

(1941) 02 MAD CK 0047

In the Madras High Court

In Re: Vedaranyaswami Devasthanam

Date of Decision : 05-02-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107, 151
Court Fees Act, 1870 — Article 17B, 7(xi)

Citation : AIR 1942 Mad 464 : (1942) 55 LW 250 : (1942) 1 MLJ 451

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—A batch of twenty-eight suits for acceptance of patta and execution of muchilika by the tenants were brought by the landlord in the Court of the Sub-Collector, Negapatam. Under a notification of the Madras Government no. court-fee is leviable on such complaints. Appeals were preferred by the landlord from the decree passed by the Sub-Collector to the District Court, Bast Tanjore. Since the notification granting exemption in regard to complaints was not applicable to appeals, a court-fee of Rs. 10 under Article 17-B, Schedule II of the Court-Fees Act was paid in regard to each appeal. The landlord not being satisfied with the order passed by the District Judge preferred these second appeals to this Court and since the appellant considered the appeals to be incapable of any valuation, he paid a court-fee of Rs. 25 in regard to each appeal. The office raised the objection that the court-fee paid by the appellant was calculated on a wrong basis and that it should have been paid according to the provisions contained in Section 7 (xi) of the Act. This contention was upheld by the Master of this Court on the 31st July, 1940, and he ordered that the deficiency in court-fee on appeals should be made up on that basis. There were certain appeals however in respect of which he was of opinion that the court-fee had been paid by the appellant in excess. He also found that some of the appeals in the lower appellate Court were under-valued and others overvalued. He therefore moved this Court u/s 12 (ii) of the Court-Pees Act to order the appellant to pay so much additional court-fee as would have been payable by him had the court-fee been rightly affixed and also drew the attention of this Court to the excess court-fee paid by the appellant in other appeals.

2. There is no specific provision in the Court-Fees Act which empowers the Court to order a refund, but decisions are to the effect that the Court may *ex debito justitiae* go into these questions, declare that any particular plaint or memorandum of appeal was over-valued and then leave the matter to the Revenue authorities for the grant of a refund in accordance with the declaration given by this Court. It was so held by a Division Bench of this Court in *Chintakayala Thammayya Naidu Vs. Chintakayala Venkataramanamma and Another*, . Other cases " have also followed the same course. It appears to be quite just in the circumstances that while I am called upon to exercise my powers u/s 12 (if) of the Court-Fees Act and to order the appellant to make up the deficiency in regard to the court-fee on certain appeals in that batch, I should simultaneously consider if he has paid it in excess on other appeals which were preferred by him at the same time. It was suggested by the learned Government Pleader that although I might be entitled to pass that order in regard to appeals preferred to this Court, yet I have no such, power in regard to the appeals presented to the Subordinate Court and that the order declaring that the court-fee has been paid in excess should be passed by the Court which had entertained the appeals. I am not impressed by that contention. u/s 107, Civil Procedure Code, every appellate Court is entitled to exercise the same powers and is bound to perform the same duties as were conferred or imposed by the Code on the Courts of Original Jurisdiction and there is no reason why the orders which could be passed by the lower appellate Court cannot be passed by this Court *ex debito justitiae*. Section 151 of the Code contains ample powers for that purpose. There is an observation of Wallace, J., in the Division Bench case to which I have referred above, which also goes to show that the High Court could make a declaration and assist the party to recover the excess court-fee erroneously paid by him under its own order or under orders of Courts subordinate to it.

3. Since the Master's decision in regard to the court-fee being leviable u/s 7 (xi) of the Court-Pees Act was not challenged before me by the learned Counsel for the appellant and his decision in regard to cases in this Court where the court-fee is deficient is not only final but correct, I see no reason why the same treatment should not be meted out to the appellant in regard to the cases where relying on a provision of the Court-Pees Act, which is now found to be inapplicable, he has paid it in excess in the appeals preferred to this Court. As for the appeals preferred before the lower appellate Court, I am bound to order, in view of the provisions contained in Clause 12 (if) of the Act that the deficiency in the court-fee should be made up and I do so order. But at the same time, I would like to issue a certificate in regard to the appeals both to this and the lower appellate Court in which the court-fee has been paid in excess of what was required u/s 7 (xi) of the Court-Pees Act that they bear an excess court-fee. This would have to be done in regard to each appeal in which an application has been or may be made on behalf of the appellant. The deficiency in court-fee on appeals preferred to the Court of the District Judge of East Tanjore must be made up by the appellant within four weeks on the same principle on which court-fee has been

held to be leviable by the Master on the appeals preferred to this Court. As for the appeals in which the appellant alleges to have paid court-fee in excess, the matter will be verified by the office on his application in any of the 28 appeals out of this batch and if having regard to Section 7 (xi) of the Court-Fees Act, excess fee is found to have been paid by him, a certificate or certificates, as the case may be, will be given to him in the terms indicated above. The same order will be passed in regard to the appeals pending in this Court.