

(1948) 10 MAD CK 0022
In the Madras High Court

Vyja Eswaramma

APPELLANT

Vs

Dappili Chinna Kota Reddi and Others

RESPONDENT

Date of Decision : 29-10-1948

Acts Referred:

Citation : (1948) 2 MLJ 623

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—The short point for determination in this petition is whether the lower Court erred in law in not determining the question of pecuniary jurisdiction, and of its competency to entertain the suit pecuniarily, before it decided the question of the pauperism of the petitioner. I am of opinion that it did err in law. When the respondents raised the objection that the suit, which was one for partition and recovery of the plaintiff's alleged two-fifths share, was beyond the pecuniary jurisdiction of the Court, it was the bounden duty of the lower Court to get rid of that objection, by deciding that the suit was within its pecuniary jurisdiction, before proceeding to consider the question of pauperism, both on general principles and the question of convenience of parties. The learned Counsel for the respondents, who had raised the question of want of pecuniary jurisdiction before the lower Court, now wants to support the lower Court's postponement of its finding regarding jurisdiction, obviously because the lower Court has found against the pauperism of the petitioner, and the respondent's purpose has been well served, and they did not see why they should not cause further inconvenience to the petitioner. The inconvenience will arise like this. Supposing the lower Court, without deciding the question of jurisdiction, decides against the pauperism, and the petitioner sells whatever properties she has, and pays court-fee, based upon the valuation of the plaint, and the lower Court, later on, hears the question about the pecuniary jurisdiction, and decides that it has no pecuniary jurisdiction, and returns the plaint for presentation in the proper Court, then the petitioner would have to file the plaint in the Sub-Court, paying additional court-fees, and may not have

enough to pay, and may be driven to file another pauper application there, and will not recover the court-fee she has already paid, and may be thus incapacitated in the conduct of her suit there. If, once for all, she is told that the pecuniary jurisdiction is with the Sub-Court, and her pauper petition is returned to her, she can approach the Sub-Court with the pauper petition and will not have spent away her scanty funds in paying any court-fee. The Sub-Court, while deciding her petition, would also consider it with reference to the suit in a Sub-Court, and the court-fee payable thereon and she will not have the above inconvenience of having wasted her scanty funds unnecessarily.

2. It was urged by the learned Counsel for the respondents that there is no provision, under Order 33, Rule 5, of the Civil Procedure Code, to enquire into the question of pecuniary jurisdiction in a pauper petition. I cannot agree with this contention. For one thing, it appears to me that Order 33, Rule 5 (d-1) may give such jurisdiction, as a suit above Rs. 3,000 cannot be filed in the District Munsiff's Court, and the law may be held to bar the filing of such a suit there. Even apart from that, the question of jurisdiction is a general question. Supposing the pauper petition was valued at more than Rs. 3,000, the District Munsiff will at once return it for presentation to the proper Court, despite the alleged want of a provision under Order 33, Rule 5, Civil Procedure Code. The ruling in *Tulshi Mahatani v. Gajadar Marwari* 61 Ind.Cas. 891 relied on by the learned Counsel for the respondents, will have no application to the facts of the present case, as a Court is not given, under our law, power to reduce the valuation given in the plaint, whereas every day power to enhance the valuation on an enquiry about the real value of the plaint is exercised, primarily in the interests of court-fees, and incidentally also for purposes of pecuniary jurisdiction.

3. The learned Counsel for the petitioner relied on a direct ruling on the point now in question by my learned brother Yahya Ali, J., in *Periyasami Padayachi and Another Vs. Ulaganathan by next Friend Mother, Muthammal and Others*, . I respectfully agree with that ruling. A ruling to the contrary, given by my learned brother Mack, J., in *Sudarsana Venkatacharyulu and Others Vs. Sri Venugopalaswami Varu and Others*, was relied on by the learned Counsel for the respondents. I am unable to agree with that view, for the reasons already stated, and also because the only power the Court has, under our law, in a suit beyond its pecuniary jurisdiction, is to return the plaint for presentation to the proper Court, and it has no power to hold any enquiry into pauperism, mesne profits or any other matter whatsoever. This petition is accordingly allowed, and the lower Court's order set aside, and the lower Court is directed to go into the question of jurisdiction and give a finding on it before proceeding with the question of pauperism and the other matters in dispute. In these circumstances and as the lower Court itself was responsible for refusing to decide the question of jurisdiction, after having referred to it, I direct all the parties to this petition to bear their own costs.