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**(1948) 10 MAD CK 0014**  
**In the Madras High Court**

Pydipalli Joga Rao

APPELLANT

Vs

Pydipalli Venkata Rao

RESPONDENT

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**Date of Decision :** 26-10-1948

**Acts Referred:**

Court Fees Act, 1870 — Article 17B

**Citation :** (1949) 62 LW 413 : (1949) 1 MLJ 648

**Hon'ble Judges :** Satyanarayana Rao, J

**Bench :** Division Bench

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**Judgement**

Satyanarayana Rao, J.—This is an application by the second defendant in the suit, O.S. No. 35 of 1945 in the Court of the Subordinate

Judge of Cocanada, to revise the order of the learned Subordinate Judge dated 1st April, 1947, directing him to pay court-fee in respect of his

one-third share in the properties which were alleged by him to have been purchased benami in the name of defendants 4 to 11 by the plaintiff. The

plaintiff, first defendant and second defendant are brothers. In this suit for partition, the plaintiff, according to the case of the defendants, omitted

certain items. The second defendant in his written statement pleaded that some of the family properties were purchased in the name of defendants

4 to 11 by the plaintiff fraudulently and collusively and benami with a view to defeat the rights of the several members to the family property. He

therefore claimed that these items also should be brought into the hotchpot. Having taken this objection in the written statement, he filed J.A. No.

2222 of 1945 to get those persons impleaded as parties and the Court directed them to be added as defendants 4 to 11.

2. The plaintiff paid a court-fee of Rs. 100 on the plaint under Article 17-B of the Court-Fees Act. After defendants 4 to 11 were impleaded the

court-fee, examiners raised an objection that the plaint was not properly valued and the court-fee paid was not sufficient. According to them the plaintiff had to pay a further sum of Rs. 500 in respect of the Immovable property purchased in the name of defendants 4 to 11 as if the plaintiff was bound to pray for a declaration of the title of the family in respect of the suit properties. They also raised a further question that in respect of a sum of Rs. 1,500 which the second defendant claimed should be decreed to him as representing the amount of dowry which was paid into the hands of the plaintiff, the second defendant was liable to pay also on that amount a sum of Rs. 149-15-0. With the objections filed by the parties the matter came up for consideration before the learned Subordinate Judge and he by his order dated 1st March, 1947, overruled the contention raised in the check-slip by the court-fee examiners on the ground that as it was a suit for partition and as the plaintiff did not claim any share in the properties standing in the name of defendants 4 to 11, there was no necessity for him to pay any court-fee in respect of those items. As regards the dowry amount claimed by the Second defendant also, he held that as it was merely an item in the account taking, there was no necessity to pay separate court-fee. After this order the suit proceeded to trial and after the plaintiff closed his evidence and while the first defendant was in the witness box, the learned Subordinate Judge suo motu raised the question whether the second defendant was not liable to pay court-fee in respect of the items standing in the name of defendants 4 to 11 and in which he claimed a one-third share, and by his order dated 1st April, 1947, the learned Subordinate Judge directed the 2nd defendant to pay court-fee on his 1/3rd share. This order, it may be stated, was passed by the learned Subordinate Judge without notice either to the plaintiff or to the defendants and without even hearing arguments on the point as the order itself clearly indicates. This, to say the least, is somewhat an extraordinary procedure for the learned Subordinate Judge to have adopted in disposing of a question of this description without giving an opportunity to the parties to argue the matter.

3. The learned Subordinate Judge was of opinion that as the title of defendants 4 to 11 was involved in the suit, there was necessity for a

declaration of the title of the family in respect of the properties standing in the names of defendants 4 to 11 and that therefore the second,

defendant claiming a one-third share in those properties should pay court-fee on the footing that the written statement of the second defendant

impliedly contained a prayer for declaration and partition. According to him the partition being consequential relief, court-fee had to be paid on the

one-third share u/s 7, Clause (v) of the Court-Fees Act. He gave a very short time for payment of the court-fee and did not determine the amount

of court-fee payable.

4. In this civil revision Petition, it is contended on behalf of the petitioner that the order of the learned Subordinate Judge is without jurisdiction and

is also vitiated by irregularity in that he did not give an opportunity to the parties to be heard. We are of opinion that the contentions urged on

behalf of the petitioner on both the points are well founded.

5. The only provision which has any bearing on this question is Article I of Schedule I, which states:

Plaint or written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-

objections presented to any Civil or Revenue Court except those mentioned in Section 3.

Then the amount of court-fee is indicated in columns 2 and 3 varying with the value of the subject-matter. The claim of the second defendant is

contained in the written statement and it cannot certainly be treated as a plaint. No question of any set-off or counter-claim arises in the present

case. There is no provision in the Court-Fees Act which requires court-fee to be paid in respect of such a claim by a defendant in a partition suit.

In fact, it is not seriously contended before us by the learned Government Pleader that there is any provision in the Court-Fees Act which justifies

the order of the learned Subordinate Judge calling upon the second defendant to pay court-fee in respect of his one-third share on the basis of his

claim in the written statement.

6. We have therefore no hesitation in holding that the order of the learned Subordinate Judge is wrong and must be set aside. It is not necessary to

refer to the decisions in Venkatasubbamma v. Ramanadhayya (1932) M.L.J. 845 : ILR 55 MAd. 975 and Hemchandra Mahto v. Prem Mahto 90

Ind.Cas. 739, which point out the procedure regarding the payment of the court-fee in a partition suit, as they do not touch the question raised

before us. The revision petition is therefore allowed and the order of the learned Subordinate Judge is set aside. There will be no order as to costs.