

(1948) 08 MAD CK 0054
In the Madras High Court

Shankaranarayana Kadambalithaya

APPELLANT

Vs

Vasudeva Achuta Hebbara and Others

RESPONDENT

Date of Decision : 13-08-1948

Acts Referred:

Citation : (1948) 61 LW 808 : (1948) 2 MLJ 553

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—It is unfortunate that the respondents are not represented. All the same, I do not think it necessary in the circumstances to issue notice to the Government Pleader, though the question for decision is the adequacy of the court-fee originally paid on the plaint.

2. It is not even necessary to canvass the correctness of the decision of the learned District Munsiff on the adequacy of the court-fee paid on the plaint. The contention of the learned advocate for the petitioner was that, whether the court-fee originally paid was sufficient or not, the learned Munsiff had no jurisdiction to demand any additional court-fee at the stage at which he passed that order. After objections had been taken to the court-fee paid the matter was placed before the learned District Munsiff, and he directed that the question should be heard in open Court and decided. " Call on Bench 26th February, 1946" was the order he passed. Apparently he heard the plaintiff's vakil and adjourned it from 28th February, 1946 to 4th March, 1946, for consideration of the authorities; the authorities must have been cited on the 4th March, 1946. The learned District Munsiff then passed the order:

It is not necessary for the plaintiff to pray for a declaration that the vaidagini lease deed is not valid and binding on him. Court-fee if paid is correct. File.

Subsequently written statements were filed and issues were framed, by the learned District Munsiff who passed that order, dated 4th March, 1946. When the issue relating to the adequacy of court-fee paid came up for consideration before

the successor of the learned Munsiff who passed that order, dated 4th March, 1946, that officer came to the conclusion that the court-fee paid on the plaint was insufficient.

3. I am unable to agree with the learned District Munsiff that the present case does not fall within the scope of S.L. Lakshmana aiyar Vs. T.S.P.L.P. Palaniappa Chettiar and Others, , decided by Venkatasubba Rao, J. There the learned Judge upheld the order of the 15th. February, 1932, in that case as a judicial decision which precluded any successor of the same judicial officer in that Court from re-opening the question of adequacy of the court-fee already paid. No doubt there was an issue in that suit whether court-fee paid was correct, and there was also the report of the court-fee examiner that the court-fee paid was not correct. As pointed out by Venkatasubba Rao, J., the intervention of the court-fee examiner can have no effect on the question for determination, whether a judicial officer having once judicially decided that the court-fee paid on the plaint was adequate was entitled to re-open the question at a later stage in the same Court. Any error committed by the judicial officer in deciding the adequacy of court-fee at that stage can only be corrected under the provisions of Section 12, Clause (2) of the Court-Fees Act. The learned Munsiff referred to Venkatasubba Reddy Vs. Ramadoss Reddy, but in dealing with the facts of that case Happell, J., observed:

It is clear from what the District Munsiff himself has said that he reserved the question of the correctness of the court-fee paid for decision at a later stage and that he did not apply his mind to-and decide the question at the time when the suit was registered.

4. Such an observation in my opinion cannot possibly be applied to the order, dated 4th March, 1946. There was certainly no reservation apparent on the face of the order. Whether there was a mental reservation on the part of the learned District Munsiff, it is not possible to decide, nor would it be useful to embark upon such an investigation. The mere fact that subsequent to the filing of the written. statement an issue was framed by the same officer would not show that on 4th March, 1946, the learned Munsiff reserved, mentally or otherwise, that the question of court-fee would have to be gone into afresh. As pointed out by Venkatasubba Rao, J., it should be for the Court to decide the question of adequacy of court-fee at the earliest possible stage. The defendant's interest is not so much in the quantum of the court-fee paid, though his help might certainly be valuable to the Court in deciding the issue where the issue is left open for decision. To reiterate, in this case by the order, dated 4th March, 1946, that question was concluded by the District Munsiff, and he did not intend to leave it open for decision afresh in his own Court.

5. On the short ground that the learned Munsiff did not have the jurisdiction to revise the order, dated 4th March, 1946, I have to set aside the order, dated 4th July, 1947. The learned Munsiff will proceed with the trial of the suit on the basis of this plaint with the stamp it now bears.

6. The petitioner will be entitled to the costs of his application from the respondents.