

(1947) 09 MAD CK 0038
In the Madras High Court

Jasti Basavayya and Others

APPELLANT

Vs

Lingam Raghavayya and Others

RESPONDENT

Date of Decision : 26-09-1947

Acts Referred:

Citation : (1948) 61 LW 389 : (1948) 1 MLJ 338

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—This is an appeal by defendants 1 to 9 against the amended decree disallowing the junior counsel's fee of Rs. 62-5-4 to the appellants and refusing to allow Rs. 270 as senior's fee instead of Rs. 187. Defendants 1 to 9 were represented in the suit by a senior counsel assisted by a junior; but unfortunately that junior died after the framing of the issues and the defendants engaged another junior. The decree as originally drafted allowed a sum of Rs. 62-5-4 for the junior pleader and Rs. 187 for the senior pleader. Defendants 1 to 9 made an application for amending the decree by allowing a sum of Rs. 270 for the senior and Rs. 90 for the junior. The application was opposed by the second plaintiff. The learned Subordinate Judge, while finding that the appellants were entitled to Rs. 270 for the senior as the other defendants 18 and 20 to 22 were not entitled to any costs since they were also equal reversioners along with the plaintiffs and supported them, did not carry out the result of this finding in the amended decree. In this we think he is wrong and the learned advocate for the respondents concedes that the appellants are entitled to Rs. 270 as senior's fee instead of Rs. 187. We think therefore that the decree ought to be amended so far as this amount is concerned.

2. As regards the junior's fee, the petition itself was made under a mistake as apparently it was not noticed by the counsel for defendants 1 to 9 that as a matter of fact junior's fee of Rs. 62-5-4 was allowed in the original decree. When the complaint about the junior's fee was raised by the petition for amendment the learned Subordinate Judge discovered that it was a mistake to have allowed

the junior's fee in the first instance as under Rule 33 of the Practitioners Fees Rules, on the facts of this case the appellants were not entitled to the junior's fee. The junior to whom the fee was payable was not the junior on record at the time of the framing of the issues. We think that the construction placed by the learned Subordinate Judge on Rule 33 of the Practitioners Fees Rules is correct. No doubt the object of the rule is to prevent a litigant from claiming the junior's fees by merely engaging him at the last hour and to see that a junior is engaged from the beginning of the case to claim the benefit of the rule. The rule is as follows:

In Courts subordinate to the High Court, when the amount or value of the claim in a suit or appeal exceeds Rs. 1,000 an additional fee calculated at one third the fee allowable under Rules 31 and 32 above shall be payable to a junior practitioner engaged with a senior practitioner, provided that the junior was on record from at least the date of the settlement of issues in a suit or from the date fixed for the appearance of the respondent in an appeal.

The language of the rule is clear. The fee payable to a junior must be to the junior who was on record at least on the date of the settlement of issues. In this case as stated already the junior on record was not the junior at the date of the settlement of the issues. Therefore no fee would be allowable under Rule 33. We are therefore unable to agree with the contention of the learned advocate for the appellants that we should give effect to the spirit of the rule overlooking the clear language. It is a matter for the Rule Committee to make suitable amendment to the rule to cover cases of this description. We have no option but to give effect to the plain language of the rule. The contention of the appellants has therefore to be rejected....

3. In the result the decree of the lower Court will be modified to the extent indicated above and in other respects the appeal is dismissed but without any order as to costs.