

(1955) 11 AP CK 0021
In the Andhra Pradesh High Court
Case No : S. R. No. 3421 of 1955
In Re: Panumarthi Tatabbayi

Date of Decision : 17-11-1955

Acts Referred:

Court Fees Act, 1870 — Section 17

Citation : AIR 1956 AP 112

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : P. Venkataramanamurthy, for the Appellant; M.V. Srinivasa Rao, for Government Pleader Andhra, for the Respondent

Judgement

Umamaheswaram, J.—The plaintiff is the appellant. He filed O.S. No. 449 of 1952 on the file of the District Munsiff's Court Kakinada for recovery of Rs. 1.062-13-3 due on four promissory notes. As the amount claimed in respect of each of the promissory notes was less than Rs. 500/-. he paid court-fee on the amount of each of the promissory notes under Art. 2 of Sch. I of the Court-fees Act. The District Munsif granted a decree in his favour but the decree was reversed in appeal. The plaintiff has consequently filed this Second Appeal.

2. The plaintiff-appellant has paid court-fee on the memorandum of appeal as in" the trial Court on the small cause scale under Art. 2 Sch. I of the Act. The office having raised an objection that the court-fee should be paid under Sch 1 Art. 1 of the Court-fees Act, the matter was placed before me and I gave notice to the Government Pleader.

3. Sri Venkataramanamurthy on behalf of the appellant contended that the court-fee paid by him is proper. He relied on the terms of S. 17 of the Court-fees Act which enacts that where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act. The decision in Secretary of State Vs. N.M.R. Ayyasami Chettiar,) relied on by him does not assist him. Venkatasubba Rao, J. held that the claim in regard to Rs. 600 - was governed by

Art. 1 of Sch. 1, and the claim in regard to Rs. 400/. was governed by Art. 2. The learned Judge did not decide that the court-fee payable on the memorandum of appeal was governed by Art. 2 of Sch. 1. Similarly in "Parshotam Lal v. Lachman Das 9 All 252 (B) the Allahabad High Court held that each hundi afforded a separate cause of action, that the suit embraced three separate and distinct subjects and that the memorandum of appeal by the first defendant was chargeable, with the aggregate amount of the court-fees to which the memoranda of appeal in suits embracing separately each of such" subjects would be liable under the Court-fees Act.

4. The question that arises for decision in this case has, therefore, to be considered on the language of Arts. 1 and 2. Article 2 prescribes the court-fee payable on a plaint presented to a Court outside the Presidency Town in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter does not exceed Rs. 500/-. There is no reference to a memorandum of appeal in Art. 2 as the decree passed in a suit covered by Art. 2 is not appealable. The Article which deals with memorandum of appeal is Art. 1. It provides for the payment of court-fee in respect of a plaint, written statement pleading a set-off or counter-claims as also memorandum of appeal presented to any Civil or Revenue Court. So. when the plaintiff presents a memorandum of appeal, he has necessarily to pay court-fee under Art. 1. The argument of Sri Venkataramanamurthy is that the court-fee payable on the memorandum of appeal ought to be the same as that payable on the plaint. Generally it may be so but. in the absence of the words "memorandum of appeal" in Art. 2. I am not prepared to accept his argument. He is bound to pay court-fee on the memorandum of appeal under Art. 1 as prescribed therein.

5. In passing I might mention that in the "Guide to the law of Court-fees in Madras" (third edition), the commentator. Sri K. Krishnamurthy, has taken this view. R. Satyamurti Aiyer in his commentary on "The Court-Fees and the Suits Valuation Acts" (3rd edition) has also taken the same view. He points out that the omission of the words "memorandum of appeal" in Art. 2 (Madras) makes the Article inapplicable to memorandum of appeal.

6. I grant" four weeks" time to the appellant to pay the deficit court-fee.