

(1935) 10 MAD CK 0048
In the Madras High Court

Payidimarri Madhava Sarma and Others	APPELLANT
Vs	
Veluri Seshagirirayadu and Others	RESPONDENT

Date of Decision : 28-10-1935

Acts Referred:

Court Fees Act, 1870 — Section 11

Citation : 160 Ind. Cas. 935 : (1936) 43 LW 300 : (1936) 70 MLJ 292

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This is a Revision Petition against the order of the lower Court calling upon the plaintiffs to pay court-fee upon a sum of

Rs. 3612 in the following circumstances:

2. The first defendant is the maternal uncle of the plaintiffs and was in management of their property for a number of years. The suit is substantially

one calling upon him to render an account of his management. It has been valued as a suit for accounts and court-fee paid on that basis. The

question, now for consideration arises with reference to certain allegations made in paragraph 5 and an alternative prayer (d) in paragraph 17 of

that plaint.

3. Paragraph 5 of the plaint relates in particular to one item of mismanagement or improper conduct on the part of the first defendant, namely, in

respect of a pro-note for Rs. 2,100 said to have been executed by the 5th defendant in favour of the plaintiffs. It is alleged that the first defendant

practically misappropriated this amount by destroying the genuine note and having another note for Rs. 2,000 executed in his own favour for the

said amount and a note for Rs. 500 in favour of his Viyyankudu. It is accordingly

stated that ""the first defendant is while rendering accounts bound to pay the said amount of Rs. 2,100 with interest"". The paragraph next refers to the fact that the first defendant had taken a sale-deed of certain lands from the 5th defendant in satisfaction of this pro-note claim. With reference to this land, the plaintiff claims that the 5th defendant should be held to have made the purchase as a trustee for the plaintiffs and that the plaintiffs are accordingly entitled to possession and mesne profits. Hence the prayer (d).

4. The learned Subordinate Judge says that though the suit is one for accounts and the relations between the parties are such as to make the first defendant liable to render accounts to the plaintiffs ""still, the specific claim for recovery of a definite amount on a definite allegation appears to me to fall u/s 7 (1) and cannot be disguised under the cloak of a relief of accounting."" The plaintiff paragraph 5 expressly asks for a decree for the said amount. He calculated the principal and interest due on the pro-note at Rs. 3,612 and accordingly ordered court-fee to be paid thereon.

5. I am unable to agree that this is the correct view of the plaintiff claim. If the sum of Rs. 2,100 due under the alleged pro-note had been received by the first defendant in the form of a note executed in his own favour by the fifth defendant, it will still be money received by him as an accounting party; but as the plaintiffs are alleging that in that connection the first defendant had acted fraudulently by making it appear that the renewed debt was in respect of an amount due to himself and by suppressing the genuine note in favour of the plaintiffs, details relating to this transaction had to be stated in the plaintiff to bring out how and why the plaintiffs claimed to hold the first defendant accountable in respect of a sum realised by him on a promissory note which stands in his own favour. The sentence in paragraph 5 to the effect that ""the first defendant is while rendering accounts bound to pay the said sum of Rs. 2,100 with interest"" does not mean that it is a claim independent of the accounting but that in the accounting plaintiffs should be allowed credit even for the sum of the note which has been fraudulently taken by the first defendant in his own name from the fifth defendant. I am unable to agree with the learned Judge that this is a claim for recovery of a definite amount falling outside the claim for accounts. If, for instance, the defendant satisfies that even this amount has been

spent on behalf of the plaintiffs there will be an end of the defendant's liability under this head. This will not be the case in an ordinary suit for money u/s 7 (1). That is why a suit for accounts is allowed by law to be valued in a particular way. After all, the plaintiffs will not in such a case ultimately evade payment of the stamp duty; because, if on the taking of accounts the amount is not accounted for and is ultimately decreed in favour of the plaintiffs the time for payment of court-fee on such amount is fixed by law u/s 11 of the Court-fees Act.

6. While I disagree with the view taken by the lower Court for the reasons above indicated I must, nevertheless, hold that the plaintiffs are liable to pay court-fee in respect of the prayer for possession u/s 7(v) of the Act. In paragraph 16 of the plaint it is suggested that no court-fee is payable in respect of the claim for the (d) schedule property because it is an alternative prayer. This does not seem to be a valid reason. A person may hold property in trust for another but if the latter sues for possession of that property he is bound to pay court-fee thereon. This cannot be said to be included in the suit for accounts. It may be that in the taking of the accounts the defendant will be entitled to credit for the price of this property because the plaintiffs take the property as their own but that is different from saying that the prayer for possession of the property is also comprised in the claim for accounts.

7. In modification of the lower Court's order, therefore, I direct that the plaintiffs shall pay court-fee u/s 7(v) in respect of the prayer for possession of the (d) schedule property. The lower Court shall fix the proper court-fee payable and take it out of the amount which I am told the plaintiffs have already paid into the lower Court under the order now revised. The plaintiffs will be entitled to a refund of the surplus amount unless they allow it to remain in Court to be utilised u/s 11 of the Court-Fees Act in due time. There will be no order as to the costs of this Revision
Petition.