
(1967) 02 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 1979 of 1964

Paramasivam Pillai

APPELLANT

Vs

The State of Madras and others

RESPONDENT

Date of Decision : 22-02-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10, Order 33 Rule 14

Citation : (1967) 02 MAD CK 0022

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : V.V. Raghavan, for the Appellant;

Final Decision : Dismissed

Judgement

Venkatadri, J.—An interesting question of law was raised by the learned Counsel for the petitioner, that the State has no jurisdiction to bring the properties in O.S. No. 8 of 1954 on the file of the Vellore Sub-Court, for sale towards recovery of the Court-fee due on the plaint, which was directed to be paid by the father, Vinayakam Pillai. The learned Counsel for the petitioner contends before me that the decree specifically directs the father to pay the costs of suit, and that he only is personally liable to pay the Court-fee due to Government and not the petitioner who was the plaintiff in the suit. The exact wording of the decree in Cl. 6 is : "That the defendants do pay to Government the sum of Rs. 2081-2-0 being the Court-fee due on the plaint". The suit is for declaration of the petitioner's title and for possession of the suit properties. The petitioner succeeded in getting about 20 acres of property under the decree. Under O. 33, R. 10 in the Civil Procedure Code, a provision has been made for the payment of the Court-fee. In the usual course, the plaintiff has to pay Court-fee if he succeeds in the suit and the exact wording in O. 33, R. 10 is:

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper ; such amount shall be recoverable by the State

Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject matter of the suit.

2. Therefore, according to the learned Counsel the interpretation to be given for O. 33, R. 10 is that only the party ordered i.e., the father is liable to pay the Court-fee due to Government, and therefore, the petitioner should not be asked to pay the same. He also drew my attention to O. 33, R. 14, where it is stated, that the amount of the Court-fee has to be recovered from the person or property liable for the payment of the same as specified in the decree. Therefore, according to him, reading together, O. 33, R. 10 and O. 33, R. 14, it is clear, that only a person who is ordered to pay the Court-fee mentioned in the decree is liable to pay the court-fee and as such the State has no jurisdiction to proceed against the successful party or the property which is the subject matter of the suit. On the other hand, the learned Counsel for the State contends that irrespective of the person liable to pay the Court-fee, mentioned in the decree, the State has always got jurisdiction to proceed against the property, whoever is in possession of the same. Admittedly the petitioner is in possession of the property, about twenty acres in extent, and indeed the State is proceeding against the property for recovery of the Court-fee due to Government. To support his proposition of law, the learned Counsel for the State cited two decisions one of which is of our High Court reported in *Gopalaswami Naick v. Province of Madras* 58 L.W. 353 where, though the Court-fee was directed to be paid by the first plaintiff, the State Government proceeded against the second plaintiff who was given a portion of the properties. Leach, C.J. observed that O. 33, R. 10, C.P. Code was wide enough to allow a charge in favour of the Government of 20 acres received by the second plaintiff. His Lordship further observed that under O. 33, R. 10 the Court-fee payable to Government became a charge on the subject-matter of the suit and the Government is entitled to proceed against the property irrespective of the direction in the decree whichever party is directed to pay the Court-fee. Another decision relied on by learned Counsel for the State is reported in *Babui Girija Kuer v. Secretary of State for India* 50 I.C. 315 wherein the facts are exactly similar. The defendant was directed to pay Court-fee in a suit instituted by the plaintiff in forma pauperis and when attempts were made to recover the Court-fee from the defendant, the State failed and then proceeded against the property in the possession of the plaintiff. Their Lordships observed that the payment of Court-fee due to Government being a first charge on the property, the State is entitled to proceed against the property. There is also another decision in *Ramdas v. Secretary of State for India* in Council 18 All. 419 in which their Lordships used the words, that "being a prerogative right of the Crown to precedence, the Crown is entitled to proceed against the subject-matter of the suit ; it is immaterial whoever is directed by the decree to pay the Court-fee. Therefore, relying on these principles laid down in the above said decisions, I feel that the State is entitled to proceed against the subject matter of the suit, which are now in the possession of the petitioner. Therefore the writ petition fails and it is dismissed. No costs.