

(1943) 01 MAD CK 0029
In the Madras High Court

Rukmani Achi and Another

APPELLANT

Vs

Sampoornathammal

RESPONDENT

Date of Decision : 06-01-1943

Acts Referred:

Citation : AIR 1943 Mad 585 : (1943) 1 MLJ 286

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellants are the second and third defendants in the suit which has given rise to this appeal. The suit

was filed in forma pauperis and was unsuccessful. The appellants did not appear, but the order for the payment of Court-fee was made against

them as well because their interests were the same as those of the plaintiff. This decision was upheld by the Subordinate Judge and Venkataramana

Rao, J., in second appeal. This appeal is against the learned Judge's judgment under Cl. 15 of the Letters Patent.

2. The cases referred to by the learned Judge can no longer be regarded as having application here. Order 33, Rule 11 has been amended since

the decision in Neelamma v. Mareppa (1935) 70 M.L.J. 128 the latest of the decisions referred to in the judgment under appeal. The rule as it

now stands directs that where the plaintiff in a pauper suit fails, the Court shall direct him to pay the Court-fee. The rule provides for one

exception, namely, the case of a suit by the next friend of a minor plaintiff. If a suit filed by the next friend has been filed unreasonably or

improperly, the Court may order the next friend to pay personally the Court-fee. As the rule reads now it is clearly not open to the Court to order

a defendant to pay the Court-fee. It is to be remembered that this is not a question of an order for costs. The Court's discretion in the matter of costs, other than the Court-fee, is not hampered.

3. The appeal will be allowed with costs throughout. In this Court and before Venkataramana Rao, J., the costs will be payable by the Government.