

(1969) 07 MAD CK 0022
In the Madras High Court

M.V. Ramaswami Nadar

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 07-07-1969

Acts Referred:

Court Fees and Suits Valuation Act, 1955 — Section 70

Citation : (1970) 1 MLJ 240

Hon'ble Judges : K. Veeraswami, C.J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—This matter raises a question of refund of Court-fee. Pending the writ appeal filed by the appellant-petitioner, he got the relief, he wanted outside the Court. At his request, the writ appeal has been dismissed as withdrawn. It had not been even numbered and was in the stamp register stage. The appellant, therefore, applies for refund of Court-fee.

2. There is no dispute that Section 70 of the Court-fees and Suits Valuation Act has no application, for, none of the grounds exists which would bring the case within its scope. In such a case, the course adopted by this Court, in a number of cases, is that if it is so satisfied ex debito justitiae, it would certify that it is a fit and proper case for the Revenue to refund the fee subject to the deduction of the usual spoliation charges.

3. One such case in point is Srimathi Periathayya alias P. Muthu Meenakshi Veerakamulu Ammal and Another Vs. L. Narasinga Rao, . One of us referred to Thammaya Naidu v. Venkataramanamma I.L.R.(1932)Mad. 641 : 62 M.L.J. 541 and Chidambaram Chettiar In re I.L.R.(1934) Mad. 1028 : 67 M.L.J. 321 and summed up the position:

It follows, that this Court has a limited power to order refund, in exercise of its inherent power u/s 151 of the Code of Civil Procedure, but it does not extend to cases other than the instance mentioned in Chidambaram Chettiar In re I.L.R. (1932) Mad. 641 : 62 M.L.J. 541.

We are of the view that the matter should be looked at, not from the stand point of refund of Court-fee to be directed by this Court. That can only be in a case covered by the statutory provision. Where that provision has no application, but still the Court thinks that, in the interests of justice, relief should be given to the parties it will, as we said, direct a certificate to issue, as has been done in a number of cases, for refund of the Court-fee subject to deduction of the usual percentage. It is on that basis Srimathi Periathayya alias P. Muthu Meenakshi Veerakamulu Ammal and Another Vs. L. Narasinga Rao, directed the certificate to issue. Our, attention has been invited to K.S. Venkataraman and Co. (P.), Ltd. Vs. State of Madras, . That case limited itself to the scope of Section 70 of the Act and did not go further to consider, whether, outside Section 70, the Court may issue such a certificate. The practice of issuing such certificates by this Court has long come to stay and on the principle of stare decisis also we would say that the Court may, in proper cases, issue such a certificate.

4. In the present case, the writ appeal was but in the stamp register stage. It was not even numbered and was not posted for admission before this Court. It should not be lost sight of that the charge of Court-fee is not as a tax but as a fee, as has been held by a Division Bench of this Court. If this is borne in mind, there will be no difficulty in directing a certificate to issue in this case. There will be a direction for the issue of the usual certificate for the refund of Court-fee subject to the reduction of the normal spoliation charges. The memorandum of writ appeal will be returned to the appellant.