
(1929) 08 MAD CK 0016
In the Madras High Court

Kolluri Subbarao

APPELLANT

Vs

Kolluri Venkataratnam and Others

RESPONDENT

Date of Decision : 01-08-1929

Acts Referred:

Court Fees Act, 1870 — Section 7

Citation : AIR 1929 Mad 828 : 121 Ind. Cas. 857 : (1929) 30 LW 637 : (1929) 57 MLJ 677

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—In this case the plaintiff is the appellant. He filed the suit for partition and delivery to him of his share in the

properties alleging that he is a member of an undivided family with defendants 1 to 6, that the immove-able properties in the plaint schedule are

joint family properties and praying that the decree in Suit No. 24 of 1922 should be set aside as not binding on him. He paid a stamp duty of Rs.

250 valuing the suit as one by a coparcener to be in possession with the other coparceners. The suit was filed on the 17th April, 1923, written

statements were filed and preliminary objection was taken as to the valuation of the suit and the Court-fee paid. Issue 12 is: ""Are the valuation of

the suit and the Court-fee paid not correct?"" The Subordinate Judge in dealing with it disposed of the preliminary point and held that the valuation

was not correct. He held that the plaintiff should not value the suit u/s 7, para. 4(b) and was not entitled to put his own valuation on the property.

He held that, the amount payable was prescribed by Section 7, para. 5 of the Court Fees Act. When he held this the plaintiff put in an application

to be permitted to continue the suit in forma pauperis on the ground that he was

unable to pay the heavy stamp duty of Rs. 1,523 and odd which would be payable by him in addition to the fee already paid. He put in the usual application through his pleader to allow him to continue in forma pauperis. The Subordinate Judge dismissed the application on the short ground that it was not in the form prescribed by the Code and that it was not presented by the plaintiff in person and hence the appeal. The first question is, whether the Subordinate Judge was right in dismissing the application. It is now clear on the authorities that in a case like the present it is open to the plaintiff to apply to continue the suit in forma pauperis.

We need only refer to *Thompson v. The Calcutta Tramway Company* I.L.R.(1893) C. 319 and *Revji Patil v. Sakham* I.L.R.(184) B 615

Although there is no direct decision in the Madras Court on the point the learned Judges who decided *Solayappa Chetty v. Lakshmanam Chetty* (1919) 38 M.L.J. 146 expressed no dissent from the view that such an application would lie. If such an application lies, then the question is, whether the Subordinate Judge was right in holding that it should be in the form prescribed in Rule 2 of Order 33 and presented in person as required by Rule 3. It is difficult to see how these rules can apply to-a case like the present. Rule 2 contemplates that the application itself should be in the form of a plaint. It should contain all the particulars required as regards plaints in suits; there should be a schedule of any moveable and Immovable property belonging to the applicant and its estimated value and the application should be signed and verified in the manner prescribed for signing and verification of pleadings. Rule 3 says that the application should be presented by the applicant in person unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application and may be examined in the same manner as the party. Rule 4 is that when the application is in proper form and duly presented to the Court it may, if it thinks fit, examine the applicant or the agent when the applicant is allowed to appear by agent regarding the merits of the claim and the property of the applicant. Rule 5 says that the application shall be rejected if it is not inter alia framed and presented in the manner prescribed by Rules 2 and 3. Then we come to Rule 8 which says that where the application is granted it shall be numbered and registered and

shall be deemed the plaint in the suit and the suit shall proceed in all other respects as a suit instituted in the ordinary manner except that the plaintiff shall not be liable to pay any Court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

2. Now the question is where as in the present case the plaint has already been filed with a stamp duty which is found to be inadequate, where a written statement has been put in and issues settled and the Court at a trial of an issue as to the Court-fee wants additional Court-fee which in amount is so large that the plaintiff could not pay it, is the application for permission to continue the suit in forma pauperis to be dismissed because it is not presented as required by Rule 8 which ex hypothesi requires that the application should be in the form of a plaint and when admitted is to be numbered and registered as a plaint, it is obviously impossible in a case like the present. There is already a plaint registered and numbered containing all the allegations and an application to continue it in forma pauperis could not be treated as a plaint or registered as a plaint. It is therefore obvious that it is not possible to comply with this provision. In such cases the question is what is to be done. It has been held, as we said before, that it is competent to the Court to allow in its inherent power the party to apply to continue the suit in forma pauperis. If that power exists, there should certainly be some power in the Court by which that procedure can be followed up. There is no use of saying that the Court can do it and at the same time requiring the party to do something which is impossible, under Rules 2 and 8. In such cases the proper thing would be to see if the plaint discloses a cause of action and issue notice to the opposite side and to the Government to see if the plaintiff is really a pauper unable to pay the additional stamp duty. If that is enquired into and found, he should be allowed to continue the suit in forma pauperis. In the present case there is no doubt that on the plaint there is a sufficient cause of action. It is not barred on the face of it and there is no reason for any inquiry except the inquiry as to whether the plaintiff is or is not able to pay the large additional fee demanded. We are therefore of opinion that the Subordinate Judge is wrong and that the matter should be tried on the lines indicated above. If the plaintiff is found a pauper, of course the other issues will go

on as if the proper stamp duty had been paid.

3. One other point has been raised by the appellant's advocate that the order of the Subordinate Judge is wrong in requiring him to pay additional

duty. In view of the decision on the other question it is unnecessary to decide this point. We think that when occasion should arise for the plaintiff

or the defendants to pay stamp duty an inquiry as to the proper Court-fee payable should be held after notice to the Government. We allow the

appeal and send the case back to be disposed of in the light of the observations in our judgment. The costs of the appeal will abide and follow the

result.

4. There is no question of any Court-fee paid to the Government on the appeal memo, because even if it had been paid, the appellant would be

entitled to refund.