
(1924) 11 MAD CK 0002
In the Madras High Court

W.M. Varadaraja Mudaliar

APPELLANT

Vs

M. Arumugam Pillai

RESPONDENT

Date of Decision : 11-11-1924

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 39

Citation : AIR 1925 Mad 1216 : (1925) 22 LW 15

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—The question raised in this matter relates to the institution fees payable in respect of a suit of a value less than Rs.

1,000, which has been transferred to this Court in order that it may be tried with another suit in this Court involving the same question. There can

be little doubt that suits below Rs. 1,000, in value do not come within Sections 39 and 10 of the Presidency Small Causes Courts Act. The transfer

to the High Court will be under powers vested in it u/s 13 of the Letters Patent and the jurisdiction of the High Court to try such a suit would be

Extraordinary Original Jurisdiction conferred by the Letters Patent. Srinivasa Aiyar Vs. Balakrishna Devai, for this position. If the suit was over Rs.

1,000 in value, Section 10 would have applied and the fees payable would be the ordinary fees leviable on the Original Side; but, as the suit is below Rs.

1,000 in value, Sections 39 and 40 do not apply. So far as the fees on the Original Side are concerned, the fees rules framed by the High Court

apply only to cases coming before the High Court in the exercise of its Ordinary Original Jurisdiction and also of its Civil Jurisdiction, viz.,

Admiralty, Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdiction. It is therefore clear that the High Court has framed no rules in

respect of suits transferred under the Extraordinary Original Jurisdiction of the Court conferred either by Section 13 of the Letters Patent or

Section 24 of the Civil Procedure Code. In such cases I think, in the absence of any rules framed by the Court, the Court-fees Act would apply

and Section 4 of that Act applies to cases coming before it in its Extraordinary Original Jurisdiction. The fees payable : are the fees prescribed in

the First and Second Schedules to the Act. In this case the difference between the advalorem fee payable under the Court-fees Act and the fee

actually paid will be paid by the" plaintiff. I see no reason to hold that, where a suit is so transferred the defendant is to pay the deficiency of

Court-fee; and I think the Registrar is right in his note that any deficiency, if payable, must be paid by the plaintiff. I say nothing here as to whether,

when a suit is tried in the Extraordinary Jurisdiction, the hearing, translation and other fees would be payable or not. That is a matter which does

not arise before me for consideration. At present I am only concerned with the institution fees. The office will levy the deficiency payable from the

plaintiff; and it will be paid within one week from the date when the office makes a demand.

2. As regards Rs. 300 paid in Court in pursuance of my order, the plaintiff will be entitled to draw it on furnishing one surety.