

(1953) 12 KL CK 0001
High Court Of Kerala
Case No: C.R.P. No. 255 of 1953

Vasudeva Vadhyar
and Another

APPELLANT

Vs

Govinda Bhatt

RESPONDENT

Date of Decision: Dec. 8, 1953

Hon'ble Judges: Koshi, C.J; T.K. Joseph, J; Subramonia Iyer, J

Bench: Full Bench

Advocate: K.A. Mohammed, for the Appellant; P.N. Subramonia Iyer and Govt. Pleader and Govt. Pleader for Sircar, for the Respondent

Final Decision: Allowed

Judgement

Joseph, J.

The question raised in this Civil Revision Petition, is whether the Defendant in a suit for partition is liable to pay court-fee on the value of properties which are claimed by him to be partible. The Plaintiff in the court below sued for partition of his share in joint family properties.

Defendants 1 and 2 filed a written statement contending that there were more partible properties than were shown in the plaint. The 5th Defendant moved a petition to direct Defendants 1 and 2 to pay court-fee on the value of such properties claimed by them as partible. This was allowed by the trial court by the following order:

Defendants 1 and 2 have to fix a value of their alleged share in these items as well and will pay ad valorem court-fee for the same, and they are directed to do so within 30 days of this date. For valuation and payment of court-fee adjourned to 2-1-1953.

Defendants 1 and 2 seek to have this order set aside.

2. The order of the court below does not show under which provisions of the Court-fees Act, II of 1125, the Defendants are liable to pay court-fee. The only

provision in the Act which requires a Defendant to pay court-fee is Article (1) of Schedule 1 which provides a scale of court-fees varying with the value of the subject-matter on

plaint or written statement pleading a set off or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court.

A claim by a Defendant in a suit for partition that there are more partible properties than are stated in the plaint does not fall within this article.

The learned Government Pleader brought to our notice the third part of Section 8 which is as follows:

If, in a suit for accounts or partition, the court finds that the Defendant is entitled to recover property from the Plaintiff, the Court may give a decree accordingly, but the Defendant shall not execute it before paying the court-fee on the relief granted, according to the provisions of this Act.

This purports to cast a liability on the Defendant to pay court-fee "according to the provisions of this Act." Section 8 cannot by itself make a Defendant liable to pay court-fee if he is not otherwise bound to pay the same under the provisions of the Act.

3. Civil Courts in the erstwhile States of Travancore and Cochin used to collect court-fees from Defendants who claimed their share in partition suits. However, in - "C.P. Raman v. Vavakutty 34 KER LR 221 (A) a Full Bench of the Cochin High Court pointed out that this practice had no statutory basis.

The Full Bench followed the decisions in - "Nawab Mir Sadrudin v. Noorudin 29 Bom 79 (B), - [Hemchandra Mahto and Others Vs. Prem Mahto](#), and - [Pillutla Venkatasubbamma and Another Vs. Gollapudi Ramanadhayya and Others](#),

In - "Hemchandra Mahto v. Prem Mahto (c)", their Lordships point out that there is nothing in the law which requires a Defendant in a partition suit to pay court-fees in order to have his share separately allotted to him. He is merely to ask for it in his written statement and it is open to the Court to order the shares of the Defendant in a partition suit to be separated amongst themselves. The decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act and except the stamp duty levied on the decree, no other court-fee is payable by the Defendant.

Civil Courts in the State of Travancore also used to collect court-fee from Defendants in partition suits, on the value of the shares allotted to them.

It may be pointed out that under the Stamp Act 4 of 1080 (Travancore) "Instrument of partition" was defined as follows:

Instrument of partition means any instrument whereby co-owners of any property divided or agreed to divide such property in severalty and includes also a final order for effecting a partition passed by any revenue authority and an award by an arbitrator directing a partition.

The corresponding provision in Section 3(14), Travancore-Cochin Stamp Act 1 of 1125 is:

Instrument of partition means any instrument whereby co-owners of any property divided or agreed to divide such property in severalty and includes also a final order for effecting a partition passed by any revenue authority or any "civil court" and an award by an arbitrator directing a partition.

There was a provision similar to part 3 of Section 8, Travancore-Cochin Court-fees Act in Section 9, Travancore Court-fees Act 6 of 1087 and the same appears to have been incorporated in Section 8 of Act 2 of 1125 without noticing the change made in the definition of an Instrument of Partition in the Stamp Act. It is clear that the right of the State to some revenue on the claim of the Defendant is satisfied by the direction in the Stamp Act that the decree as finally drawn up should be stamped as an instrument of partition and except that stamp duty no other duty is payable by the Defendant.

4. As stated above, there is the further fact that Defendants 1 and 2 want partition of certain properties which are not included in the plaint. This by itself cannot cast a burden on the Defendants to pay court-fee on the value of such property. There is only one suit for partition and the question is what the partible properties are. It is open for any of the Defendants to point out that the list of properties furnished by the Plaintiff is incomplete. If the court be satisfied that more properties have to be brought in to be partitioned, that will be done and at the time of drawing up the final decree, stamp duty will be collected on the value of such properties also.

This specific question came up for decision in - "Joga Rao v. Venkata Rao AIR 1949 Mad 471 (E). It was held:

The claim of the Defendant is contained in the written statement and it cannot certainly be treated as a plaint. No question of any set off or counter claim arises in the present case. There is no provision in the Court-fees Act which requires court-fee to be paid in respect of such a claim by a Defendant in a partition suit.

We are in full agreement with the above view and we hold that Defendants 1 and 2 are not liable to pay court-fees as ordered by the court below.

5. In the result we set aside the order sought to be revised and allow the Civil Revision Petition. There will be no order as to costs.