
(1961) 11 AP CK 0012

In the Andhra Pradesh High Court

Case No : Appeal No. Nil of 1960 and S.R. No. 1507 of 1960

In Re: Vatrapu Rami Reddy and Others

Date of Decision : 10-11-1961

Acts Referred:

Court Fees Act, 1870 — Article 17B

Citation : AIR 1962 AP 397

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : Ch. Sankara Sastry and T. Veerabhadraiah, for the Appellant; M.V. Nagaramaiah for 2nd Govt. Pleader N.V.B. Sankara Rao, for the State, for the Respondent

Judgement

Umamaheswaram, J.—The question that arises for decision in this reference is whether the appellants ought to pay ad valorem Court-fee on the costs awarded against them as also on the costs disallowed to them in a partition suit. The contention of Sri T. Veerabhadrayya, the learned advocate for the appellants, is that the appropriate article applicable to the case is Article 17-B of the old Court-Fees Act, which is in the following terms:

The appellants have paid a court-fee of Rs. 100/- as in a partition action under Art. 17-B of the Court Fees Act. The office raised the objection that though Court-fee paid in respect of the relief as to partition is quite in order, the memorandum of appeal was defective inasmuch as no court-fee was paid in regard to the claim as to costs. Reliance was placed on the decision of the Madras High Court in *Re Makki*, ILR 19 Mad 350.

2. Having given my best consideration, I am inclined to uphold the contention of Sri T. Veerabhadrayya. The point is directly governed by the decision of the Calcutta High Court in *Jyoti Prosad Singha Deo Bahadur Vs. Jogendra Ram Roy and Others*, . The question that arose for decision was in regard to costs in partition action. Mitter J. held that inasmuch as the appeal arose in respect of a partition action under Art. 17(vi) of the Court Fees Act, the court-fee that was payable was the amount provided under that Article i.e., Article 17(vi) of the

Court fees Act. This decision was followed by Krishnaswami Nayudu, J. in Veluchami Pillai by next friend, Chellathayee alias Meenakshi Ammal Vs. K.R. Sankaralingam Pillai and Others, . The learned Judge held that it did not matter whether the ground of attack was one with reference to the allotment of specific portions of immovable or moveable property or whether it was the question of costs.

The same view was taken by me in Damiseti Satyanarayana Murthi and Another Vs. Damiseti Bhavanna and Others . I held that on the language of the section, the memorandum of appeal against a final decree is governed by Art. 17-B of schedule II as the words employed are "memorandum of appeal in every suit where it is not possible to estimate at a money value". Inasmuch as the question as to costs is raised in a memorandum of appeal in a suit where it is not possible to estimate at a money value the subject-matter in dispute, no ad valorem court-fee is payable in respect of the claim for costs. The decision in ILR 19 Mad 350 does not relate to a partition action. The suit was in respect of recovery of possession of immovable property. So, the Court took the view that ad valorem court-fee was payable separately in respect of costs.

3. Following the decision in Jyoti Prosad Singha Deo Bahadur Vs. Jogendra Ram Roy and Others, I hold that the Court-fee paid by the appellants is perfectly adequate and the reference is answered accordingly.