
(1933) 07 MAD CK 0005
In the Madras High Court

Vijyalakshmi Ammal

APPELLANT

Vs

K.R. Srinivasa Ayyangar and Others

RESPONDENT

Date of Decision : 28-07-1933

Acts Referred:

Court Fees Act, 1870 — Section 13, 14, 15

Citation : (1934) ILR (Mad) 542 : (1933) 38 LW 983 : (1934) 66 MLJ 35

Hon'ble Judges : Pakenham Walsh, J

Bench : Division Bench

Judgement

Pakenham Walsh, J.—The petitioner in this case filed a suit to recover possession of certain Immovable properties. The suit was valued at

Rs. 1,000 and a Court-fee of Rs. 112-7-0 was paid thereon. The defendants contested that the market value of the properties was Rs. 4,000 and

that the plaintiff has to pay an additional Court-fee. On an issue being raised as to the Court-fee payable the Court found that the correct fee was

to be calculated on ten times the kist, i.e., Rs. 125, and that the Court-fee payable was Rs. 14-9-0. It decreed the suit but in awarding costs only

ordered a sum of Rs. 14-9-0 to be paid for stamp fee. Petitioner then applied for a certificate for refund of the excess Court-fee paid but the

Court refused the application and this Revision Petition is filed against that order.

2. It appears to be well settled that the Court has the power u/s 151 to grant a certificate in cases not covered by Sections 13, 14 and 15 of the

Court-Fees Act. It does not appear to me that the discretion of the Court is barred by the fact that the excess fee was paid by the mistake of the

party and not in consequence of any direction by the Court. The case in Chintakayala Thammayya Naidu Vs. Chintakayala Venkataramanamma

and Another, would appear to be one where the mistake was that of the party and not of the Court, and certainly several of the cases which the learned Judges have quoted in support of their decision are cases where the over-payment was due to the mistake of the party. I hold therefore that the Court had jurisdiction to entertain the application.

3. The next question is whether this Court should interfere in revision against an order refusing the certificate. One case at least of those quoted in

Chintakayala Thammayya Naidu Vs. Chintakayala Venkataramanamma and Another, , i.e., Girish Chandra Mali v. Girish Chandra Dutta 36

C.W.N. 190, is a case where a certificate was issued on a Revision Petition it having been refused by the Lower Court. In considering whether the

discretion of the Lower Court in a matter of this sort should be interfered with in revision it is necessary, I think, to see what the certificate to be

granted really is. There appears to be no doubt that the Revenue authorities are not bound to make a refund to the party even if he has obtained a

certificate of the Court, as they apparently are bound to do in the case of certificates under Sections 13, 14 and 15 of the Court-Fees Act which

distinctly say that the certificates in those cases authorise the party obtaining the certificate to receive the excess Court-fee paid back from the

Collector. I think it is therefore clearly wrong to order a refund of the Court-fee on a certificate as appears to have been done in some of the cases

quoted. The Court has no power to order refund or even to give a certificate to say that a party is entitled to it. A party cannot be said by the

Court to be entitled to anything which need not be granted to him, and it appears to me that the proper certificate the Court should give is that he

has paid excess Court-fee. If this is the form which the certificate should take it would appear that as a general rule the discretion of the Court

should be exercised in petitioner's favour, for the discretion is merely confined to the question as to whether the Court will give a certificate that the

petitioner has in effect paid excess fee. If the Court holds it to be a fact then in the absence of special reasons one would expect that it would not

refuse issuing a certificate to that effect.

4. I therefore allow this Revision Petition and order that a certificate of the above nature should be granted to the petitioner.