
(1952) 11 MAD CK 0026
In the Madras High Court

Nagarathna Mudali and Others

APPELLANT

Vs

Mayandi Venkatesa Mudali and Others

RESPONDENT

Date of Decision : 07-11-1952

Acts Referred:

Court Fees Act, 1870 — Section 7

Citation : (1953) 1 MLJ 461

Hon'ble Judges : Venkatarama Aiyar, J

Bench : Division Bench

Judgement

Venkatarama Aiyar, J.—The question that arises in this revision petition is as to the court-fee payable on the plaint in O.S. No. 105 of 1951 on the file of the Court of the Subordinate Judge of Chittoor. There was a joint family consisting of two branches, one branch being represented by the second defendant and the other branch being represented by defendants 1 and 3. In I.P. No. 69 of 1935 on the file of the Sub-Court, Chittoor, defendants 1 and 2 were adjudicated insolvents. The third defendant then filed a suit for partition, O.S. No. 163 of 1937 on the file of the Court of the District Munsif of Sholinghur, and a decree was passed therein, the terms of which are set out in paragraph 7 of the plaint. In substance, the Official Receiver as representing the interests of defendants 1 and 2 was authorised to sell the properties and discharge the debts. The present suit has been filed by the sons of defendants 1 and 2 for partition of their shares in the joint family properties. An objection was taken as to the court-fee payable on the plaint.

2. The plaintiffs paid a fixed court-fee of Rs. 100 under Article 17-B of the Second Schedule of the Court-Fees Act which of course should be the proper article applicable if the plaintiffs were in possession of the joint family properties actually or constructively. The Official Receiver did not contest the position that the plaintiffs and defendants 1 and 2 should be regarded as members of a joint undivided Hindu family. Indeed he claimed that that being the position he was entitled to sell the properties under the Hindu law for discharging proper debts.

The Subordinate judge has however held that there was no proof that the plaintiffs were in possession of the properties along with the Official Receiver and therefore directed the plaintiffs to pay court-fee as in a suit for ejectment u/s 7, Clause (v) of the Court-fees Act. In my opinion this is wrong. The effect of the insolvency is not to put an end to the joint possession of the coparceners and whatever the rights of the Official Receiver might be, the coparceners must be deemed to be in possession at least constructively of all the joint family properties. In this view the court-fee paid by the plaintiffs must be held to be correct and the order of the lower court must be reversed. There will be no order as to costs in this revision petition as the objection as regards court-fee was not taken by the Official Receiver.