

(1931) 04 MAD CK 0028
In the Madras High Court

(Wuppuluru) Neelachalam

APPELLANT

Vs

Narasinga Dass

RESPONDENT

Date of Decision : 28-04-1931

Acts Referred:

Citation : AIR 1931 Mad 716 : (1931) 34 LW 252

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Petitioner seeks to revise the judgment of the District Judge, Ganjam, in A.S. No. 283 of 1926.

2. He filed O.S. No. 131 of 1926 on 6th January 1925 and he was ordered to pay Rs. 57-15-0 to make up the proper court-fee. Instead of

doing so he reduced the claim and returned the plaint with a court fee of Rs. 37 which was then correct. The District Judge held that he had not

obeyed the order of the lower Court and therefore the original plaint could not have the same effect, as if the proper Court- fee had been paid at

the outset. The point is important because if the amended plaint is to be treated as a fresh and distinct document it will be time barred. The original

plaint could be rejected under Order 7, Rule 11, if the plaintiff on being required to supply the requisite stamp paper failed to do so. In this case

the plaintiff did supply the correct stamp in the sense that he finally produced a correct court-fee, though it was not the fee that the unamended

plaint would have required.

3. The view of the learned Judge is that the plaintiff ought not to have amended the plaint without permission; but it is difficult to see why permission

is required. A plaintiff may relinquish any portion of his claim to bring it within

the Court's jurisdiction (Order 2, Rule 2) and it seems equally open to him to relinquish a portion in order to bring it within a certain court-fees.

4. As the Court returned the plaint to him the plaintiff did ii; without consulting the Court. If the Court had kept the plaint presumably he would have asked to have the plaint back so as to strike out the portion and there is no reason why the Court should have objected, even if it was entitled to object, which seems very doubtful.

5. In *Midnapur Zamindary Co. Ltd. v. Secretary of Stale* [1917]44Cal.352 upon which the learned Judge relies the plaintiff entirely failed to comply with the Court's order under Order 7, Rule 11, and then afterwards-sought to remedy matters by striking out a plea. As though in this case after the expiry of the allotted time the plaintiff had attempted to get over the difficulty by striking out a portion of his claim. That is entirely a different set of circumstances.

6. The lower Court lays down as the principle that the plaintiff must not be allowed to evade the proper court-fee. But there is no evasion. The State does not want to charge a court-fee higher than what is payable as a due proportion of the claim; and if the claim is reduced, the court-fee should naturally be reduced also. It is not as if the plaintiff was getting a relief on payment of an inadequate court fee. The principle is rather that a plaintiff must set his plaint and fee right within the time prescribed by the Court; and in the present case this has been done.

7. The point seems to be covered by *Bam, Prasad v. Bhiman* [1905]27 All.151. There too the plaintiffs instead of paying the additional court-fee struck out a portion of their claim, and it was held that the District Munsif had erred in dismissing the suit u/s 10 (2), Court-Fees Act.

8. It is urged that this Court has no jurisdiction u/s 115, Civil P. C. But court-fee questions are invariably brought up on revision, on the plea that the lower Court has erred in refusing jurisdiction.

9. The petition must be allowed, but without costs. Plaintiff is to blame for leaving things to the last moment, and then raising these debatable questions. The appellate Court's decree is set aside and that of the District Munsif restored. Costs below will be paid to the petitioner.