

(1936) 10 MAD CK 0032
In the Madras High Court

Sadasivam Pillai and Others

APPELLANT

Vs

Varadaraja Odayar and Others

RESPONDENT

Date of Decision : 28-10-1936

Acts Referred:

Court Fees Act, 1870 — Section 12(1)

Citation : AIR 1937 Mad 325 : (1937) 45 LW 206 : (1937) 1 MLJ 89

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is a petition to revise the order of the learned Subordinate Judge of Kumbakonam dated 6th March, 1936,

directing the 3rd defendant to pay an additional court-fee of Rs. 134-15-0 on his memorandum of appeal presented against the judgment and

decree of the District Munsif of Kumbakonam in O.S. No. 323 of 1933 on the file of the said Court. This order was in supersession of the prior

order passed by the same learned Judge on the 20th November, 1935, in and by which he had decided that the correct court-fee had been paid.

The question is, has the learned Judge jurisdiction to pass the order under revision? In a recent case reported in S.L. Lakshmana aiyar Vs.

T.S.P.L.P. Palaniappa Chettiar and Others, , Venkatasubba Rao, J., in a considered judgment held that once on an objection taken by the office

or by a defendant, a Court applies its mind and gives its considered decision, it is final and its power to revise the valuation is at an end. No other

interpretation is possible on the language of Section 12, Clause 1 of the Court-Fees Act. I respectfully agree with the said decision and set aside

the order in question.

2. But I am invited by Mr. Jagadisa Aiyar to go into the correctness of the said order and uphold it u/s 12, Clause 2 of the said Act. Granting that

the order-is correct, I do not think I should be justified in upholding it on this ground as I would be striking at the principle of finality laid down by

Clause 1 of the section. And I would also be setting up a bad precedent by encouraging parties and Courts to go behind orders once passed and

indirectly circumvent what is prohibited by the section. Unless compelled to do so, I should like to avoid a construction of Clause 2 of the section

which would lead to such a result. In my opinion, the condition precedent to the exercise of powers under Clause 2 is that the suit, i.e., the subject-

matter of the suit should be before the Court of appeal, reference or revision. It is unnecessary for me to consider in this case whether it should be

the whole subject-matter as *Kerala Varma v. Chadayan Kutti* I.L.R.(1891) 15 Mad. 181 seems to suggest or if part of the subject-matter is

enough as observed by the learned Judges of the Calcutta High Court in *Radharanee v. Kshetra Mohan* 40 C.W.N. 406, but the suit whether

whole or in part must be before the Court of appeal or revision. Were it otherwise, it may be contended that whenever there is an appeal or

revision against an interlocutory order in the suit (for instance, an order upon an application for injunction or attachment before judgment) the Court

of appeal or revision can go into the question of court-fee paid in the lower Court if it is brought to its notice that the proper court-fee had not been

paid. Such a result would never have been in the contemplation of the legislature. As the suit is not before me, I do not feel warranted in exercising

my powers under Clause 2 of Section 12 and I express no opinion as to the correctness or otherwise of the order which is set aside.

3. In the result, the revision petition is allowed with costs.