

(1958) 11 MAD CK 0021

In the Madras High Court

Case No : Civil Revision Petition No. 87 of 1956

V.S. Thiruvengadaswami Mudaliar

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 28-11-1958

Acts Referred:

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 41, 87(2)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115
Court Fees Act, 1870 — Article 17

Citation : AIR 1959 Mad 155 : (1959) ILR (Mad) 460 : (1959) 72 LW 136

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : S.V. Rama Aiyangar, for the Appellant; Mahomed Ibrahim, for the Respondent

Final Decision : Allowed

Judgement

Panchapakesa Ayyar, J.—This civil revision petition is by one Thiruvengadaswami Mudaliar the plaintiff in an unnumbered claim suit of 1955

on the file of the Subordinate Judge's Court. Tirumelveli, for revising and setting aside the order of the learned Subordinate Judge, dated 13-9-

1955, directing Court-fee to be paid on the claim suit under the new Court-fees Act, and holding that the fixed Court-fee of Rs. 15 paid, under the

old Court-Fees Act, to be insufficient and also directing payment of the deficit court-fee by 20-9-1955.

The facts were briefly these : On 9-2-1954 the petitioner filed E. P. No. 4 of 1954 in O. P. No. 209 of 1932, on the file of the District Court,

Tirumelveli and attached some lands of the respondent in the Tirumelveli Dt. The respondent filed E. A. No. 104 of 1954 on 15-4-1954, a claim

petition for getting the lands released from the attachment. On 4-8-1954, an

order was passed allowing the claim petition. Consequent on this the petitioner filed a claim suit on

4-8-1955. The suit was filed in time, that is, within a year.

The learned Subordinate Judge conceded that the suit arose as a direct result of the claim petition filed on 15-4-1954 which was allowed on 4-8-

1954, long before the coming into operation of the new Court-Fees Act, which came into force only on 13-

5-1955, but since he considered that the suit was not a proceeding and was not a continuation of the claim order passed adversely to the

petitioner, he held that the old Court-Fees Act would not apply, and that the fixed court-fee of Rs. 15 paid thereunder would, not be sufficient, but

that court-fee should be paid under the new Court-Fees Act, and passed an order calling for payment of the deficit court-fee.

(2) I have perused the records and heard learned ed counsel on both sides. Mr. S. V. Rama lyengar, learned counsel for the petitioner, and Mr.

Mahomed Ibrahim, learned counsel for the respondent-defendant, have argued the case fully and fairly. Mr. Mohamed Ibrahim raised a

preliminary objection that this civil revision petition would not lie, and that the petitioner should have waited till his claim suit was dismissed for

default of payment of deficit court-fee and then appealed against the order of dismissal.

I cannot agree. As Mr. Rama lyengar urged, it will be putting too mud) hardship on the plaintiff. In my opinion, a revision petition can be filed

against an order demanding deficit court-fee and the matter got clarified so that the plaintiff may not be put to the necessity of having his suit

dismissed and then agitato the matter. That course may be something like getting medicine after death. Of course, if the plaintiff defaults in payment

of the court-fee demanded, and then the suit is dismissed for nonpayment of the deficit court-fee, then he can file an appeal.

But I do not think that he is bound to wait till the dismissal of his suit. Much less is he bound to pay the court-fee demanded of him and get the suit

tried and decided and then take the matter in appeal, as argued by Mr. Mahomed Ibrahim. The tendency in modern times is to settle court-fee

matters as speedily as possible and not keep them in cold storage for months or years, with penal consequences like the dismissal intervening.

Therefore I reject this preliminary point,

(3) The next question is whether in the claim suit filed against the order passed on the claim petition filed before the new Court-Fees Act came

into operation, court fee has to be paid under the new Court-Fees Act simply because the suit was filed after the coming into operation of the new

Court-Fees Act. I have no doubt that this is not so, "

Just as in appeals to the Privy Council or Supreme Court the filing of the suit before the Constitution of India came into operation is taken into

account, and the lower valuation of over Rs. 10,000, and less than Rs. 20,000 is held to be sufficient, so too I am of opinion that in the case of

claim petitions filed before the coming into force of the new Court-Fees Act, the plaintiff in the claim suit counsel quent on a claim order passed in

the claim petition need pay only court-fee due as on the date of the claim petition, in this case admittedly Rs. 15.

The policy of the law, in matters of finance and court-fees is to give the benefit of the doubt to the party obliged to pay regarding an order in a

claim petition. It is obvious that the defeated party alone will file a claim suit, whether he is the claimant or the attaching party. Either of them will

get the benefit of the construction placed now by me.

There is nothing in Section 87(2) of the new Court-Fees Act to justify the Court in levying, in such suits, court-fee under the new Court-fees Act.

Proceedings taken, namely, the claim petition out of which the claim suit arose, were instituted before the commencement of the new Court-Fees

Act and so the court-fee payable would be governed only by the provisions of the then (old) Court-Fees Act.

(4) In the end, therefore, I allow this civil revision petition, set aside the order of the learned Subordinate Judge demanding payment of the deficit-

court-fee, and hold that the court-fee already paid is sufficient, and direct the learned Subordinate Judge to re-entertain the plaint on his file when

re-presented to him within one month from today and proceed, with the trial of the suit,

(5) In the circumstances, all the parties to this civil revision petition will bear their own costs.

(6) The Office will return the plaint to the advocate for the petitioner at once for re-presentation in the Court of the Subordinate Judge.