

(1924) 11 MAD CK 0057
In the Madras High Court

Sudalimuthu Pillai alias Appavu Pillai and Others	APPELLANT
Vs	
Peria Sundaram Pillai and Others	RESPONDENT

Date of Decision : 19-11-1924

Acts Referred:

Citation : 87 Ind. Cas. 25 : (1925) 48 MLJ 514

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—This is an application u/s 115, Civil Procedure Code, to revise an order passed by the Additional Subordinate Judge of

Tinnevely declaring that ad valorem Court-fee on Rs. 11,000 was payable on the plaint presented to him by the petitioner before me in this Court.

The plaint was one u/s 92 of the Code, and in the plaint he asked that the defendants should be made to refund to the trust the sum of Rs. 11,000

at which figure he estimated the amount misappropriated by them. He also asked that certain properties in the possession of the defendants should

be handed over to the new trustees to be appointed under the scheme to be framed by the Court, and these properties were valued at Rs. 90 at 5

times the annual assessment of the lands described in the schedule. The figure 11,000 was arrived at in this manner. He actually paid a stamp duty

only of Rs. 10 on the plaint as for a declaration and urged that the other reliefs which he claimed in the plaint were not capable of valuation because

he was not asking that the property should be handed over to himself and because he claimed no beneficial interest in those reliefs. The

Subordinate Judge has held that the plaintiff was bound to pay Court-fees on those reliefs as they formed part of the subject-matter in dispute. It

seems to me that this view is not correct. The plaintiff does not claim any beneficial interest in these sums, but only says that on going through the accounts a sum which he estimates at Rs. 11,000 would be found due by the trustees to the trust and that the trustees should be asked to make good to the trust itself that amount of money and hand over possession of the Immovable property. In such a case, we cannot treat those reliefs as being part of the subject-matter in dispute between the parties, they are merely ancillary reliefs. The case is covered by the ruling in Ramrup Das v. Mohunt Sitaram Das (1910) 13 CLJ 211. I respectfully follow the view taken in it by the learned Judges of the Calcutta High Court. No doubt, as pointed out by the Subordinate Judge, there is an observation in Srinivasa v. Venkata ILR (1887) M 148 that if damages on account of misappropriated moneys are claimed, Court-fees will have to be paid on such amounts. But these observations were unnecessary for the purpose of disposing of that case, and were only obiter "dicta; and therefore I do not think that I am bound by those observations. It would be a hardship to worshippers who bring suits u/s 92 in order to see that the trusts are properly carried out and that the trustees do not misappropriate the moneys belonging to the trust or abuse the trust, to have to pay Court-fees upon such large sums of money. It will practically prevent them from bringing such suits. I am therefore inclined to think that this Court should take a lenient view as regards Court-fees with reference to claims of this sort. As it seems to me that the relief claimed clearly falls under Article 17 (vi) of the 2nd schedule to the old Court Fees Act, which was in force when the plaint was filed, there is no reason why the plaintiff should not be allowed to file the plaint on a ten rupees stamp. The view taken by the Calcutta High Court in the case above quoted seems to me to be the proper view . My attention has been drawn to Omrao Mirza v. Jones ILR (1884) C 599 but that case was not one u/s 92 so far as can be gathered from the report. If it is supposed to lay down a rule which is in conflict with the ruling in Ramrup Das v. Mohunt Sitaram Das (1910) 12 CLJ 211, I think we should prefer to follow the later decision of the Calcutta High Court. Omrao Mirza v. Jones ILR (1884) C 599 was cited to the learned Judges in Ramrup v. Mohunt Sitaram Das (1910) 12 CLJ 211 as appears from the arguments of the counsel before them, but no reference is made to it in the judgment. Thlakuri v. Brahma Narain I LR (1896) A 60 has also

been brought to my notice but it is easily distinguishable. In fact in that case the learned Judges held at page 63 that Court-fee need not be paid

upon any claim for damages as part of the account asked for u/s 92 and they distinguish the cases in *Delroos Banoo Begum v. Ashgur Ally Khan*

(1875) 15 Beng LR 167 and *Omrao Mirza v. Jones* ILR (1884) C 599 already referred to. They, no doubt, say that if a prayer for an injunction

against interference was added and if that is valued, Court-fee ought to be paid for it. Whether that portion of the decision is correct or not, it is not

necessary for me to say, for, there is no such claim put forward in this case. The Subordinate Judge has referred to 37 M.L.J. 447. But there does

not seem to be any case in that report, having any bearing; there is clearly some error here. With reference to the new Court Fees Act, there is a

clear ruling by Venkatasubba Rao, J., in *Ramanuja Naidu and Others Vs. Muthu K.R.V. Alagappa Chettiar and Another*, in which he held in a

case exactly similar to the present that a single Court-fee of Rs. 50 only need be paid. I should have been content merely to follow that case in

deciding this case, had it not been for the fact that this case arises not under the new Act but under the old Act. It seems to me that the tendency

has been in such cases to hold that a Court-fee of Rs. 10 is sufficient and the Legislature has now made it clear that extra Court-fees are not

payable even though claims are made for accounts to be taken and for moneys to be paid by the defaulting trustee to the trust fund if he had

misappropriated them. I hold that the Court-fee of Rs. 10 paid on the plaint is sufficient in this case.

2. It was also argued that whatever might be my opinion in the case, I should not interfere in revision as the parties have another remedy by way of

appeal to the proper appellate Court if the plaintiff refuses to pay the Court-fees and gets the plaint rejected. No doubt, there is such a remedy.

But it seems to me to be a cumbrous remedy, for if the plaint is rejected he will have to pay the same stamp duty on appeal. It has been the

practice of this Court to interfere in this class of cases in revision and set the matter right, so that no further trouble might arise. No conflict of

opinion in this Court on this point has been brought to my notice, although it is true that the Patna High Court has taken a different view. In the case

in *Chandramani Koer v. Basdeo Narain Singh* (1918) 4 Pat LJ 57 the main argument was that the *cursus curiae* of that High Court had been not to

interfere u/s 115 in cases of this sort. But in this Court *cursus curiae* has not been in that way at all. Therefore the argument loses much of its force

in this Court. It seems to me that it is open to this Court to interfere because the question is really one of jurisdiction as the plaint has to be rejected

if the stamp duty is not paid. I am also of opinion that it is desirable that u/s 115, Civil Procedure Code, we should interfere and not leave the party

to his remedy by way of appeal. I am therefore inclined to interfere u/s 115 in this case and I do so. The Civil Revision Petition is allowed and the

order of the Subordinate Judge is set aside and he is directed to take the suit on his file on the stamp of Rs. 10 already paid, and dispose of it

according to law. Costs of this petition and costs in the Lower Court will be dealt with by the Subordinate Judge in his final order.