

**(1948) 10 MAD CK 0018**  
**In the Madras High Court**

Geddamm Venkamma and Another

APPELLANT

Vs

Geddamm Venkataramayya and Others

RESPONDENT

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**Date of Decision :** 07-10-1948

**Acts Referred:**

**Citation :** (1948) 2 MLJ 651

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

**Bench :** Division Bench

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### Judgement

Mack, J.—This petition raises an interesting question of jurisdiction and a Court-fee. The respondents were the plaintiffs who filed O.S. No.

61 of 1946 in the District Munsiff's Court of Razole praying for two declarations, (1) that they were the nearest reversioners of one Geddamm

Venkayya who died issueless and intestate in 1936; and (2) that a sale deed dated 30th October, 1936, executed by his widow, the 1st defendant,

and the late Venkayya's foster daughter, the second defendant was not binding on them. Only Rs. 15 was paid on the plaint for one declaration, it

is not quite clear for which. The District Munsiff in a considered order returned the plaint for re-presentation holding that the plaint impliedly sought

to set aside a will by the late Venkayya, who admittedly died possessed of more than 3 acres of land. By the sale deed dated 30th October, 1946,

defendants 1 and 2 sold only about an acre of land for Rs. 1,500. It is common ground that Venkayya's estate is worth more than Rs. 3,000. The

District Munsiff held the suit was outside his pecuniary jurisdiction and returned the plaint for presentation to the proper Court. The Subordinate

Judge held that the subject-matter of the suit was only that covered by the sale deed valued at Rs. 1500 and remanded the suit to the District

Munsiff for disposal on merits. As regards the will and the reversionership he made the following observation:

For the purpose of deciding whether the alienation made by the first defendant in favour of the third defendant is valid and binding it is necessary to

determine whether the plaintiffs are reversioners and whether the will relied on by the first defendant is true. They are incidental to the determination of the issue whether the alienation is valid.

I am quite unable to accept the view taken by the learned Subordinate Judge. Under cover of a very small alienation of property by a Hindu

widow whose life estate comprises very substantial property it is not open to a reversioner to seek to have his rights declared even though they

only amount to a spes successionis--which may never be realised--and a will bequeathing considerable property set aside in a District Munsiff's

Court on a Rs. 15 court-fee stamp. The subject-matter of such a suit is in my view not the small alienation alleged to be invalid and not binding but

in substance and in fact the entire estate of the last holder succession to which is sought to be established. The question immediately arises on a

perusal of such a plaint, what is the value of the estate to which a reversionary right is sought to be declared. Such a plaint should be returned for

such valuation being inserted for it is this valuation which should, as it appears to me, determine the pecuniary jurisdiction of the Court. If the value

of the estate is more than Rs. 10,000, the Court-fee for such a declaration will under Article 17-A of the Court Fees Act be Rs. 500 and if

between Rs. 3000 and Rs. 10,000 the court-fee will be Rs. 100, the plaint lying in a Sub-Court or a District Court as the case may be.

2. The learned advocate for respondents has strenuously contended that it is not necessary for them to pay court-fee on a separate declaration that

the will of Venkayya is not genuine or valid. He relies on Gokula Venkamma v. Gokula Narasimha (1916) 2 M.W.N. 325 a Bench decision of our

High Court. That decision is I think in point. I do not think that any Court-fee need be paid for a declaration to set aside as invalid or as a forgery

any will set up by the defendants. Some reliance has also been placed on a Calcutta decision which went up to the Privy Council Bijoy Gopal

Mukerji v. Krishna Mahishi Debi (1907) 17 M.L.J. 154 : L.R. 34 IndAp 87 : ILR 34 Cal. 329 (P.C.) to avoid paying any Court-fee for even a

declaration that plaintiffs are the nearest reversioners. Their Lordships of the Privy Council held in that decision that a widow's alienation is not absolutely void, but was prima facie voidable at the election of the reversionary heirs who may approve it or treat it as a nullity without the intervention of any Court, there being nothing to set aside or cancel as a condition precedent to their right of action. The important point to note is that those observations were made in a suit for actual possession. Their Lordships further observed in that same decision that the institution of a suit for possession shows an election to treat the alienation as a nullity and that in such a suit it is therefore unnecessary for the reversionary heir to ask for a declaration that the alienation is inoperative. Adequate court-fee there had been paid on the basis of recovery of possession. The present suit however is not one for recovery of possession and the plaint asks for two separate declarations (1) of the rights of plaintiffs as nearest reversioners, whatever that may mean; and (2) that the sale deed executed by the widow is not binding on them. The plaintiffs in fact cannot sue now for recovery of possession. This appears to me precisely the sort of prayer contemplated by Article 17-A of the Court Fees Act and in my view on each of the declarations in the plaint a separate court-fee of Rs. 100 is payable under this Article. The pecuniary jurisdiction is as I have shown regulated by the subject-matter of the property involved which in this case is the value of the widow's life estate. As the plaintiffs ask on the basis of such a declaration for a further declaration that a sale deed by the widow is not binding on them, they must pay a further court-fee of Rs. 100 for this prayer, the suit lying in a sub-Court. The petition is allowed with costs throughout. The order of the Subordinate Judge is set aside. The plaint and the connected papers will be sent to him for registration and disposal on the merits in the light of these observations. It is open to him to give the plaintiffs a reasonable time within which to pay the deficit court-fee.