a revence Court. Ten Rupess possible to estimate A districh Munsif''s Court or the City Civil Court Fifteen rupees at a money value

the subject-matter One hundred rupess

in dispute and A district Court or a Sub-Court which is not otherwise provided for by this Act.

It is important to note that the same Court-fee is payable on the plaint or memorandum of appeal, if it is not possible to estimate at a money value the subject-matter in dispute in the suit. There can be no doubt that in an appeal against a preliminary decree in a partition suit, the Court-fee payable is the same as in the plaint. The only question is, whether, when a final decree is passed for an ascertained sum, the terms of Art, 17-B do not apply and Court-fee has to be paid ad valorem under Article 1, Sch. 1.

10. I have no doubt that, on the language of the section, the memorandum of appeal against a final decree is governed by Article 17-B as the words employed are

memorandum of appeal in every suit where it is not possible to estimate at a money value.

11. This question was considered at great length by Krishnaswami Nayiklu J., in Veluchami Pillai by next friend, Chellathayee alias Meenakshi Ammal Vs. K.R. Sankaralingam Pillai and Others, . The final decree provided that! the Plaintiff should receive a certain amount from the other party to equalise the shares. The Plaintiff was granted a decree for a specific amount in respect of his share of the profits. Not being his with the decree, he preferred an appeal and paid a fixed Court-fee of Rs. 100 as provided under Article 17-B of Sch. II. The observations of the learned Judge are directly in point and are as follows:

If the language of Article 17-B is examined it will be seen that on the plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute fixed Court-fee only will be payable. This is an, appeal arising in a suit where it is not possible to estimate at a money value the subject-matter In dispute as it is a partition suit between members of a joint family and which has been (Nov.) 1957 Andh. Pra. D.F./49 the difficulties pointed out above.

12. I shall now proceed to consider what court-fee is payable in respect of a final decree passed in rjartition afctiQn. In Rangayya Chetty v. Subramanian Chetty, 21 Mad LJ 21 (FB) (S), it was held by White C J. and KrishnaswamiAiyar J, of the Madras High Court that a suit for partition of the joint family where a Plaintiff is in joint possession with the other co-parceners is governed by S. 7, Clause (iv) (b), Court-fees Act and that the plaint should be stamped ad valorem on the

amount at which the relief sought is valued.

Ayling J., dissented and held that the "ase fell within Article 17 (vi) of Sch. II (which is now Article 17-B of the Madras Court-fees Amendment Act of 1922). The correctness of this Full Bench decision was canvassed in Ramaswamy Ayyangar v. Rangachariar 1940 Mad WN 126: ILR (1940) Mad 259 : AIR 1940 Mad 113) (T), and the majority decision in 21 Mad LJ 21 (FB) (S), was held to .be erroneous and was overruled. So according to the later Full Bench decision which is binding on this Court, the Only provision in the Court-fees Act which is applicable is Article 17-B of Sch. II which is as follows:

When the plaint is presented to or the memorandum of appeal is against Ten rupees, the decree of a Re- venue Court. A district Munslf''s Court or the City Fifteen rupees. Civil Court, A district Court or a Sub-Court. One hundred rupees held ''to bo one coining under this article. Since the appeal arises in the suit, Article 17-B would be applicable to the appeal as well.

Article 1 of Sch. 1 provides that in respect (1'' a plaint or m::mor. ndum of appeal (not otherwise provided for in this Act) ad valorem Court-fee given In column 3 should be paid. But since it has been held that in respect of a suit for partition Article 17-B is the provision that is applicable, Article 1 of Sch. I cannot be made applicable since it is otherwise provided for in this Act under Article 17-B. Since there is a specific provision under Article 17-B, Sch. II, for this class of suits Article 1, Sell I. is not applicable and ad valorem Court-fee cannot be charged.

The conclusion of the learned Judge, as summed up'', was "the appeal against either a preliminary or a final decree, arising out of a suit for partition, must be treated as one incapable of valuation and Article 17-B, Sch. II, is the only article that would be applicable." This decision was followed bv Chandra Reddy J., in Kamalam Vs. Saradambal and Others, . Though the actual point which the learned Judge had to consider arose in ar, administration suit, the learned Judge held that the principles applicable to a partition suit equally apply to an administration suit.

The relevant observations are at page 139 (of Mad LJ): (at P. 579 of AIR) and are in the following terms:

The construction to be placed on this clause. depends on the question whether the expression "In the suit, where it is not possible to estimate at a money value," governs only the plaint, or the memorandum of appeal as well. If it governs memorandum of appeal also, then although the subject-matter of the memorandum of appeal is capable of valuation, still it i''alis within the pur view of that article, because the memorandum of appeal is in the suit in which it is not possible to estimate at a money value the subject-matter in dispute. A plain reading of the clause inclines mo to the view that the clause governs both the words "suits" and "memorandum of appeal" preceding it.

I respectfully follow these two decisions as, in my opinion, they correctly interpret the terms of Article 17-B. The same view was taken by the Bombay High Court in Vishnuprasad Narandas Modi Vs. Narandas Mohanlal Modi, . The decisions of other High Courts taking the same view are referred to by Gajendra-gadkar, J., at page 5. The same question came up for consideration before a Full Bench of the Nagpur High Court in ILR (1952) Nag 457 at p. 468 : AIR 1952 Nag 350 at p. 352) (P). All the relevant cases are reviewed in that decision. The answer given by the Full Bench to the second question is as follows:

The court-fee payable on a memorandum of appeal in a suit for partition which falls under Article 17 (vi), Sch. II, Court-fees Act, would be the same as that leviable on a plaint and is not to be assessed on the basis of the value of the subject-matter in appeai.

I respectfully follow the above decisions and hold that the court-fee need not be paid on the value of the subject-matter in appeal, namely, the amount determined by the final decree, but only under Article 17-B of Sch. II.

12. In support of the contention that court fee is payable under Article 1, Sch. l, Sri Oangadhara Rao on behalf of the learned Government f Pleader relied on the decisions in ILR 45 Mad 280 : AIR 1923 Mad 19) (C); Kadiyala Peravadhannulu Vs. Kadiyala Peravadhannulu minor by mother and guardian Subbamma, and In re Krishnappa Chettiar 1941 2 Mad LJ 92 (W). As the full report of the judgment of Horwill J., in 1941 2 Mad LJ 92 (W), is not placed before mo, I am not in a position to know on what ground;; the learned Judge took that view.

From the short notes it appears that he held that ad valorem court-fee should be paid as the claim in appeal cannot be said to be incapable of valuation. Possibly, the learned Judge did not take into consideration the important words which are underlined by me (herein into) every suit'' where it is not possible to estimate at a money value'''' following the words "memorandum of appeal".

In 19492 Mad LJ 402 : AIR 1950 Mad 28) (V), Mr. Justice Mack proceeded on the footing that there was no distinction between an ordinary suit for accounts & a partition suit that for fiscal pureposes the liability of a manager of p, Hindu Joint family to account to other members of the joint of family cannot be differentiated from an ordinary suit for account as between partners. do not agree with the view taken by the turned Judge as there is no discussion of the ctual word employed in Article 17-B, Sch. II, Court-jes Act. Chandra Reddy J., has expressed his dissent from this decision in Kamalam Vs. Saradambal and Others, and I respectfully share his view.

13. The last case that remains to be conspired is the decision in ILR Mad 280 : AIR 923 Mad 19) (C). Sri Gangadhara Rao strenuous-contended that the decision is a direct outvote on the point and that I should follow the bench decision in preference to the decisions of glee Judges of the Madras High Court and the ;actions of other Courts.

From the facts set out at page 280 in ILR Mad 280; AIR 1923 Mad 19) (C), it appears that the reference arose out of a partition suit and that both the Plaintiffs and Defendants preferred appears to the District Court against the final decree determining the mesne profits. The judgment of the Bench is in a single sentence and is in the following terms:

These appeals must be treated as appeals against a final decree under Order 20, Rule 12(2), Code of Civil Procedure, and an ad valorem court-fee must be charged under Article 1, Sch. 1, Court-fees Act, calculated .on the amount of mesne profits in dispute.

14. Sri K. Ramachandra Rao, on behalf of the Petitioner contended that the decision in ILR Mad 280 : AIR 1923 Mad 19) (C), should no-longer be treated as good law in view of the Full Bench decision reported in Babburu Basavayya and Others Vs. Babburu Guravayya and Another, at p. 941) (X), as it was held by the Full Bench that Order 20, Rule 12, CPC does not apply to partition suits. I agree with his contention that a partition suit is not covered by the provisions of Order20, Rule12, CPC but only by the provisions of Order 20, Rule 18, CPC In Babburu Basavayya and Others Vs. Babburu Guravayya and Another, at p. 179 : AIR 1951 Mad 938 at p. 941) (X), the Madras High Court considered1 this matter in great detail.

It was pointed out that Order 20, Rule 12 deals only with suits for ejectment or for recovery of possession of Immovable property from a person in possession without title and for recovery of past or past and future mesne profits and that Order 20. Rule 18 deals with suits for partition by one or more tenants-in-common against others with a claim for account of profits and suits for partition by a member of a Joint Hindu family with a claim for an account from the manager. It was clearly pointed out that the words mesne profits as defined in Section 2(12) CPC were not applicable to a case where relief is sought as against the ''manager for accounts. The peculiar characteristics of a partition action were stated thus:

It may be necessary in a partition suit not merely to divide the properties but also to realise out standings, discharge common liabilities, sell properties not capable of easy division, direct different sharers to account for different periods of time in respect of profits of different properties, adjust equities between the parties and give directions from time to time to the commissioners appointed to divide the properties or take accounts.

The view taken by Ayling J., in Ghulusam Beevi v. Ahamadas Rowther ILR Mad 296: v. AIR 1919 Mad 998) (Y), that the terms of Rule If should be restricted in the same way as in the final decree referred to in Order20, Rule 12, CPC was overruled. So the view taken in ILR 45 Mad 280 : AIR 1923 Mad 19) (C), that the final decree for mesne profits falls under Order 20, Rule 12, CPC cannot, therefore, stand side by side with the Full Bench decision in Babburu Basavayya and Others Vs. Babburu Guravayya and Another, (X). As aforesaid, the terms of

Order 20, Rule 12, CPC cannot at all apply to I a partition action.

The profits which the manager has to account for are not mesne profits within the meaning of Section 2(12), CPC Therefore; the foundation of the judgment in ILR Mad 280 : AIR 1923 Mad 19) (C), that the appeals should be treated as appeals against a final decree under Order XX Rule, 12, Code of CPC disappears as a result of the Full Bench decision in Babburu Basavayya and Others Vs. Babburu Guravayya and Another, (X).

Moreover, the view taken in 21 Mad LJ 21 (PB) (S), that ad valorem court-fee should be paid u/s 7 (iv) (b) in respect of a partition action has also been expressly overruled by the Pull Bench decision in ILR (1940) Mad 259 : AIR 1940 Mad 113) (T).

There is no discussion about the applicability of Article 17-B to partition suits in ILR 45 Mad 280 : AIR 1923 Mad 19) (C), as.the view that prevailed at the time was that S. 7 (iv) (b) applied to partition suits vide Full Bench decision in 21 Mad. LJ 21 (S).

The decision in ILR 45 Mad 280 : AIR 1923 Mad 19) (C), cannot, therefore, be regarded as good law in the light of the two Full Bench decisions in ILR (1940) Mad 259 : AIR 1940 Mad 113) (T); and Babburu Basavayya and Others Vs. Babburu Guravayya and Another, (PB) (X). The principle laid doven in Sulmond''s Jurisprudence, 10th Edition, at page 182 that

a precedent that would otherwise possess absolute authority loses this authority in ....(ii) where the precedent though it has not been expressly overruled is inconsistent with a subsequent decision of a higher court; (iii) ....

applies to this case. This principle is accepted by the Court of Appeal in Young V. Bristol Aero plane Co. (1944) 2 All ER 293 at p. 300 (Z). As the Bench decision in ILR 45 Mad 230 : AIR 1923 Mad 19) (C), is inconsistent with the two Full Bench decisions referred to supra it would no longer be held to be binding on. tin''s Court. The observations of Subbarao J., (as lie thou was) in Dr. K.C. Nambiar Vs. State of Madras and Others, , and quoted with approval by the same Judge in M. Subbarayudu and Others Vs. The State, , do not in any way militate against the view taken by me. What the learned Judge pointed out at p. 54 in Dr. K.C. Nambiar Vs. State of Madras and Others, at p. 354) (ZI), was that a single Judge cannot differ from a Division ''Bench unless a lull Bench or the Supreme Court overruled that decision specifically or laid down a daren''t law on the same point.

As I am convinced that the two Full Bench decisions have laid down a different law as discussed above, the Bench decision in ILR Mad 280; AIR 1923 Mad 19) (C), is no longer good law in so far as it relates to a partition suit.

15. Sri Gangadhara Rao next contended that as the Bench decision was cited with approval in S. R. No. 3956 of 1956, (Since reported AIR 1957 AP 6) (R). I am bound to follow that decision. The question that arose for decision in S. R. No. 3956 of 1956 (Since reported AIR 1957 AP 6) (R), was "as to what is the

value of the subject-matter of appeal filed against a final decree ascertaining mesne profits due to the Plaintiff in a suit for recovery of possession and mesne profits governed by the express terms of Order 20, Rule 12, Code of CPC The peculiar nature and character of partition suits did not fall to be considered in that case.

The learned Judges did not deal with the terms of Article 17-B, Sch. II, Court-fees Act or Order 20, Rule 18, CPC So the observations of the learned Judges approving the decision in ILR Mad 280 : AIR 1923 Mad 19) (C) are only obiter. Their view that Court-fee is payable under Article 1, Sch. I, Court-fees Act, in respect of the mesne profits determined under Order 20, Rule 12 CPC may be binding on this Court. But in respect of a final decree passed in a partition suit, it cannot be said that "ad valorem court-fee is payable.

16. In the result, I hold that the Court-fee payable is the fixed Court-fee of Rs. 100 under Article 17-B, Sch. II, Court-lees Act and not ad valorem court-fee as under Article 1, Sch. I.

