

(1921) 09 MAD CK 0008
In the Madras High Court

T.V. Chakrapani Aiyangar

APPELLANT

Vs

The Government of India

RESPONDENT

Date of Decision : 01-09-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10

Citation : AIR 1922 Mad 125 : (1921) 14 LW 529 : (1922) 42 MLJ 191

Hon'ble Judges : William Ayling, O.C.J.; Odgers, J

Bench : Full Bench

Judgement

William Ayling, Officiating C.J.

1. The Officiating Chief Justice: The facts of this case have been very clearly set out in the order of the Lower Appellate Court and need not be re-capitulated. The Subordinate Judge has allowed Government a first charge under Order 33, Rule 10 of the CPC of the sum of Rs. 88-15-0 to which the plaintiff was entitled under the decree in O.S. No. 89 of 1917.

2. But under the same decree plaintiff was liable to pay defendants Rs. 191-0-0 for the latter's costs, and as a matter of fact, before Government applied for execution first defendant had taken out execution for the balance in his favour after giving plaintiff credit for the sum of Rs. 88-15-0.

Under Order 21, Rule 19, Code of Civil Procedure, plaintiff was indeed precluded from taking out execution for the amount decreed in his favour.

3. In these circumstances I do not think plaintiff can be held to have "succeeded" in the suit so as to attach the provisions of Order 33, Rule 10.

This Rule and Rule 11, which deals with cases in which the pauper plaintiff fails, must between them be made to cover cases of partial success and

cases of partial failure, and, it seems to me that a case in which a plaintiff is by

reason of Order 21, Rule 19 precluded from taking out execution in

his own favour but liable to have execution taken out against him but the defendant must fall under Rule 11 rather than under Rule 10. I find nothing

in *Janki v. The Collector of Allahabad* I.L.R (1887) All. 64 contrary to this view.

4. The object of Rule 10 is clearly to facilitate the recovery by Government of the Court-fee where a pauper plaintiff has realised something from

his litigation; not to penalise, a defendant for his adversary's pauperism by making him pay an undue proportion of the Court-fee.

5. I would set aside the decree of the Subordinate Judge and dismiss the petition with costs throughout.

Odgers, J.

6. In this case I do not think the pauper plaintiff has "succeeded" within the meaning of Order 33 Rule 10, Code of Civil Procedure. He got a

decree for Rs. 88 and odd from defendant but the latter had a right to set off against this amount a sum of Rs. 191 awarded him for costs of the

suit. The original claim of the plaintiff was for articles of the value of nearly Rs. 3,000. The Court-fee came to Rs. 170 and; the Munsif has

apportioned this i- e., has ordered defendant to pay Rs. 6-12-0 only as plaintiff's proportion of the Court-fee payable on Rs. 88. The Government

now claims a first charge on the whole of the Rs. 88. It is clear that the plaintiff never had a decree capable of execution in his favour (O, 21, Rule

19 of the Code of Civil Procedure.) As Sir T. Muthuswamy Iyer, J. said in *Lakshmikantam v. Lakshmiddevamma* Referred Case. No. 12 of 1893,

(unreported) quoted in *Collector of Vizagapatam v. Abdul Kharim Saheb* I.L.R. (1898) Mad. 113 the word "succeeds" and "fails" in the suit "refer

to ultimate decision or the result of the suit." I do not think the result of the suit here can be set to be in plaintiff's favour. The learned Government

Pleader says that costs ought not to be included in considering what the subject matter of the suit is. I take it the word "subject matter " is a neutral

term employed because it is applicable either to immovables or movables or to an interest in either. As laid down above success means the result

of the suit, i. e., the net gain to the plaintiff on the decree. Here there is none.

7. From the cases quoted it is evidently the practice to apportion the court-fee recoverable in cases of partial success and failure for which no

provision is made by the rules. Order 33 Rules 10 and 11 only refer to success or

failure. This has, as stated, been followed by the Munsif and I think he was right. As to *Janki v. The Collector of Allahabad* I.L.R.(1887) All. 64 it was found in the circumstances of that case that no question of set-off or other modification of the subject matter of the suit had arisen. The learned Government Pleader also argued that the Government's charge would intervene before the right of set-off arose as between the parties. No authority was quoted and I gravely doubt if Government has anything more than the right to be reckoned as the first creditor of a successful pauper plaintiff.

8. For these reasons I think the Civil Miscellaneous Second Appeal succeeds, and the petition must be dismissed with costs.