

(1934) 12 MAD CK 0045
In the Madras High Court

Pindiprou Perraju and Others

APPELLANT

Vs

Pindiprolu Subba Rao and Others

RESPONDENT

Date of Decision : 13-12-1934

Acts Referred:

Court Fees Act, 1870 — Section 7(viii)

Citation : 156 Ind. Cas. 625

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—These Civil Revision Petitions raise a question of court-fee. The suits are for partition of the joint family property, but certain creditors have been made parties on the ground that the debts, alleged to be due to them, are not binding on the plaintiffs. There is a prayer that their share should be delivered to them free of the specified debts. The lower Court has held that in respect of each debt, a separate fixed court-fee of Rs. 15 should be paid as upon a declaration under Article 17A(i) of Schedule II of the Court Fees Act. It is contended for the petitioners that the order of the lower Court is wrong and that they are not liable to pay any additional court-fee in respect of the debts mentioned.

2. Mr. Subramaniam puts his argument thus: It is within the proper scope of a partition suit that the debts should be ascertained and discharged. The Civil Rules of Practice expressly provide that at the hearing of a suit the Court shall determine whether there are any outstanding debts and liabilities of the family; they also contemplate the bringing in of claims by third Parties on a notice issued by the Court. It is contended that inasmuch as such claims should, therefore, be adjudicated up on, there is no reason why the plaintiff, who in the first instance, making the creditors parties, seeks a declaration, should be penalised by being required to pay a separate court-fee. It seems to me that this argument, though plausible, is not sound. In such a suit as this, where the creditors have been impleaded, any decision rendered is necessarily binding upon them. Though no

doubt the deciding of the claims of third parties would, conduce to the proper disposal of a partition suit, there is no procedure by which they, not being originally impleaded, can be compelled to bring in their claims for adjudication. There is a provision in the Civil Rules of Practice which says that where a co-owner has alienated any portion of the joint property for other than family purposes, the alienee shall be made a party and the plaintiff shall set out the particulars of the alleged alienation. Supposing the unauthorised alienation was made by the plaintiff, in such a case the plaintiff would naturally not set it out, but it would be to the interest of the defendant to refer to it and apply that the alienee should be impleaded. No court-fee would, in that event be payable, although the propriety of the alienation has been made the subject of enquiry. Does it follow from this, that the plaintiff should escape the payment of court-fee when he himself attacks in his plaint the alienation and impleads the alienee? The analogy relied on by the petitioners seems, therefore, to be misleading. Take a case again, where a co-sharer other than the plaintiff makes the alienation, but the plaintiff does not choose to attack it in his plaint. If in such a case a defendant co-sharer, impeaching the alienation, gets the alienee added, no liability to pay a court-fee arises. Merely, therefore, on the ground that to decide such matters falls within the scope of a partition suit, the plaintiff cannot be absolved from the payment of court-fee, if in the plaint itself, such questions are expressly raised and he prays for suitable reliefs. If the petitioners' argument were sound, it would equally follow that when decree debts are attacked in the plaint, no court-fee would be leviable, nor even when the plaintiff seeks to set aside attachments, such as are referred to in Section 7(viii) of the Court Fees Act. It has been no doubt held that creditors are proper parties to a partition suit--*Shanmuga Nadan v. Arunachalam Cheity* 18 Ind. Cas. 961 : 45 M. 194 : 14 L.W. 642 : (1921) M.W.N. 799 : 42 M.L.J. 97 : 30 M.L.T. 172 : AIR 1922 : Mad. 332 *Official Assignee Vs. Ramachandra Aiyar and Others*, , *Ramaswamy Chettiar v. Vellayappa Chettiar* Ind. Cas. 643 : 60 M.L.J. 229 : AIR 1931 Mad. 357 : Ind. Rul. (1931) Mad. 547 : 33 L.W. 734 but that has no bearing on the present point, for, in their absence the adjudication regarding the debts is binding only upon the parties to the partition suit [see *Tarachand v. Reeb Ram* 3 M.H.C.R. 180 .]

3. It has been held by Sir Horace Owen Beasley, Kt., Chief Justice, and Curgenvin, J. that even where as against a member of a family, relief is claimed in the partition suit on the ground that he is in adverse possession of a particular item, a separate court-fee in regard to it, as on a claim for possession, should be paid *Kandunni Nair Vs. Ittunni Raman Nair and Others*, . Again, where in addition to partition, rendition of accounts is prayed for, an additional court-fee has been levied *T.R. Manikkam Pillai and Another Vs. T.S. Murugesam Pillai and Others*, .

4. I am, therefore, of the opinion, that the lower Court has correctly decided the point and the Civil Revision Petitions accordingly fail and are dismissed with costs--one set to be paid in equal moieties by the petitioners in Civil Revision Petition.