

(1936) 08 MAD CK 0039
In the Madras High Court

Kotamreddi Subba Reddi

APPELLANT

Vs

Perumareddi Venkatanarasimharreddi and Others

RESPONDENT

Date of Decision : 31-08-1936

Acts Referred:

Court Fees Act, 1870 — Section 25, 26, 27

Citation : AIR 1937 Mad 266 : (1936) 44 LW 830 : (1936) 71 MLJ 804

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is a Civil Miscellaneous Appeal against the order of the District Judge of Nellore refusing to receive a plaint.

2. A preliminary objection has been taken that no appeal lies and it is conceded that no appeal lies. A revision petition has been filed and I

therefore propose to deal with the said petition.

3. The suit was to recover a sum of Rs. 8,131-13-0 upon a promissory note executed by defendants 1, 5 and 8 in favour of the plaintiff and also

for a declaration that a certain mortgage executed by the eighth defendant in favour of the ninth defendant is void and not binding upon the

creditors of the family of defendants 1 to 8. On the last date of limitation, that is, on the 24th February, 1934, the plaintiff appeared to have gone to

the office of his pleader and asked him to prepare a plaint and file the same in Court that day. It was about 12 noon when he saw his pleader. The

Court-fee leviable on the plaint is a sum of Rs. 710-12-0. It seems that the Court-fee stamps of the denomination required under the rules could

only be obtained from the Taluk Office and for that purpose the money had to be paid into the Taluk Office before 11-30 A.M. So the necessary

stamps could not be available to the plaintiff. It took nearly 4 P.M. to have the plaint prepared and the plaint was thereupon presented with a

court-fee stamp of annas twelve affixed thereon. The Sheristadar declined to receive the plaint and the matter was brought to the notice of the

learned District Judge who also declined to receive the plaint and passed the following order:

This plaint not being properly stamped will not be received.

4. Within a few minutes after the said order having been passed, the pleader for the plaintiff interviewed the learned District Judge in his chambers

and made a request to him to grant time till 12 noon the next day for supplying the deficient stamp or permit him, to affix court-fee stamps of a

smaller denomination and present the plaint within 15 minutes. But the learned District Judge refused to accede to either request. It seems to me

that the learned Judge acted illegally in declining to receive the plaint. In more than one decision of this Court it has been pointed out that the Court

has no jurisdiction to return the plaint presented with an insufficient stamp. It is incumbent upon the Court to receive it, fix a time within which the

deficiency should be made up and if it is not complied with within the time allowed, to reject it. Vide *Kolisetti Basavayya and Others Vs. Mittapalli*

Venkatappayya and Another, and Narasimha Rao v. Venkata Krishna Rao (1932) M.W.N. 104 where Jackson, J., followed *Achut Ramchandra*

v. Nagappa Rao Balgya ILR (1913) 38 Bom. 41. It is rather surprising that the Office of the District Court should have ignored this procedure

which has been pointed out by the High Court. Further, I do, not see that there is anything illegal in permitting a plaintiff to file a plaint with stamps

of denomination smaller than the one required under the rules, if the requisite stamps are not available. Sections 25 to 27 of the Court-Fees Act

specify the mode of levying fees. Section 25 says:

All fees referred to in Section 3 or chargeable under this Act shall be collected by stamps.

5. Section 26 says:

The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the

Local Government may, by notification in the Local Official Gazette, from time to time direct.

6. And Section 27 gives power to the Local Government to frame the same rules for regulating the supply of stamps or the number of stamps to be used for

denoting any fee chargeable under this Act.

7. The only rule in this behalf which has been brought to my notice is the rule framed and published by the Notification No. 76 dated 19th May,

1883 as amended by Notification dated 25th February, 1924. The said rule provides as follows:

When, in the case of fees amounting to or exceeding Rs. 25, the amount can be denoted by a single impressed stamp the fee shall be denoted by a

single impressed stamp of the required value. But if the amount cannot be denoted by a single impressed stamp or if a single impressed stamp of

the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the

use of one or more additional impressed stamps of the next lower values available which may be required to make up the exact amount of the fee

in combination with adhesive stamps to make up fractions of less than Rs. 25.

8. There is nothing in this rule which prohibits the receipt by the Court of a plaint with Court-fee stamps of a denomination lesser than the one

required under that rule. On the other hand, the rule provides that Court-fee stamps of a lesser denomination can be affixed, if the stamp of the

required value is not available. From the affidavits of both the pleader and the plaintiff filed in this case, it is quite clear that stamps of the required

value were not available to the plaintiff on that day before he could present the plaint in Court. In such circumstances the Court ought to permit the

pleader of the plaintiff to affix the necessary stamps in accordance with the request made by him and receive the plaint. The act of the Court in

declining to receive the plaint is highly unjust and I therefore set aside the order of the learned Judge and direct him to receive the plaint and give

leave to the plaintiff to furnish the deficient stamp within one week after the receipt of order by the lower Court from this Court. I however direct

the plaintiff to pay a sum of Rs. 75 as and for the Advocate's fee to the defendants who are represented by an Advocate in this Court and also any

other costs incurred by them in connection with this civil revision petition and the appeal. I understand that the Court guardian has already been

paid the fee that has been fixed by the Registrar and I do not propose to make

any separate order for him.